

## APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Parker.

1887.  
March 3, 22.

THÁYAMMÁL (PLAINTIFF), APPELLANT,

and

MUTTIA (DEFENDANT), RESPONDENT.\*

*Rent Recovery Act (Madras), Act VIII of 1865, s. 11—Water-cess—Tenants—  
Cultivation improved by water taken from landlord's tank.*

A landlord has a right to charge water-cess when his tenant cultivates a wet crop on dry land or a second wet crop on wet land by means of water taken from the landlord's tank.

SECOND appeal against the decree of J. Hope, District Judge of South Arcot, reversing the decree of the Temporary Deputy Collector of Cuddalore.

This was a summary suit under the Madras Rent Recovery Act, s. 9, to compel the defendant to accept a pattá from, and execute a muchalká to the plaintiff of whom he held certain land. The defendant objected to a water-cess inserted in the pattá on account of water taken from a tank belonging to the landlord, but it was admitted that he had used it to cultivate a wet crop on his dry land and a second crop on his wet land.

The Temporary Deputy Collector decreed in favor of the plaintiff: the defendant accordingly appealed to the District Court which modified the original decree by directing that the water-cess should be struck out of the pattá.

The plaintiff preferred this second appeal.

Rámá Ráú for appellant argued that the introduction of the water-cess or kasar in the pattá was not an enhancement of rent, but that it was a charge which the landlord was entitled to make on dry lands cultivated with the aid of his tank water.

Mr. Spring Branson for respondent argued that the charge was an additional rent which could only be charged under s. 11 of the Madras Rent Recovery Act, and cited *Kottasawmy v. Sandama Naik* (5 M.H.C.R., 294).

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\* Second Appeal 759 of 1886.

The Court (Collins, C.J., and Parker, J.) delivered the following  
 JUDGMENT :—The question is whether the landlord has a right  
 to charge water-cess when a wet crop is cultivated on dry land, and  
 when a second wet crop is cultivated on wet land.

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 v.  
 MUTTIA.

It is not denied that the water taken for these purposes is taken  
 from the proprietor's tank.

This is not a question of a landlord having, at his own expense,  
 repaired a tank and rendered land formerly cultivated as punjah  
 cultivable as nunjah, as in *Kottasawmy v. Sandama Naik*(1), but  
 the question is whether the tenant can be called upon to pay for  
 extra water taken from the landlord's tank for special crops.  
 There is nothing illegal in such a charge see *Vaythenútha Sástriá*  
*v. Sámi Pandither*(2).

In the present case there is no dispute about the rate of assess-  
 ment.

The appeal must be allowed and the decree of the Lower  
 Appellate Court reversed and that of the Temporary Deputy  
 Collector restored.

The respondents must pay appellant's costs in this and in the  
 Lower Appellate Courts.

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## APPELLATE CIVIL—FULL BENCH.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice  
 Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt and  
 Mr. Justice Parker.*

MUTTIA (COUNTER-PETITIONER), APPELLANT,

and

VÍRAMMÁL (PETITIONER), RESPONDENT.\*

1886.  
 Oct. 13.  
 1887.  
 April 29.

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*Hindú Law—Execution of decree for maintenance of widow—  
 Liability of ancestral estate.*

Maintenance decreed to a coparcener's widow by reason of her exclusion from  
 succession in a joint family cannot be regarded as a charge on the family estate or  
 the decree treated as a decree against the managing member of the family for the  
 time being.

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(1) 5 M.H.C.R., 294.

(2) I.L.R., 3 Mad., 116.

\* Appeal against Appellate Order No. 1 of 1886.