APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Parker, and Mr. Justice Wilkinson.

1889.
Feb. 5.

AUDATHODAN MOIDIN AND OTHERS (PLAINTIFFS),

v.

PULLAMBATH MAMALLY AND ANOTHER (DEFENDANTS).*

Court Fees Act—Act VII of 1870, *s.* 7, *cl. v.* (*c*) (*e*)—*Paramba in Malabar, valuation of suit for.*

On its appearing that a paramba in Malabar is not subject to land tax, but that a tax is levied on trees of certain kinds which may grow on it :

Held, that a paramba must be regarded for the purposes of the Court Fees Act as a garden or as land which pays no revenue, according to the circumstances of each case.

CASE referred for the decision of the High Court by A. F. Cox, Acting District Judge of North Malabar, under section 617 of the Civil Procedure Code.

The case was stated as follows :—

" One Audathodan Moidin and two others brought suit No. 754 of 1886, in the Tellicherry Munsif's Court, against their karnavan and one Pakrichi (female) for the removal of the karnavan from office, and for cancellation of a mortgage and assignment deed executed by their karnavan in favor of second defendant over three parambas, and for the recovery of the same with mesne profits.

" The District Munsif decided the suit in plaintiffs' favor and ordered the first defendant's removal from the office of karnavan and the surrender of the parambas sued for with all mesne profits.

" Against this decree the second defendant, the mortgagee, appeals.

" The amount of Court fees paid on the appeal memorandum is Rs. 12-12-0, calculated on five times the assessed revenue, viz., Rs. 25 and mesne profits from date of plaint, viz., Rs. 144-15-0. From the introduction of the Court Fees Act down to the time of Mr. Nelson's assuming charge of this Court this was the practice,

* Referred Case No. 16 of 1887.

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I understand, in calculating the stamp duty. But Mr. Nelson, in the case under reference, has ordered that Court fee should be paid on the market value of the parambas in suit, and not on five times the revenue, apparently on the authority of section 7, cl. v (*e*) of the Court Fees Act, the parambas being treated as gardens and not mere lands assessed to revenue.

"The appellant objects to this ruling and relies on the principle of the decisions *in Collector of Thana* v. *Dadabhai Bomanji*(1) *Dayachand Nemchand* v. *Hemchand Dharamchand*(2) and on section 7, cl. viii, Court Fees Act.

"I am informed that the question was not argued before Mr. Nelson in Court, and these decisions were probably not referred to by him. My own opinion is that the contention raised by the appellant is valid. In the first of the cases cited, the plaintiff sought to remove an attachment made by the Collector on a cocoanut oart or garden, and the High Court of Bombay held that the stamp duty should be calculated under section 7, cl. viii of the Court Fees Act, not on the market value, but on five times the assessed revenue. Mr. Nelson's system of valuation is, I think, inequitable when the valuation of wet lands is considered. . . . I am inclined to think that the term 'garden' in the Act was meant to include only unassessed lands, such as gardens intended for ornament and pleasure, or pepper and sugarcane gardens and the like, which are also unassessed. But Mr. Nelson's decision, together with the ruling of the High Court in their proceedings, No. 956, dated 13th May 1873, on a reference from the District Judge of South Canara, cause me to entertain doubts upon the matter which is of great importance to Government and suitors. I therefore request the favor of an authoritative ruling upon the subject."

The case having come on for disposal on 13th April 1888 before a Divisional Bench (Collins, C.J., Shephard, J.), it was directed, in view of the importance of the question involved, that it should stand over for argument before the Full Bench.

On the first hearing by the Full Bench, their Lordships directed that further information as to the circumstances under which a paramba was held should be furnished by the referring officer.

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(1) I.L.R., 1 Bom., 352. (2) I.L.R., 4 Bom., 515.

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In compliance with the above direction of the High Court the Acting District Judge of North Malabar reported as follows :—

"The land used for parambas is not assessed : the assessment is levied only upon cocoanut, jack, and areca trees growing in them. Any other tree, shrub, or vine which may be grown upon the land is free from assessment. It may, and does, therefore, happen that a Malayali ryot has parambas devoted solely to pepper cultivation, for which Government charges no assessment whatever either upon the land or the crop.

"In the revenue accounts parambas are classed as *bhagayat* or garden land. There is generally a house in a paramba, but not always. There is, however, hardly a house that is not situated in a paramba. In parambas are cultivated fruit trees of all sorts, pepper vines, plantains and the like, while immediately round the house, if there is one, there may be a few flowering plants."

The case then came on for re-hearing.

The *Acting Government Pleader (Subramania Ayyar)* for the Crown argued that on the facts disclosed in the reference a paramba came within the ordinary acceptation of the term garden, which, however, is not defined in the Act.

The parties to the suit were not represented.

The Court delivered the following

JUDGMENT :—This is a case stated under section 617 of the Civil Procedure Code by the Acting District Judge of North Malabar.

The point on which he entertains doubt, and which he refers for our decision, is whether a paramba is, for the purpose of ascertaining the Court fee payable, to be treated as a garden or as land assessed to revenue.

By section 7, Act VII of 1870, the amount of fee payable in suits for the possession of land, houses and gardens is to be computed according to the value of the subject matter ; and where the subject matter is (1) land the revenue of which is permanently settled, the value shall be deemed to be ten times the revenue payable; (2) land the revenue of which is settled but not permanently,—five times the revenue ; (3) land paying no revenue,—either fifteen times the nett profits if any, or the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood; (4) and where the subject

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matter is a house or garden,—according to the market value of the house or garden.

The Acting District Judge is of opinion that a paramba should be regarded as land the revenue of which is settled but not permanently. But he himself admits that the owners of parambas pay no land revenue. In Malabar the assessment is levied upon the cocoanut, areca or jack trees which grow in the parambas. If a paramba contains no cocoanut, areca or jack trees, no assessment is charged. In fact in Malabar a tree tax is substituted for the land assessment, and whether or not a paramba is assessed depends on the nature of the trees grown therein. It is therefore evident that parambas should either be classed as land paying no revenue or as gardens. The word "garden" is nowhere defined in Act VII of 1870, but from its occurring in connection with the word houses, we are of opinion that the term refers primarily to a garden in the English sense,—ornamental or pleasure or vegetable,—and that parambas do not ordinarily come under that category. We do not, however, wish it to be understood that in no case should a paramba be treated as a garden for the purpose of the Court Fees Act. Whether or not the paramba sued for is to be regarded as a garden or as land which pays no revenue, is a question of fact which must be decided in each case. The Acting District Judge will be informed that in the case of parambas the amount of fee payable under Act VII of 1870 is to be computed either under sub-clause (c) or (e) of section 7, clause v, according to the circumstances of each case.