Supreme Court of India
P. Venkataswami And Anr. vs D.S. Ramireddy And Anr. on 27 February, 1976
Equivalent citations: AIR 1976 SC 1066, (1976) 3 SCC 665
Author: A Gupta
Bench: A Gupta, P Shinghal
JUDGMENT A.C. Gupta, J.

1. This appeal by special leave arises out of a proceeding started suo motu by the Additional Assistant Settlement Officer, Chittoor, under Section 15(1) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. Section 15(1) reads:

Determination of lands in which the land-holder is entitled to Ryotwari Patta under foregoing provisions:

(1) The Settlement Officer shall examine the nature and history of all lands in respect of which the landholder claims a ryotwari patta under Sections 12, 13 or 14, as the case may be, and decide in respect of which lands the claim should be allowed.

The first respondent who purchased the land in question on May 12, 1950 claimed a ryotwari patta in respect of the same under Section 13(b)(iii) which is in these terms:

13. Lands in inam estate in which land-holder is entitled to ryotwari patta: In the case of an inam estate, the land-holder shall, with effect on and from the notified date, be entitled to a ryotwari patta in respect of-

(a) x x x

(b) (i) x x

(ii) x x

(iii) all lands (not being (i) lanka lands, (ii) lands of the description specified in Section 3, Clause (16), Sub-clauses (a), (b) and (c) of the Estates Land Act, or (iii) forest lands) which have been abandoned or relinquished by a ryot, or which have never been in the occupation of a ryot, provided that the land-holder has cultivated such lands himself, by his own servants or hired labour, with his own or hired stock, in the ordinary course of husbandry, from the 1st day of July 1945 and has been in direct and continuous possession of such lands from that date.

Explanation: 'cultivate' in this clause includes the planting and rearing of topes, gardens and orchards, but does not include the rearing of topes of spontaneous growth.

It is clear that the land-holder in order to be entitled to a ryotwari patta under Section 13(b)(iii) must prove that he has cultivated the land himself or by his own servants or hired labour from July 1, 1945 and has been in direct and continuous possession of the land from that date. It appears that

before the suo motu enquiry under Section 15(1) had commenced, a ryotwari patta in respect of the same land had been granted jointly in the names of the first respondent and the two appellants before us. This patta was however cancelled as it had been issued without enquiry and the present enquiry under Section 15(1) was started. The appellants preferred objections to the claim put forward by the first respondent stating that they were in possession of the land and had been cultivating it for the last 30 years. To refute the appellants' claim of possession, the first respondent filed a certified copy of the judgment in Original Suit No. 245 of 1959 of the District Munsif's Court, Madanapalle, which was instituted by the first respondent for declaration of his title to the land in dispute and for permanent injunction restraining the appellants, who were impleaded as defendants, from interfering with his peaceful possession. This suit was decreed and the defendants were restrained from interfering with the first respondent's possession of the land. The first respondent also filed the certified copy of the decree (Ex. P-3) passed by the Subordinate Judge, Chittoor, affirming in appeal the decision of the District Munsif. The Assistant Settlement Officer disregarded Exhibits P-2 and P-3 on the view that the appellants were not parties to the suit. This was plainly wrong as it appears from those exhibits that the appellants were the defendants in the suit. However, the Assistant Settlement Officer also found that the first respondent had failed to prove personal and continuous cultivation from July 1, 1945, his own case being that he had reclaimed the land after his purchase on May 12, 1950. The Assistant Settlement Officer therefore rejected the first respondent's claim and held that the land would be treated as "assessed waste".

2. From the order of the Assistant Settlement Officer the first respondent took an appeal to the Estates Abolition Tribunal, Chittoor. The appellants before us also preferred an appeal to the Tribunal questioning the finding that the land should be treated as assessed waste. The Tribunal dismissed the appeal of the first respondent, affirming the decision of the Assistant Settlement Officer that the first respondent had failed to prove that he had been cultivating the land since 1-7-1945, and allowed the other appeal reversing the decision that the land is to be treated as assessed waste, on the view that the fact that a roytwari patta had once been issued in respect of the land indicated that the land was cultivable.

