

Vellayan Chetti Vs. Tiruvakone and ors.

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SooperKanoon Citation : sooperkanoon.com/775284

Court : Chennai

Decided On : Feb-20-1882

Reported in : (1882)ILR5Mad76

Judge : Charles A. Turner, Kt., C.J., ;Innes, ;Kernan, and ;Kindersley, JJ.

Appellant : Vellayan Chetti

Respondent : Tiruvakone and ors.

Judgement :

Charles A. Turner, Kt., C.J.

1. Doubts having been felt whether mortgagees in possession of agricultural estates enjoy the privileges and are subject to the obligations of landlords under the Rent Recovery Act, the cases before us were referred to a Full Bench for decision.

2. A review of the legislation respecting landlords and tenants of agricultural holdings discloses the anxiety of the Government to protect tenants from uncertain demands and at the same time a recognized necessity, in the interests of the public revenue, to entrust landlords with certain summary powers and processes for the realization of their dues. It also shows that the privilege to employ these summary powers and processes was restricted to such landlords as had fulfilled their statutory obligations, that certain landlords were debarred from suit if such obligations were not fulfilled, and that precautions were taken to secure to tenants

injured by the exercise of summary powers prompt relief, and the responsibility of persons presumably in a position to make compensation.

3. The earliest legislation respecting the granting of pattas by landlords to tenants in this Presidency is to be found in Regulation XXV of 1802, which introduced the permanent assessment. The 14th section of that Regulation required 'Zamindars' and 'Landholders' to enter into engagements with their raiyats for a rent and within a reasonable time to grant to each raiyat a patta or cowle defining the amount to be paid by him and explaining every condition of the engagement and to give receipts for all payments made to them by their raiyats, and it declared a Zamindar, who, after the expiry of a reasonable time from the execution of a kabulyat, should neglect or refuse to comply with the demands of his under-farmers or raiyats for pattas or receipts, liable to a suit for damages in the Civil Court.

4. Regulation XXVII of 1802 conferred on Collectors summary powers for the realization of the Land Revenue from proprietors of land and farmers holding a farm immediately from Government, and in the second section it declared that the designation 'proprietors of land,' whenever it occurred in any Regulation, should describe Zamindars, independent talukdars, and all actual proprietors of land who might pay the revenue assessed on their estates directly to the Government.

5. Regulation XXVIII of 1802, for the like reasons as were declared in the preamble of the preceding Regulation, empowered 'proprietors of land and farmers of land holding immediately from Government,' without notice to any Court or Public Officer, to distrain and sell, with certain exceptions, the property of their under-renters, tenants, and raiyats for arrears of rent or revenue, subject to rules prescribed by the Regulation, and it conferred the like powers on under-farmers farming land from proprietors' in relation to their under-farmers, tenants, or raiyats.

6. Section 34 empowered 'Zamindars, proprietors, or farmers of land,' if they were unable to realize by distraint of the property of their dependent talukdars or under-tenants of whatever denomination or of the sureties of such persons, to apply to the Judge of the Zilla Court setting forth the arrear and praying that the defaulter and his surety might be taken into custody unless the amount were paid. The

person against whom the complaint was made was to be arrested and brought before the Judge, who was directed to hold a summary [82] inquiry into the merits or refer the case to the Collector for adjustment. If, from his own inquiry or the report of the Collector, the Judge found the arrear claimed or a considerable portion thereof due, he was to detain the debtor in custody until the debt was discharged or the landlord applied for his release.

7. Powers were also given to landlords to attach the farm or other tenure of defaulters and to manage them by their agents and to collect the rents due to defaulters from the cultivators of the soil and other inferior tenants, and, if the debt was not claimed at the end of the year, to make arrangements for its collection in the ensuing year. Proprietors and farmers were also declared by Section 34, Clause 7, competent, on application to the Civil Court, to sell such tenures of defaulters as were transferable by sale, and, where the defaulters might be leaseholders or other tenants having right of occupancy only during payment of certain rents, it was declared competent to the 'proprietors, * * *, or the farmers or other persons to whom such proprietors may have leased or committed their rights,' to oust such defaulters from their tenures without application to a Court.

8. In the exercise of the powers conferred on them without the intervention of a Court, the landlords were declared responsible for all acts done by them or their agents in excess of their powers or in derogation of the rights of their under-tenants, and liable to be sued for damages and to pay a fine to Government.

9. The 35th section recognized the right of persons confined for arrears after summary inquiry to question the decision by regular suit.

