(1892) 12 MAD CK 0003

Madras High Court

Case No: None

Vencata Mahalakshmamma		APPELLANT
	Vs	
Ramajogi		RESPONDENT

Date of Decision: Dec. 23, 1892

Citation: (1893) ILR (Mad) 271

Hon'ble Judges: Wilkinson, J; Muttusami Ayyar, J

Bench: Division Bench

Judgement

1. The appellant is the zamindarni of Kasimkota and respondent is a raiyat in the zamindari. In fasli 1298 the former gave the latter notice to quit,

and there is no dispute as to the sufficiency of the notice. The respondent, however, denied that he was a tenant from year to year and contended

that he had occupancy right. Both the Courts below dismissed the plaintiff''s suit. The District Munsif considered that it was for the plaintiff to show

that defendant was a tenant from year to year and liable as such to be ejected after due notice. On appeal the District Judge held that, as between

the zamindar and the raiyat, the former was merely the assignee of land revenue, whilst the latter was prima facie the owner of the soil, and that the

zamindar was not entitled to eject the raiyat. For the appellant it is contended that it was for the raiyat to establish his occupancy right, and that, as

he failed to do so, the zamindar was entitled to a decree. The facts found by the District Judge are that defendant''s family has been in possession

for about 120 years, that about sixteen years ago defendant repaired an old well and formed a mango tope, that he executed the muchalka (Exhibit

C) for one year only, viz., for fasli 1298, and that plaintiff has not proved that the tenancy commenced under him or his ancestors. The question is

whether upon these facts the zamindar is entitled to determine the tenure by notice to quit and to eject the defendant. We have been referred to the

decision in Second Appeals Nos. 1627 and 1834 of 1888 and also to the decisions in Chockalinga Pillai v. Vythealinga Pundara Sunnady 6

M.H.C.R. 164, Krishnasami v. Varadaraja,"" ILR 5 Mad. 345. Thiagaraja v. Giyana Sambandha Pandara Sannadhi ILR 11 Mad. 77 and Baba v.

Vishvanatha Joshi ILR 8 Bom. 228. It is clear from those decisions that in each of the cases the defendant conceded that the plaintiff or his

ancestor was the original owner of the land. In the first case Chockalinga Pillai v. Vythealinga Pundara Sunnady 6 M.H.C.R. 164 it was admitted

that the land was the property of the Mutt, and that the tenancy commenced under a muchalka executed by the defendant''s father in August 1837.

In Krishnasami v. Varadaraja ILR 5 Mad. 345 the land was admitted to be the property of the temple. The same was the case in Thiagaraja v.

Giyana Sambandha Pandara Sannadhi ILR 11 Mad. 77, and the tenancy commenced under the temple in 1827. Similarly, in the case of Baba v.

Vishvanatha Joshi I.L.R., 8 Bom. 228 the plaintiff''s title as owner was admitted and the tenancy set up was one which commenced under him.

They are clear authorities for the proposition that when the plaintiff''s family is acknowledged to be the owners of the land, and the tenancy set up is

one which commenced under him or his ancestors, the onus of proving the permanency of the tenure is on the tenant, and that neither the

Regulations nor Act VIII of 1865 operates to extend a tenancy beyond the period of its duration secured by the express or implied terms of the

contract creating it. In Second Appeals Nos. 1627 and 1834 of 1888 the defence was an alleged grant from a former Zamindar of Jalantra, and

the fact that the zamindar''s ancestor was the owner when the defendant''s holding commenced was admitted.

2. In the case before us, however, there is no such admission, the defence being that defendant and his ancestors have been jirayati raiyats from

time immemorial. The finding of the Judge is that the duration of the holding is at least 120 years, and it is quite possible that the holding was as old

as the zamindari itself. We do not consider, in cases in which the raiyats'' holding is not shown to have commenced subsequent to the permanent

settlement, and when upon the evidence it is possibly as ancient as the zamindari itself, the principle laid down with reference to tenancies which

admittedly commenced under the zamindar has any application. It may be that the raiyat was in possession when the zamindari itself was created,

or that the zamindar, as pointed out by the Judge, was a mere farmer of the revenue. In such cases it is not unreasonable to hold that the onus of

showing that the tenancy commenced under the plaintiff or his ancestors rests on the zamindar, and that until he shows it, the zamindar may be fairly

presumed to have been the assignee of Government revenue, and the tenant liable to pay a fair ''rent and entitled to continue in possession as long

as he regularly pays rent.

3. As regards the muchalka executed in 1298 there is nothing in it inconsistent with the defendant''s contention. Neither a patta nor a muchalka

granted or executed under Act VIII of 1865 during the continuance of the holding is conclusive evidence that the holding is a tenancy from year to

year. A patta or muchalka is ordinarily nothing more than a record of what the tenant has to pay for a particular year with reference to the pre-

existing relation of landlord and tenant. We must also observe that the term tenant is defined in Act VIII of 1865 only for the purposes of that Act

and means nothing more than that the holding is subject to the payment of rent. It does not necessarily imply that the tenant was originally let into

possession by the plaintiff''s ancestor, and it may be that the payment was due in consequence of the status of the zamindar as the farmer of public

revenue. Under the circumstances we are not prepared to reverse the decrees of the Courts below and we dismiss the appeal with costs.