

[3 Mad. 116.]

APPELLATE CIVIL.

The 19th March, 1881.

PRESENT :

MR. JUSTICE KERNAN AND MR. JUSTICE MUTTUSAMI AYYAR.

Vaythenatha Sastrial and two others.....(Defendants), Appellants
versus

Sami Pandither.....(Plaintiff), Respondent.*

Madras Act VIII of 1865—Landholder Manager of estate with interest is not—Increased rate of assessment for garden cultivation and second crop.

An instrument authorizing a creditor to manage an estate, recover rent and pay certain disbursements, and retain possession until a certain debt amongst other debts to him was paid, does not create the creditor a landholder within the meaning of Act VIII of 1865. A provision in a patta for increasing the rate of assessment if garden cultivation is carried on, or if a second crop is raised, is not illegal, but comes within the provisions of Section 11† of Act VIII of 1865.

* Second Appeal No. 79 of 1881 against the decree of G. A. Parker, Acting District Judge of South Tanjore, confirming the decision of the Head Assistant Collector of Tanjore, dated 25th October 1880.

Rules for deciding disputes as to rates of rent. †[Sec. 11 :—In the decision of suits involving disputes regarding rates of rent which may be brought before Collectors under Sections 8, 9, 10 the following rules shall be observed :—

All contractors to be enforced. (i) All contractors for rent, express or implied, shall be enforced.

(ii) In Districts or villages which have been surveyed by the British Government previous to 1st January 1859, and in which a money assessment has been fixed on the fields, such assessment is to be considered the proper rent, when no contract for rent, express or implied, exists.

(iii) When no express or implied contract has been made between the landholder and the tenant, and when no money assessment has been so fixed on the fields, the rates of rent shall be determined according to local usage, and when such usage is not clearly ascertainable, then [according to the rates established or paid for neighbouring lands of similar description and quality. Provided that

if either party be dissatisfied with the rates so determined, he may claim that the rent be discharged in kind according to "the Warum," that is, according to the established rate of the village for dividing the crop between the Government or the landlord and the cultivator. When "the Warum" cannot be ascertained, such rates shall be decreed as may appear just to the Collector after ascertaining if any increase in the value of the produce or in the productive power of the land has taken place otherwise than by the agency or at the expense of the ryot.

(iv) In the case of immemorial waste land and of lands left unoccupied, either through default or voluntary resignation, it shall be lawful for landholders to arrange their own terms of rent; provided that nothing in this rule shall be held to affect any special rights which by law, or usage having the force of law, are held by any class or person in such waste or unoccupied lands.

Provided always that nothing herein contained shall affect the right of any such landholder, with the sanction of the Collector, to raise the rent upon any lands, in consequence of additional value imparted to them by works of irrigation or other improvements executed at his own expense, or constructed at the expense of Government, and for which an additional revenue is levied from him. Provided also, that no Puttas which may have been granted by any such landholder at rates lower than the rates

IN this suit the plaintiff, as Inamdar of *Kadiramangalam* in the *Tanjore* District, by his agent sought to enforce acceptance of a patta for Fasli 1287 (1876-77) by the defendants.

The defendants' principal objections were—

- (1) That the plaintiff had no right to sue on the ground that he had given over the village to one *Krishna Mudali* and parted with the legal estate on certain conditions.
- (2) That he had brought a former suit, which had been dismissed on the ground that the patta was defective, and that it was not open to him to bring another suit upon the same cause of action.
- (3) That the patta provided, contrary to law, for an increased rate of assessment if garden cultivation were carried on or if a second crop was raised.

[117] The Head Assistant Collector directed the defendants to accept the patta and to execute muchalka.

This decision was confirmed on appeal by the District Judge, who, with reference to the objection that the plaintiff was not the proper party to sue, remarked as follows: "As regards the fourth ground of appeal, it is not disputed that plaintiff is the legally authorized Muktiar Agent of the Melvaramdar, but defendants object to his bringing the suit on the ground that the Melvaramdar has transferred his rights of managing the estate to one *Krishna Mudali*, to whom he is in debt, since the date of the muktiarnama. No objection to the suit is put forward by *Krishna Mudali*, who would be the person really injured if there is any force at all in the defendants' plea; but the defendants, who admit their liability to pay rent, object to pay it on the ground that their landlord is probably desirous of defrauding his creditors—a sort of argument which might perhaps be thought worthy of an Irish tenant."

The defendants appealed to the High Court.

Mr. *Shephard* for the Appellants.

V. *Bhashyam Ayyangar* for the Respondent.

The arguments sufficiently appear in the judgment of the Court (KERNAN and MUTTUSAMI AYYAR, JJ.).

Judgment:—Mr. *Shephard* objected that the *Mudali* to whom the instrument of the 18th February 1878 was given, was the proper person to give a patta and not the Inamdar. He contended that the effect and construction of that instrument was that the estate in the land passed to the *Mudali*. He contended that the right to possession given by it amounted to such an estate granted.

We do not agree in this view.

On reading the instrument it appears to us that it is merely an authority to manage and recover and pay certain disbursements, and to retain possession until a certain debt amongst other debts to him was paid. No estate in the land passed to the *Mudali*. He was made an agent with an interest as well as a power, and the power was irrevocable as long as his debt was unpaid.

payable upon such lands, or upon neighbouring lands of similar quality and description, shall be binding upon his successor, unless such Putta shall have been *bona fide* granted for the erection of dwelling houses, factories, or other permanent buildings, or for the purpose of clearing and bringing waste land into cultivation, or for the purpose of making any permanent improvement thereon, and unless the tenant shall have substantially performed the conditions upon which such lower rates of assessment were allowed.]

Such an instrument does not create the party to whom it is given a landholder within the meaning of Act VIII of 1865.

[118] Mr. *Shephard* objects that the provision in the patta for increasing the rate of assessment if garden cultivation is carried on, or if a second crop is raised, is illegal. But the case seems to us to come within Section 11, as there has not been any money assessment fixed on the field as provided by Clause 1, 2, or 3 of Section 11, of Act VIII of 1865. The rate of rent on the ordinary punja lands of the whole village was referred as being fixed at 215 pons in Suit No. 2 of 1844 and Appeal Suit No. 68 of 1847 as between the plaintiff and the Mirasidars. But no mention was made for assessment of land on which garden crops are raised or when a second crop is raised on land.

The District Judge has taken evidence as to the local usage, and according to it he has settled assessment in this case.

In this we think he was right.

It was objected that a former suit to enforce acceptance of a patta for the same fasli was dismissed on the ground that the patta tendered was not a proper one.

Mr. *Shephard* contends that this suit to enforce another patta for the same fasli cannot be maintained (Section 13, *Civil Procedure Code*). However, no objection was taken in the Court below or in the grounds of appeal, and we decline to allow it now or to decide the question.

We dismiss the appeal with costs.

NOTES.

[I. RIGHT OF LANDLORD FOR INCREASED RENT—

When wet crops are raised on dry land or second crop raised on the land with the landlord's water, he is entitled to increased assessment :—(1887) 10 Mad. 282 ; (1901) 12 M.L.J. 22.

II. SUCH INCREASED RENT NOT ENHANCEMENT—

(1901) 12 M. L. J. 22.]