

Appu Row Vs. Kaveri

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SooperKanoon Citation : sooperkanoon.com/811956

Court : Chennai

Decided On : Sep-25-1917

Reported in : AIR1918Mad93; 44Ind.Cas.519

Judge : Abdur Rahim and ;Oldfield, JJ.

Appellant : Appu Row

Respondent : Kaveri

Judgement :

1. The suit was in ejectment, and one of the questions before the lower Appellate Court was whether the land in dispute was the private land of the plaintiff or the ryoti land of the defendant. The District Munsif held in favour of the plaintiff, but, in appeal, the learned District Judge was of opinion that Section 185 of the Madras Estates Land Act permitted only a specific kind of evidence to be adduced in proof of the allegation whether certain land was the private land of the landholder. Taking that view of the section, he came to the conclusion that the plaintiff failed to adduce any proof that the land was his private land. The learned Pleader for the appellant points out that there were at least two documents, Exhibits A and B, which contained an admission of the plaintiff's title. The statement which is said to amount to an admission is to the effect that the land belongs to the plaintiff's patta. He also points out that there was evidence of the plaintiff that the land was his private land. Further there was evidence furnished by the conduct of the defendant which supports the plaintiff's case. Section 185 says: 'When in any suit or

proceeding it becomes necessary to determine whether any land is the landholder's private land, regard shall be had to the local custom and to the question whether the land was before the first day of July 1898 specifically let as private land and to any other evidence that may be produced, but the land shall be presumed not to be private land until the contrary is shown. Provided that all land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour with his own or hired stock for twelve years immediately before the commencement of this Act, shall be deemed to be the landholder's private land.' The Legislature, whether it was necessary for it to mention certain classes of evidence or not, does lay down that evidence other than that mentioned may be produced in support of the landholder's allegation. With reference to Exhibit A, which is a muchilika executed by the defendant in 1904, that is, since 1st July 1898, it is urged that Section 185 in mentioning that 'regard shall be had to local custom and to the question whether the land was before the 1st day of July 1898 specifically let as private land', means to exclude any evidence of letting as private land after 1st July 1698. That seems to be the view taken by Sadasiva Aiyar, J., in *Mulpuru Lakshmayya v. Varadaraja Apparow* 17 Ind. Cas. 353 : (1912) M.W.N. 1193 while Mr. Justice Sundara Aiyar's view was to the contrary. In *Chintaman Reddi Sanyasi v. Rajasagi Appala Narasimha Raja Guru* 27 Ind. Cas. 50 : (1914) M.W.N. 766 the learned Chief Justice and Ayling, J. had a similar question before them), and it is contended by the learned Pleader for the respondent that they took the same view of Section 185 as Sadasiva Aiyar, J., but we do not think that this is correct. On the other hand, it seems to us that in two places they point out that, besides the classes of evidence mentioned in Section 185, it is open to the landlord to produce any other evidence which may be relevant to his purpose. No doubt there is a sentence in that judgment which might perhaps be taken to lend some countenance to the argument of the learned Pleader for the respondent; it is to this effect: What the Court has to find is, with regard to the classes of evidence mentioned in the section, whether the land was private land at the passing of the Act'. But if that sentence is read along with the rest of the judgment, it seems to us to be fairly evident that the learned Judges did not mean to lay down that, under Section 185, only certain classes of evidence are admissible, for the result of that would be that they would not be giving effect to

the words 'any other evidence that may be produced'. We do not see any reason why we should give such a narrow construction to Section 135 as suggested by Sadasiva Aiyar, J. Besides, Exhibit A is sought to be used by the plaintiff not to prove the fact of letting but as containing an admission of his title to the land in question.

2. With reference to Exhibit B it is contended on behalf of the respondent that it is an agreement to lease for ten years and, therefore, inadmissible for want of registration. It is a razinama filed by the parties, the defendant, and the plaintiff, containing several terms, one of which is a grant of lease for ten years. The passage upon which the plaintiff relies is 'that this land belongs to the plaintiffs patta', which, he says, is an admission of his title.

3. We think that the learned District Judge was wrong in his construction of Section 185 and there is evidence which has to be considered in connection with the question as to whether the plaintiff has proved that the land is his private land. We may point out that Section 185 clearly raises a presumption in favour of the defendant, but the question that has to be considered is whether the evidence which has been adduced by the plaintiff is sufficient to rebut that presumption.

4. We set aside the decree of the lower Appellate Court and remand the appeal for disposal according to law. Costs will abide the result.