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Court : Chennai

Decided On : Dec-18-1883

Reported in : (1883)ILR7Mad365

Judge : Charles A. Turner, Kt., C.J., ;Muttusami Ayyar and ;Hutchins, JJ.

Appellant : Venkatagopal

Respondent : Rangappa

Judgement :

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

1. In this and the connected appeals the appellant is the zemindar of Tiruvur and holds the village of Perumallapetta as a part of his permanently-settled estate. The respondents have long cultivated lands in the village as tenants. The appellant tendered to the respondents pattas for the fasli year 1290 (1879-80) stipulating for the payment of rent at certain rates in cash. The rates of rent entered in the pattas had been paid for the same lands for not less than fourteen years. The tenants refused to receive the pattas and demanded pattas providing for the payment of rent in kind, and, when these were not granted, neither party had recourse to the Revenue Court to obtain a decision of the dispute. The tenants remained in possession, and after the close of the agricultural year the zemindar attached their crops for arrears of rent at the rates entered in the pattas. Thereupon the tenants instituted the suits in which these appeals are presented by way of appeal against

the distraints under the provisions of the Rent Act, Section 18.

2. In the principal case an objection was taken to the deficiency of the tender of the patta, but this plea was decided adversely to the tenant in both Courts and need not be further considered.

3. The tenants also maintained that the attachment was illegal on the ground that they were entitled to pattas providing for the payment of varam rents, and they took no other objection to the pattas tendered than that a rent was thereby reserved in cash and not in grain. The Assistant Collector, finding that no grain rents had been paid in the village for ten years and that the tenants had , for a number of years paid in cash the rents entered in the pattas, dismissed the suit.

4. The decision of the Assistant Collector, it may be inferred, proceeded on the ground that from the payment of rents in cash for a number of years there might be inferred contracts to pay rents in that form. On appeal the Judge held that, as pattas required renewal annually, the patta for each year was, when accepted, the contract for the year, and that no inference could legally be drawn of the subsistence of a contract to pay rent in cash from the circumstance that such payments had been made for one or more years previously. Finding that the tenants had immediately repudiated the pattas tendered, he held that no contracts subsisted for the year in question, and he therefore remitted issues to the Assistant Collector to inquire whether the pattas were proper with reference to the rates of rent and with reference to the other provisions entered in them. The issue was tried by the Deputy Collector, when the tenants stated that the rates entered in the pattas were too high and that they would elect to receive pattas for varam rents unless there was a reduction. The Deputy Collector afforded them the opportunity of showing the existence of any special ground entitling them to an abatement or reduction of rent, and that rates less than the rates claimed were the proper rates. They contended themselves with examining a few witnesses to show that lower rents were paid for some land in adjoining villages, but, while it appeared that the rates varied in the adjoining villages as well as in Perumallapetta, it was not shown that the lands of the tenants corresponded in soil with those on which lower rates were proved to be paid.

5. In addition to the fact that the zemindar was claiming no higher rates than the tenants had paid for a number of years, other evidence, was adduced on his part to prove the local usage, and the Deputy Collector found that the rates claimed in the pattas tendered were neither improper nor unusual. He at the same time expressed his opinion that the rents were high as compared with the rates in adjoining villages, and he considered that a reduction of one rupee per kani, which the zemindar consented to make on his suggestion, was reasonable.

6. In accordance with the direction of the Judge the Deputy Collector considered the propriety of other provisions of the pattas, and, although these were identical with the provisions contained in earlier pattas and had been sanctioned in a case which came before the Revenue Court, he regarded some of them as open to objection and suggested modifications.

7. The Judge, agreeing with the Deputy Collector that certain provisions of the patta to which no objection had been taken were open to objection, and opining that the Collector would have reduced the rates of rent to the amounts to which the zemindar had agreed if suits had been brought by the zemindar to enforce the acceptance of the pattas, held that the pattas were not such pattas as the tenants were bound to receive, and that the tenants were entitled to receive pattas at rates in grain. He therefore reversed the decree of the Assistant Collector and ordered the release of the attachments.

8. On second appeal it is contended that the Judge was in error in holding that a contract to pay rent at certain rates in cash may not be inferred from the payment of a cash rent at those rates for a number of years, that the Judge was not justified in pronouncing the pattas improper by reason that they contained provisions to which no objection had been taken, and that the provisions to which the Judge objected were usual and not improper, that the reduction of rent by one rupee per kani was a concession by the zemindar and not claimable under the provisions of the Act, and that no usage for the payment of rent in kind has subsisted in the village for a number of years.

9. It is to be regretted that the zemindar did not take proceedings under the Act to enforce the acceptance of the pattas he tendered, or that the tenants did not have

recourse to the Revenue Court to direct the issue of pattas of the nature claimed by them before the expiry of the fasli. The Judge has rightly observed that the zemindar has by the course he has pursued exposed himself to the risk of having the attachment proceedings declared illegal if he fails to prove that the pattas he tendered were such as the tenants were bound to accept.