10. The 36th section recognized in proprietors and farmers of land a similar right to contest by regular suit a summary decision rejecting their claims.

11. The 40th section declared the Regulation was not intended to deprive the tenants of their right to sue in the Zila Courts for damages for illegal distress, nor 'landholders, or farmers, or other persons vested with the power of distress' from prosecuting their demands in the same Courts.

12. The 42nd section empowered 'Zamindars and other landholders and . farmers of land' to delegate their power of distraint to their naibs, gomastahs, and other agents employed in the collection of their rents and revenues; and the persons to whom such power is delegated are declared to be free to proceed for the recovery of arrears of rent and revenue due to their 'constituents' in the same manner as the latter were authorized to proceed.

13. Regulation XXX of 1802, a Regulation framed in contemplation of the complete introduction of the permanent settlement, required all 'proprietors and farmers of land,' within six months from the time of the permanent assessment being fixed, to exchange pattas and muchalkas with their tenants, specified the contents and forms of these instruments, required all payments, under whatever denomination collected on account of the proprietor's share, to be consolidated in one sum of money or quantity of grain, and ordered that proprietors or farmers suing in the Zila Court on engagements, in which the rents had not been consolidated after the expiry of two years from the time when the permanent assessment should have been fixed, should be non-suited with costs. 'Under-tenants and cultivators of land' were declared entitled to demand pattas, and, in the event of refusal, to sue the proprietor or farmer for damages in the Zila Court.

14. By Regulation II of 1806 the provisions of Sections XXVII and XXVIII of 1802 were extended to all districts, whether permanently settled or not, in which Zila Courts might be established under the Regulations.

15. Regulation V of 1822 invested Collectors with jurisdiction to take primary cognizance by summary process of all cases which, under the provisions of Regulations XXVIII and XXX of 1802, were summarily cognizable by the Zila Courts, with certain exceptions immaterial to the present inquiry.

16. The 3rd section of the same Regulation provided that no property attached under Regulation XXVIII of 1802, for the discharge of arrears of rent or revenue should be sold unless pattas should have been granted, or tendered and refused, nor until leave had been obtained from the Collector.

17. The 9th section declared that suits preferred in the Zila Courts for arrears of rent or revenue from under-farmers or raiyats or their sureties, where no patta had been granted, should be dismissed with costs, unless it were proved the parties had agreed to dispense with the exchange of pattas and muchalkas.

18. It will be seen that by the Regulation the obligation to grant pattas was imposed and the power to collect rents by summary process was conferred not only on proprietors and farmers under Government, but on the farmers under proprietors. The same reason, the necessity for providing for the speedy collection of revenue, suggested the conferring of summary powers on farmers as well as on proprietors; and the same object, the protection of the tenant, was promoted by imposing on farmers the like obligations as on proprietors.

19. Act VIII of 1865, which consolidated and amended the rent law, defines two classes of landholders, and, while it imposes obligations on the one class, it permits the other class to have recourse to summary process for the recovery of rent, only in cases in which a written engagement has been obtained from the tenant. In the first class are placed 'all persons holding under a sanad-i-milkiyat-i-istimrar, all other zamindars, shrotriendars, jagirdars, inamdars, and all persons farming land from the abovementioned persons or farming the land revenue under Government;' and in the second, 'all holders of land under raiyatwar settlements or in any way subject to the payment of land revenue direct to Government, and all other registered holders of land in proprietary right.'

20. The 2nd section confers on landholders generally, as defined in the Act, power to proceed against their tenants for arrears of rent on the conditions thereafter laid down.

21. The 3rd section imposes on the landholders described in the first class the obligation to exchange pattas and muchalkas with their tenants. The 7th* section, as to the same class, repeats the provisions of Regulation V of 1822, Section 9, that no suit brought and no legal proceedings taken to enforce the terms of a tenancy shall be sustainable unless pattas and muchalkas have been exchanged 'as aforesaid' or proper pattas have been tendered or dispensed with.

22. The 12th section declared the landholders specified in Section 3 incompetent to oust their tenants, except by decree of Court or on the authority of the Collector, as provided in the Act.

23. The 13th section of the Act empowers the landholders described in the second class to proceed under the Act for the recovery of rent if they have taken a lease or agreement in writing from their tenants specifying the rent, but not otherwise.

24. Power is given to landholders--

(1) To realize arrears (a) by distress and sale after notice to, and with the leave of, the Collector; (6) by sale of the defaulter's interest in the holding.

(2) With the like leave to oust a defaulter from his holding if there be no sufficient distress and the tenant has no transferable interest in the holding.

