

Yakub Vs. Narasinga

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Court : Chennai

Decided On : Aug-13-1884

Reported in : (1883)ILR7Mad572

Judge : Charles A. Turner, Kt., C.J. and ;Brandt, J.

Appellant : Yakub

Respondent : Narasinga

Judgement :

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

1. Narasinga Lala, the mittadar of Veppampattu, instituted a summary Suit, 39 of 1882, in the Court of the Head Assistant Collector, Salem District, to compel the defendant, Patel Yakub Sahib, to accept a patta and exchange a muchalka. The Head Assistant Collector directed the defendant to accept a patta as amended by him.

2. The defendant appealed to the District Court, and on the 27th February 1883 that Court ordered further amendment of the patta, and stated specifically in its judgment what the terms of the patta should be. A decree was drawn up which directed the preparation of a patta. The particulars given in the decree are at variance with those set out in the judgment.

3. On the 6th March, the defendant states, he received information from his vakil that the case had been decided partly in his favour. He subsequently applied for copies of the decree and judgment. The defendant states that, discovering that the decision and the decree of the Appellate Court were not in accord, he intended to apply for the correction of the decree. Meanwhile, on the 12th June 1883, the mittadar applied to the Head Assistant Collector complaining that the tenant had not accepted the patta and executed a muchalka in the terms prescribed by the decision of the Appellate Court, and,, asked for an order of ejectment under Section 10 of the Rent Act. On the 23rd July 1883 the Head Assistant Collector issued a summons to the defendant to appear on the 2nd August and show cause why he should not be ejected.

4. The defendant states that he appeared before the Head Assistant Collector on the 1st August 1883 and expressed his willingness to accept the patta if granted as mentioned in the summons, and that the Head Assistant Collector directed a gumasta to prepare a patta in accordance with the decree; that the gumasta brought to the notice of the Head Assistant Collector that the case stood posted for the following day and the Head Assistant Collector ordered him to attend on that day; that he attended in accordance with the order, and the Head Assistant Collector passed an order in the following terms:

Six months have elapsed since the judgment of the District Court, but defendant has not yet accepted patta. He should have done so in ten days and has failed to give any proper excuse. I order that he be ejected from the land.

5. The defendant has applied to this Court to set aside the order on the following grounds:

That the 10th Section of the Rent Act did not authorize the Head Assistant Collector to eject him for failure to accept a patta as amended by the District Court;

That the Head Assistant Collector, if he had the power, should not have exercised it without proof of wilful default; and

That sufficient reasons were offered by him to explain the default.

6. The 10th Section of the Rent Recovery Act enacts that, if within ten days from the date of the Collector's judgment the defendant shall not have accepted the patta as approved or amended by the Collector under that Section, etc., the Collector shall, on proof of such default, pass an order for ejecting the defendant.

7. The defendant did not, within ten days from the date of the Collector's judgment, accept a patta as approved or amended by the Collector, and, looking only to the terms of Section 10, he would be liable to ejectment; but the 69th Section of the Act gave him a right of appeal to the District Court, and the decision of the Collector was altered by the District Court. It is obvious he cannot be required to accept the patta ordered by the Collector, and is not liable to ejectment for his omission to do so. The question, then, arises whether he is liable to be ejected by reason that he did not accept a patta and execute a muchalka within ten days after the decree of the Appellate Court.

8. Section 10 does not in terms provide for the case. It authorizes ejectment when there has been a failure to accept a patta within ten days of the date of the Collector's judgment.

9. It may be allowed that the judgment of the Appellate Court takes the place of the judgment of the Collector; but there is no provision that a delay of ten days from the date of the Appellate Court's decision to execute a muchalka in the terms approved by that Court, but at variance with the terms approved by the Collector, shall authorize ejectment. There may have been a reason for the omission. A cultivator cannot in all cases attend at the District Court, which may be located at a distance of many miles from his holding, until that Court takes up and disposes of the appeal, and, if he is not in attendance, there may be an interval of some days before decree is prepared and copies of the decision and decree can reach him. It would be in many cases impossible for him to accept a muchalka as amended by the Appellate Court within ten days from the decision of that Court. If it is desirable to attach ejectment as a penalty to inexcusable default to accept within a prescribed time a patta amended by the Appellate Court, it would be expedient to provide that the time should run from the date on which the Collector executing the decree might notify to the tenant that the amended patta was ready for

acceptance. At present there is no provision to his effect, and we do not consider ourselves at liberty to extend the provisions of Section 10 to cases in which the decision is not that of the Collector but of an Appellate Court.

10. It has been held by this Court in Mahomed Yakub Sahib v. Mahomed Jaffer Alt Sahib I.L.R. 4 Mad. 167 that the default must be wilful to justify ejection, and the reasons urged in this case by the defendant to excuse his default deserved consideration.

11. We set aside the order of the Head Assistant Collector with costs.

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