10. If, however, the zemindar has proved that the pattas he tendered were not open to the objection taken to them by the tenants at the first hearing, if he has proved that by contract the tenants were bound to pay rent in the form and at the rates claimed, it would not be open to the Court to declare the pattas improper by reason that certain of the provisions to which no objection was taken, and which in fact did not come into force, might have appeared to a Court improper if it had been required to pronounce an opinion on them.

11. We shall, therefore, address ourselves to the question whether a contract was proved within the meaning of the Rent Act.

12. The provisions of Regulation XXX of 1802 and of Act VIII of 1865, which impose on landlords the obligation to deliver pattas to their tenants, presuppose the existence of the relation and a liability on the part of the tenant to pay a rent to the landlord.

13. Where a dispute arose as to the rates of assessment in money or of division in kind the Regulation provided that the rate should be determined according to the rates prevailing in the cultivated lands in the year preceding the assessment of the permanent jama on such lands or, where such rates might not be ascertainable, according to the rates established for lands of the same description and quality as those respecting which the dispute arose. Except in the case of lands taken up for reclamation from waste the Regulation made no express reference to the settlement of rates of rent by contract in the case of cultivating tenants. It implied, doubtless, that rents might be so settled where there was no dispute; but when a dispute arose it required that the rate should be determined by a fixed standard where it was available, namely, the rates prevailing in the year previous to the introduction of the permanent settlement, and, where this standard was not available, in reference to the established rates. The term established rates was

ambiguous. It might have meant rates established by custom, or it might have meant rates established by competition; but the ambiguity was not of serious importance when there was a competition among landlords for tenants and not a competition among tenants for land.

14. In the interval between the institution of the permanent settlement and the passing of Act VIII of 1865 considerable changes' had taken place in the relation of landlord and tenant.

15. In India that relation had often arisen otherwise than by contract, and the right of the landlord had not unfrequently originated in a delegation of, or encroachment on the right of the State, or in an encroachment on the right of persons in occupation of the soil. Moreover persons settled on estates and applied themselves to the cultivation of the soil without any express bargain with the person claiming to be the landlord, but on the understanding that they would pay the rates customarily paid in the village for lands of similar quality. The silence of the Regulation respecting the settlement of rates by contract may thus be explained. It was also the intention of the Legislature that in conferring on the landlords the benefit of a permanent settlement, the cultivating classes should participate in that benefit and should be required to pay no higher rates than had been paid before the settlement or than were established by usage.

16. The benefits which the Legislature had intended to secure to the cultivators by Regulation XXX of 1802 were subsequently placed in jeopardy by the enactment of Regulation IV of 1822, whereby it was declared that the provisions of the earlier regulations were not meant to define, limit, infringe or destroy the actual rights of any description of landholders or tenants, but merely to point out in what manner tenants might be proceeded against. The rights of the cultivating classes which had been placed on an assured footing by Regulation XXX of 1802 were in consequence of this regulation made to depend on a difficult and generally unsatisfactory inquiry.

17. In time the cultivating classes, either through apathy or ignorance of their rights, lost recollection of the settlement rates which in some places were necessarily reduced, while the rates established by usage varied with the demand

for land and the prices of produce. Legislative recognition of the proprietary status of zemindars encouraged them to override the subordinate rights of the cultivators, and at last they claimed that the Regulation IV of 1822 had left them to deal with their tenants unfettered by the restrictions of Regulation XXX of 1802.

18. In the proceedings of the Board of Revenue, 2nd December 1864, No. 7743, reference is made to a letter from Mr. D. F. Carmichael, then Collector of Vizagapatam, calling attention to the pretensions of the zemindars, an abnormal increase in rents and the anxiety of the cultivating classes as to their position.

19. Mr. Carmichael observed that it would be a revolutionary measure to revert to the rates prevailing and at the permanent settlement, and that up to within a then recent period the tenantry had scarcely cared to inquire what rights they possessed. He suggested that the moderate party on either side would be satisfied by an enactment which provided that rates for one year should be considered lawful rates for next year, and that enhancement should not be forced on the tenant, except on proof of improvements effected at the cost of the landlord. He advised that further compulsory enhancement should be checked, but that what had never been complained of should not be disturbed. The Board ably reviewed the position of the cultivating classes, but while recognizing the customary rights of those classes and the intention to secure them manifested by the Regulations, they allowed ' that when the land had been assessed at grain rates or with a share in the crop, any commutation into money was a matter for mutual agreement, the facts and force of the agreement being fit subject for decision by the Civil Court; and they also intimated their opinion that the Courts should recognize a modification of the conditions of the tenure created by 'the conditions of any subsequent mutual agreement whether expressed or fairly inferible from long continued practice, 'and should reject or allow the zemindar's claim' according as it was found to be within or beyond the terms either of the original tenure or of the subsequent mutual agreement whether express or implied.' The Board of Revenue considered the rights of landlord and tenants were governed primarily by the incidents of the tenure, which were to be ascertained, were it was possible, as they existed at the time of the permanent settlement; and were this was not possible, by inquiry into custom--but that these incidents might

be modified by mutual agreement, and that such an agreement might be inferred from long proved practice. An agreement so proved they described as an implied agreement.