3. The first respondent moved the High Court under Article 227 of the Constitution challenging the orders passed by the Tribunal on the two appeals. Civil Revision Petition No. 15 of 1966 directed against the order rejecting the first respondent's claim for a ryotwari patta and Civil Revision No. 807 of 1966 against the order allowing the appeal of the appellants were disposed of by the High Court by a common judgment on 21-8-1967. The High Court agreed with the Tribunal that the fact that a ryotwari patta had previously been issued in respect of the land and the further fact that admittedly since 1950 the land was being cultivated, the only dispute being which of the parties did it, was clear indication that the land was cultivable and as such it could not be treated as assessed waste. However, the High Court, relying on a Full Bench decision of the Madras High Court in Pariannan v. Amman Kovil held that the test employed by the Tribunal that the land holder should prove that he had been personally cultivating the land was not the proper test and that it was sufficient if he was able to show that there was an intention to cultivate or resume the land for cultivation. On these findings the High Court set aside the orders of the Tribunal and directed the Tribunal to dispose of the appeals afresh in the light of the observations made in its judgment.

4. It is the case of both parties that the land is cultivable and cannot be treated as assessed waste. It would appear that the High Court also agreed with the Tribunal that the land was cultivable which means that the High Court affirmed the order of the Tribunal allowing the appeal preferred to it by the appellants before us, and Civil Revision Petition No. 807 of 1966 should have been disposed of accordingly. Therefore, the order of the High Court directing the Tribunal to hear afresh also this appeal seems to be an obvious mistake. The matter is, however, further complicated by the statement made by the appellants in the special leave petition that the intended appeal was against the order passed in Civil Revision Petition No. 807 of 1966. On the judgment of the High Court the matter that remained to be disposed of was the first respondent's claim for a ryotwari patta which was the subject-matter of the appeal to the Tribunal preferred by the first respondent. On a reading of the petition it is plain that the grievance of the appellants was really against the order remitting the case of the first respondent to the Tribunal for a fresh hearing; the Tribunal, as already stated, had decided against the first respondent. The present appeal appears to us to be directed against the common judgment of the High Court, limited to that part of it which deals with the claim of the first respondent, and the reference to the revision case No. 807 only, it seems, as Mr. Jaya Ram, learned Counsel for the appellants submitted, was a slip. For the first respondent Mr. Rao took an objection that the appellants before us were not parties in Civil Revision Case No. 15 of 1966 and that, as such, they could not appeal against the order passed in that case. The appellants who had filed objections to the first respondent's application for a ryotwari patta might properly have been parties to the appeal the first respondent had filed before the Tribunal and, though they were not impleaded as parties, the Tribunal appears to have disposed of the appeal after hearing them. The appellants thus were entitled to be made parties in Civil Revision' Petition No. 15 of 1966. However, it appears that even in the High Court they were heard not only on the character of the land which formed the subject-matter of Civil Revision Case No. 807 of 1966 but also on the question whether the first respondent was entitled to a ryotwari patta which was the controversy in Civil Revision Petition No. 15 of 1966. We therefore decided to hear the appeal on merits.

5. The only question that arises for decision is whether the High Court was right in holding that the requirement of Section 13(b)(iii) of the Act is satisfied if the land-holder is able to show that there was an intention to cultivate or resume the land for cultivation. The High Court directed the Tribunal to reconsider the question from this aspect. For the view it had taken, the High Court relied on the Full Bench decision of the Madras High Court in Periannan v. A.S. Amman Kovil supra). The Madras Full Bench decision on this point is based on a construction of Section 3(10) of the Madras Estates Land Act, 1908. This Court in Chidambaram Chettiar v. Santhanaramaswami Odayar construing the same Section 3(10) which defines private land, held at page1011 of AIR 1968 SC:

It seems to us that the definition read as a whole indicates clearly that the ordinary test for 'private land' is the test of retention by the landholder for his personal use and cultivation by him or under his personal supervision. No doubt, such lands may be let on short leases for the convenience of the landholder without losing their distinctive character; but it is not the intention or the scheme of the Act to treat as private those lands with reference to which the only peculiarity is the fact that the landlord owns both the warams in the lands and has been letting them out on short term leases.

Having thus stated the law, this Court dismissed the appeal with the observation that "in the present case there is no proof that the lands were ever directly cultivated by the landholder". Thus even on the provisions of the Madras Estates Land Act, 1908 considered by the Madras Full Bench, this Court appears to have taken a different view. Apart from this, the provisions we are concerned with, namely Section 13(b)(iii) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948, requires as a condition "that the landholder has cultivated such lands himself, by his own servants or hired labour...". We are unable to agree that the words "has cultivated" could imply a mere intention to cultivate. In our opinion, in view of the clear terms of Section 13(b)(iii) there is no warrant for a reconsideration of the question by the Tribunal.

6. Accordingly we allow this appeal, set aside the order of the High Court and restore that of the Tribunal. In the circumstances of the case there will be no order as to costs.