ALAGIRISÁMI v. RAMANÁTHAN.

It is true that vakíls are spoken of, and are in some sense officers of the Court, but we think that the words used in s. 292 of the Code of Civil Procedure are not used in this sense, and that a vakíl cannot be said to have a duty to perform in connexion with the sale as therein required. *Goshain Jug Roop Geer* v. *Chingun Lal*(1) has been cited as indicature of the probable intention of the Legislature, but it appears to us that if the Legislature having that case in view had intended to prohibit vakíls generally from purchasing, they would have said so in plain language as they have in the Transfer of Property Act.

We must have regard rather to being assured that a civil right has been expressly taken away from a class or section of the public than to what may or may not be desirable.

We consider the appeal fails as against the respondent No. 2 also and dismiss it with costs.

APPELLATE CIVIL.

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

1886. Sept. 30. Oct. 5.

VENKATAVARAGAPPA (DEFENDANT), APPELLANT,

and

THIRUMALAI AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Landlord and tenant—Hindú law—Wells dug with consent of landlord—Compensation.

Where tenants from year to year, with permission of the landlord, sank wells in the land demised:

Held, that they were not entitled under Hindú law to any compensation therefor from the landlord after the determination of the tenancy.

APPEALS from the decrees of K. R. Krishna Menon, Subordinate Judge at Tinnevelly, modifying the decrees of G. Rámasámi Pillai, District Múnsif of Tinnevelly, in suits 167, &c., of 1883.

The facts necessary for the purpose of this report are set out in the judgment of the Court (Collins, C.J., and Kernan, J.).

Bháshyam Ayyangár for appellant.

Subramanya Ayyar for respondents.

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(1) 2 N.W.P., 46.

* Second Appeals 56 to 61, 65, 66 and 73 of 1886.

JUDGMENT.—In these several cases the appellant is the defendant in several suits brought by different respondents hereto.

There is, however, one point in each case, the determination of which by this Court will decide the rights of the parties respectively.

That point is whether tenants holding from fasli to fasli, who by permission of the landlord during the tenancy sunk wells in the land demised, are entitled at the end of their tenancy to be compensated by the landlord for their expenditure laid out in sinking the wells.

It is not alleged in any of the cases that the landlord ever contracted to pay for such expenditure or to compensate the tenants therefor at the termination of their tenancy. Neither is it alleged that there exists any custom in the country that the landlord should, in such circumstances, make such compensation.

The wells are found to be not built-up wells, but wells sunk in the following manner, viz., first 6 feet in clay, then for 1¼ yards in gravel, and then down to the bottom in quarried rock.

It was argued that, according to Hindú law, the tenants were entitled to such compensation; but no authority in Hindú law has been cited so as to support such proposition.

The authority of Nárada cited in *Thakoor Chunder Paramanick, in re*(1) refers to the right of a person, who erected a house under the *bonâ fide* belief he was entitled to the land, and who when ejected, Nárada held, was entitled to take away the house, or to be compensated therefor. To a similar effect is the extract from the Hidayah cited in the same case when land is let for building or for planting.

Shib Doss Banerjee v. *Bamun Doss Mookerjee*(2) is to the same effect in the case of an expired tenancy.

These authorities refer merely to cases where there is at the time of the expiration of the tenancy a house, or other building of any sort which has been erected on the land by the tenant, and which remains there when the tenancy expires, and which is capable of being removed by the tenant.

In this case there was nothing to remove, as the clay, the gravel, and the rock are part of the freehold and belonged to the landlord and never belonged to the tenant.

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(1) B.L.R., Sup., vol. 596. (2) 15 W.R., 360.

VENKATA-VARAGAPPA v. THIRUMALAI.

The Transfer of Property Act does not affect this case, the facts of which took place in 1877.

In the absence of contract or of custom, the tenants had no right to be paid for their expenditure in sinking the wells, though the landlord assented to such sinking.

The appeals in these several cases must, therefore, be allowed.

In each case the following decree will be made: the decree of the Lower Appellate Court, so far as it awards compensation to the respondent (or respondents) for sinking the well, as claimed in this suit, and costs in relation thereto, will be reversed with costs throughout including the costs of this appeal; the decrees of the Lower Appellate Court in other respects are confirmed.

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.

1886. October 26.

POKALA (PLAINTIFF),

and

MURUGAPPA (DEFENDANT).*

Presidency Small Cause Courts' Act, 1882, *s.* 18—*Suits for maintenance cognizable.*

Presidency Small Cause Courts, constituted under Act XV of 1882, are not debarred from entertaining suits for maintenance not based on contract or declaratory decree.

CASE referred by the Judges of the Small Cause Court of Madras.

The question referred was whether a suit for maintenance, where the amount had not been fixed by contract or declaratory decree, is cognizable by Presidency Small Cause Courts.

Ambrose for plaintiff.

Defendant did not appear.

The Full Bench (Collins, C.J., Kernan, Muttusámi Ayyar, Brandt and Parker, JJ.) delivered the following

JUDGMENT:—It was by oversight, no doubt, that the Court, in their letter of November 1882, stated that in Presidency Small Cause Court suits for maintenance could not be maintained. It

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* Special Case 81 of 1885.