20. There can be little doubt that the advice of Mr. Carmichael and the opinion of the Board of Revenue suggested the provisions of Section 11 of the Rent Act. The Legislature recognized that in the course of half a century the rights of landlords and tenants might have been considerably modified by contract and it was therefore enacted that on the occasion of a dispute as to rates of rent the revenue officer shall first inquire whether there exists a contract for rent express or implied. Where such contract exists, its terms are to be enforced. Where its existence is not proved, the Revenue officer is to adjust the dispute according to the pre-settlement rates where they can be ascertained, and where they cannot, according to the established usage, and in the absence of satisfactory proof of local usage according to the rates paid for neighbouring lands of a similar description or quality. When a decision is to be arrived at irrespectively of contract, and there has been no regular survey and settlement by the officers of the Government, either party is at liberty to elect rents in kind according to the varam or established rate in the village, or where this cannot be ascertained, at such rates as may appear just to the collector, account being taken of any increase in the value of the produce or in the productive power of the land which has taken place otherwise than by the agency or at the expense of the tenant. At the same time it is provided that the landlord may, with the consent of the Collector, enhance his rent on any lands when additional value had been imparted to them by improvements effected at his own expense or at the expense of Government if an additional revenue is levied for them.

21. The District Judge held that it cannot be found there is a contract express or implied for a particular year, until a patta for that year has been tendered and accepted. He therefore considered himself at liberty to disregard any agreement as to these relations into which the parties had entered in previous years.

22. We have observed that the Act presupposes the existence of the relationship and the liability to a rent. The patta is no doubt evidence of consensus or contract

as to the rent payable for the year, but where the parties are unable to agree as to the rent payable, but still desire to continue the relationship, it must be ascertained what is the contract in respect of the nature or rate of rent to which the one has a right to compel the assent of the other, and this right may itself be a creature of contract.

23. If the Judge's opinion is correct, that there can be no contract regulating the rights of the parties for the year till a patta for that year has been given and accepted in every case in which suits are brought under the provisions of Sections 8 and 9 of the Act, the first rule in Section 11 would be inapplicable.

24. The object of the Legislature in compelling the delivery and acceptance of pattas was to secure to the tenant precise information of his liability and to the Court a fairly certain record of the obligations of the parties. It was not contemplated that in each year the parties should be able to compel one another to alter the terms which heretofore had regulated their obligations. It improbable that the terms 'implied' was intended to signify a contract that could be inferred from the conduct of the parties in preceding years.

25. 'Payment of rent in a particular form or at a certain rate for a number of years is not only presumptive evidence of the existence of a contract to pay rent in that form or at that rate for those years, but it is also presumptive evidence that the parties have agreed that it is obligatory on the one party to pay and the other to receive rent in that form and at that rate, so long as the relation of landlord and tenant may continue.' Either party is of course at liberty to rebut this presumption. It may be shown that the rate paid has been paid under a mistake, that it was intended rent should have been paid at the pre-settlement rate and that a higher or lower rate had been paid in error. It may be shown that rent at a certain rate or in a certain form was fixed for a certain term on the expiry of which the parties were at liberty to revert to their original rights, and that the term has expired, or it might be shown that there has been an increase or diminution in the extent of the holding or an addition to its value by the creation of improvements at the expense of the landlord or that its value has diminished by reason of the deterioration of irrigation or other works which the landlord was bound to maintain. Changes of

circumstances such as these would entitle the parties to the agreement to an alteration in its terms without necessarily putting an end to the relationship of landlord and tenant. But where there is no proof of any such special cause entitling the parties to an alteration in the terms heretofore subsisting between them, it must be held that so long as the tenant elects to retain the holding, he is liable to the obligations in respect of rent which it is to be inferred from his past conduct that he has accepted.

26. In the cases before us there is proof of long continued payment of rent at certain rates in cash and the tenants, although allowed the opportunity to show special circumstances rebutting the presumption of a contractual obligation to pay rent in that form and at those rates, have failed to do so. The Assistant Collector was therefore entitled to find that the only objection advanced by the tenants was without foundation, and the suits should have been dismissed.

27. The decree of the District Court is reversed, and that of the Collector will be restored, but seeing that the zemindar has consented to a reduction of the rate by one rupee per kani, the distraints will be enforced only for the amounts due at the rates so reduced. Having regard to the circumstance that the construction of Section 11 is not free from ambiguity, and to the special circumstances of the case, we consider that each party should bear their own costs in the Appellate Courts.