(3) By arrest by summary process where the other measures are inefficacious to liquidate the arrear.

25. The 49th section authorizes any person deeming himself aggrieved by any proceedings taken under colour of the Act to seek redress by summary suit for damages.

26. The 79th section authorizes landholders without qualification to delegate to their agents or assignees all the powers given them by the Act, but declares that any person injured by such agents or assignees may hold liable in damages not only the person by whom the injury is occasioned, but also the person who has delegated the powers; for this is the only meaning that can attach to the term principal so as to include the other party to a contract of assignment as well as a contract of agency.

27. It will be seen that the Act authorizes the delegation of powers not only to agents, but to assignees.

28. The question, whether or not mortgagees of landlords are authorized as assignees to exercise the powers of landlords under the Act, assuming that they have satisfied the conditions of the Act, must turn upon the nature of the

mortgage.

29. The term farmer, when used in respect of the land system in this country, applies primarily to persons who farm the public revenue, who contract to pay a certain sum to the Government recovering the dues, which either in the form of revenue or rent the Government is entitled to receive, but the term also applies to persons who farm or take a lease of the rights of proprietors who, in consideration of obtaining such proportion of the profits of an estate as was enjoyed by the proprietors, agree to pay or account to the proprietor for a sum certain in consideration of the privilege. A mortgage may be made by way of lease or by way of farm or accompanied with a farm.

30. If it be a stipulation of the mortgage that the mortgagee shall take possession of the estate in whole or in part and give credit or account for a sum certain to the proprietors on account of the collections, he is pro tanto a farmer; and in such a case, if the mortgagor is the holder of a sanad-i-milkiyat-i-istimrar, a zamindar, shrotriyamdar, jagirdar, or inamdar, the mortgagee is expressly included in the definition of landholder. On the other hand, a mortgage may be made in such a manner that the rights of the mortgagor in respect of the enjoyment of the property are simply assigned to the mortgagee, and in such a case the mortgagee has the powers conferred by the Act on landholders only if they have been delegated to him by Section 79, and they may be delegated by landlords of either of the classes mentioned in the definition.

31. A question has been raised whether there is necessity for the express delegation of such powers. To this the answer is there must be the same evidence of delegation as is required in other cases in which powers are delegated. A delegation may be inferred from the general tenor of the instrument and without express terms, but it should not be inferred from an instrument which in form is an ordinary mortgage.

32. In the appeals from South Tanjore, the Kallakottai Zamindar is the mortgagor. He mortgaged his rights in seven villages to the plaintiff (appellant) to secure the repayment of Rs. 50,000 with interest at the rate of 10 1/2 per cent. per annum. The beriz or rent-roll of six out of the seven villages had been settled; and it was

agreed that the rent-roll of the seventh village on which the tirva had not been regularly fixed should be taken at a certain sum. The aggregate of the rent-rolls thus ascertained amounted to Rs. 5,944-14-0.

33. It was calculated that Government revenue and the expenses of collection and the interest payable on the mortgage would amount to the same sum, Rs. 5,944-14-0; and it was agreed that the mortgagee should take the beriz of the seven villages at that sum and should receive any excess profit and, on the other hand, should have no claim for any deficiency in the collections. At the end of any fasli year the mortgagor was to be entitled to recover possession of the seven villages on payment of the principal in full, or of two specified villages on payment of a proportionate part of the principal moneys.

34. There were other conditions to which reference is unnecessary. The effect of the instrument was not only to create a mortgage, but also a farm of the mortgaged villages, determinable in whole or in a specified part, at the end of any fasli year. The mortgagee is, therefore, a landlord within the meaning of Act VIII of 1865, and is entitled to enforce the acceptance of a proper patta.

35. The decrees of the Lower Appellate Court must be set aside and the cases remanded for the decision of the other pleas taken in appeal to that Court. The costs of the appeals to this Court will abide and follow the result.

* No suit to be brought unless Puttahs and Muchalkas have been exchanged, or tendered or dispensed with.

[Section 7: No. suit brought, and no legal proceedings taken, to enforce the terms of a tenancy, shall be sustainable unless Puttahs and Muchalkas have been exchanged as aforesaid, or unless it be proved that the party attempting to enforce the contract had tendered such a Puttah or Muchalka as the other party was bound to accept, or unless both parties shall have agreed to dispense with Puttahs and Muchilkas. Such tender shall be sufficiently evidenced by such proof of service as is provided for by Section 39 in the case of notices. But it shall not be necessary to send duplicates of such documents to the Collector.]

