doubt, however, that plaintiff's illam was sufficiently represented by the uralars of the other illams, who had a common interest with plaintiff's illam. MADHAVAN v. KESHAVAN.

The second appeal, therefore, fails and must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

MADAYYA (PLAINTIFF),

and

YENKATA (DEFENDANT).*

1887. July 15.

Civil Procedure Code, s. 266—Attachment—Standing crops—Immovable property.

Standing crops are, for the purposes of the Code of Civil Procedure, immovable property.

CASE stated by T. Sami Ráu, District Múnsif of Kurnool, under s. 617 of the Code of Civil Procedure as follows :—

"In small cause suit No. 120 of 1886, the plaintiff applied for execution of the decree and asked standing crops to be attached. I objected to order their attachment, saying that they must be regarded as immovable property. The plaintiff's pleader urged that they were movable property, that they had always been sold as such, and that this had been the practice of this court. There is no ruling of the Madras High Court either way, and there are conflicting decisions of the other High Courts. I have the honor, under s. 617 of the Code of Civil Procedure, to submit for decision the question whether standing crops are movable or immovable property for the purposes of the Code of Civil Procedure."

"As standing crops adhere to the land, they must, under the General Clauses Act, be considered as immovable property. In the same way, fruits upon growing trees must be considered as immovable property as they form part of the trees which are attached to the land, and they become movable property only when they are picked from the trees, but the Allahabad High Court have held, in *Nasir Khan, in re*(1), that fruits adhering to trees are movable property. Under this ruling ears of corn adhering to standing stalks

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* Referred Case No. 5 of 1887. (1) I.L.R., 3 All., 168.

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can be considered as movable property. The Registration Act expressly declares that growing crops are movable property; but this is for the purposes of registration only. It has been held in *Pandah Gazi* v. *Jennuddi*(1) that they are immovable property for the purposes of the Limitation Act, and again they have been held in *Sadu* v. *Sambhu*(2) to be immovable property for the purposes of the Civil Procedure Code also. It is argued for the plaintiff that, if crops be regarded as immovable property, there will be a great deal of loss to parties in regard to their attachment. The following circumstances have been urged. Under the rules for the attachment and sale of immovable property prescribed by the Civil Procedure Code and by the High Court, a long time elapses between the date of attachment and the date of sale, and the period is generally three months. Certainly, the crops cannot remain on the ground so long a time without being spoiled. Agricultural operations must be carried on to make them grow properly, such as weeding, &c. They must be protected from being browsed by cattle and from being trodden upon by cattle and men. When they are in ear, men must be employed to watch them and to prevent them from being removed by thieves, or eaten by birds, &c. In the case of wet crops they must be watered, and a great deal of work must be done. There is no provision in the Code of Civil Procedure or in the High Court rules to get this work done, and even if there is a provision, it is almost impossible to get it done satisfactorily and without causing loss. Sometimes a crop is asked to be attached when it is a month old. In that case, it has to be taken care of till it is brought to sale, which will be under the rules about three months after. An enormous cost will entail upon parties to protect the crops for so long a time. Sometimes attachment is asked for when the crop is in ear and is fit to be reaped in a week or fortnight. If crops are attached as immovable property, they must be kept on the ground until they are brought to sale and will be spoiled if they are retained so long. The judgment-debtor cannot be allowed to interfere with the crops, for, if he does so, he will neglect to take care of them, and they will be spoiled. Moreover, the moment the attachment is made, he will cease to look after the crops, thinking they will be sold. Whereas, if they are sold at once, they will fetch a good price. It is

(1) I.L.R., 4 Cal., 665. (2) I.L.R., 6 Bom., 592

impossible for a court amin or peon to watch the crops and to take the same care of them as if the owner would take. If they are attached as immovable property, they cannot be brought to sale immediately under s. 269 of the Code of Civil Procedure, as that section applies to movable property only. If growing crops be treated as immovable property, the provision in the Code of Civil Procedure must be altered so as to confer some power on the courts as in the cases mentioned in s. 269 of the Code of Civil Procedure. It is argued that, in consideration of these difficulties, the legislature could never have intended to class growing crops as immovable property for the purposes of the Code of Civil Procedure. I may mention other facts in connection with this matter. The town of Kurnool is situated on the banks of the river Toongabadra, and water melons, called kurbuch, are extensively grown in the bed of the river in the hot weather. I have received applications for the execution of decrees in which the water-melon crops have been asked to be attached and sold at once. They cannot be left unsold for more than two or three days after attachment, for either they will be spoiled or stolen. In one case there was objection to the attachment of cholum crop, and about three weeks' time was required to inquire into and decide the objection. There was difficulty in watching the crops for such a long time.

"A. Subba Ráu, first-grade pleader, argued, as *amicus curiæ*, whether s. 503 of the Code of Civil Procedure applied to the attachment of crops. I ruled that, under that section, I had to submit nomination of receiver to the District Court for sanction in each suit, and that it would tend to delay and to cause loss to parties. I do not think it advisable to apply s. 503 to cases of attachment of crops in execution of decrees. My opinion is that, under the definition of immovable property given in the General Clauses Act, growing crops must be held as immovable property. At the same time, I beg to suggest the advisability of altering the provisions of the Code of Civil Procedure relating to attachment and sale of standing crops if they are to be treated as immovable property."

Counsel did not appear.

The Court (Muttusámi Ayyar and Brandt, JJ.) delivered the following

JUDGMENT:—On referring to the cases cited by the District Munsif, we do not find that there is any conflict. The case of

MADAYYA v. YENKATA.

Nasir Khan v. *Karamat Khan*(1) referred to by a Full Bench of that Court in *Umed Ram* v. *Daulat Ram*(2) was apparently distinguished, on the ground, that it was not held in the former case that the trees themselves but that the fruit of the trees (for the wrongful taking and removal of which compensation was claimed) constituted movable property.

There is a direct decision in *Sadu* v. *Sambhu*(3) that the words "immovable property," as used in the Code of Civil Procedure, include standing crops.

We agree in that conclusion and consider that it may be supported upon the principle indicated in the Full Bench case of the Allahabad Court above cited, viz., that, in the absence of any specific definition of immovable property in the Code of Civil Procedure, regard is properly had to the General Clauses Act, in which growing crops come within the definition of immovable property. To the question stated by the District Munsif, our answer is that standing crops are, for the purposes of the Code of Civil Procedure, immovable property.

APPELLATE CIVIL.

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

1887. July 18.

SUBBARAYADU (PLAINTIFF), APPELLANT,

and

GANGARAJU (DEFENDANT, No. 2), RESPONDENT.*

Regulation XXIX of 1802, *s.* 7—*Karnam in zamíndárí Village—Title to Office.*

The holder of a karnam's office in a zamíndárí village being incapacitated, resigned the office in 1863, leaving a minor son, the plaintiff. The brother of the late holder was then appointed to the office, and held it till 1877, when he died. Plaintiff was then nominated by the zamíndár, but did not enter on the office. In 1879, the zamíndár being dead, defendant No. 2 was appointed by the zamíndár's widow and entered on the office:

Held, that under Regulation XXIX of 1802, s. 7, defendant No. 2 being the heir of the last holder was the lawful holder of the office.

APPEAL from the decree of T. Ramasámi Ayyangar, Subordinate

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(1) I.L.R., 3 All., 163.
(2) I.L.R., 5 All., 564.
(3) I.L.R., 6 Bom., 592.
* Second Appeal No. 662 of 1886.