

In the former case, the Sub-Registrar could not determine whether or not the document was executed, and if execution was denied, he was obliged to refuse registration. The document could hardly therefore be said to be given in evidence before him by a party to any proceeding; whereas in the latter case (that of a will), s. 41 makes it incumbent upon the Sub-Registrar to satisfy himself that the document has been really executed by the testator, and the document has to be given in evidence before him in a proceeding in which the Sub-Registrar has to determine whether it shall or shall not be registered. A Sub-Registrar acting under s. 41 is exercising similar powers to a Registrar acting under ss. 73-75, as to which see High Court Proceedings, 12th May 1881, No. 962(1). We think, therefore, the Joint Magistrate is in error in saying that the two rulings of this Court are in conflict, though we agree with him that in the case under reference the sanction of the Sub-Registrar is not necessary. The Bombay case, *Queen-Empress v. Tulja*(2), is no doubt in conflict with the Madras decision in *in re Venkatachala*, it may be well if the point again arises that the question should be reconsidered.

QUEEN-
EMPRESS
v.
SOBHANADRI.

APPELLATE CIVIL—FULL BENCH.

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

REFERENCE UNDER S. 39 OF ACT V OF 1882.*

Forest Act—Act V of 1882 (Madras), s. 6—Tree patta—Occupier of land.

The holder of a tree patta is a known occupier of land within the meaning of s. 6 of the Madras Forest Act.

1888.
Sept. 11.
1889.
Feb. 15.

CASE stated for the opinion of the High Court by G. MacWatters, Collector of Salem, under s. 39 of the Madras Forest Act.

This case depended on the construction of the last clause of s. 6 of the Madras Forest Act. The question referred was whether Madhava Rau and eleven others, who held a joint patta with him of certain tamarind trees, were entitled to be served with a notice

(1) Weir's Criminal Rulings, 3rd ed., p. 844. (2) I.L.R., 12 Bom., 36.

* Referred Case No. 3 of 1887.

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to the same effect as the proclamation made by a Forest Settlement officer on a notification of Government under s. 4. *

The *pattadars* in question, not having been served as above, did not assert their claim till after the expiry of the time fixed in the proclamation. Subsequently, however, the following application was made :—

“There is a tree patta for 11 tamarind trees in Naralapulli village. These trees were held on *patta* and enjoyed for the last 6 years by my brothers Srinivasa Row and Hanumantha Row, and, after them, by their sons Vyasamurthi Row and Vencoba Row and were leased for 5 years from 1884 to one Thammana Chetti of Chinna Mekalapully.

“Now I hear that the trees have been included in the Maharajagadai Reserve and I was also told by the lessee, when I had been

* Section 4 : “Whenever it is proposed to constitute any land a reserved forest, the Governor in Council shall publish a notification in the Fort St. George Gazette and in the Official Gazette of the district—

- (a) specifying, as nearly as possible, the situation and limits of such land ;
- (b) declaring that it is proposed to constitute such land a reserved forest ;
- (c) appointing an officer (hereinafter called the Forest Settlement officer) to enquire into and determine the existence, nature, and extent of any rights claimed by, or alleged to exist in favor of, any person in or over any land comprised within such limits, or to any forest produce of such land, and to deal with the same as provided in this chapter.

The officer appointed under clause (c) of this section shall ordinarily be a person other than a forest officer ; but a forest officer may be appointed by the Governor in Council to attend on behalf of Government at the enquiry prescribed by this chapter.”

Section 6 : “When a notification has been issued under section 4 the Forest Settlement officer shall publish in the Official Gazette of the district, and at the head-quarters of each taluk in which any portion of the land included in such notification is situate in every town and village in the neighbourhood of such land, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the land proposed to be included within the reserved forest ;
- (b) setting forth the substance of the provisions of section 7 ;
- (c) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest ; and
- (d) fixing a period of not less than three months from the date of publishing such proclamation in the Official Gazette of the district and requiring every person claiming any right referred to in section 4, either to present to such officer, within such period, a written notice specifying, or to appear before him within such period and state the nature of such right, and in either case to produce all documents in support thereof.

The Forest Settlement officer shall also serve a notice to the same effect on every known or reputed owner or occupier of any land included in or adjoining the land proposed to be constituted a reserved forest, or on his recognized agent or manager. Such notice may be sent by registered post to persons residing beyond the limits of the district in which such land situate.”

to Maharajadai a few days ago, that it was decided by your honor that the lessee should enjoy the trees until his lease expired, and that then the tope should be included in the Government reserve. The Government accounts and village officers will prove that my brothers and others held the patta, and we enjoyed the trees for the last 60 years. I request that an enquiry be made and the tope in question confirmed as per *patta* and excluded from the reserve. I don't know, perhaps the time for the preference of a claim expired or did not expire as I was given no notice in the matter. I only casually came to know of this affair when I had been to Maharajadai. I therefore request that my claim may be admitted under s. 17 of the Forest Act and disposed of in the regular way."

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On the 15th November 1886 the Forest Settlement officer passed the following order:—

"Claimant is not entitled to have any notice served on him under the Forest Act, as he does not own or occupy land in the reserve. It is possible that the facts stated in his petition are true, as is partly proved by the evidence on record in the claim No. 279 of 1886. As the time for preference of claims has now expired, I cannot entertain his claim; he will have to satisfy the Collector or District Forest officer hereafter that his claim is a just one, which fact no doubt the village accounts will prove, but I cannot now entertain the claim. He should also keep this endorsement."

An appeal against this order was preferred to the Collector of Salem who referred for the opinion of the High Court the question whether "a notice should have been served on Madhava Rau and his joint *pattadars* in respect of the tamarind trees for which they hold a joint *patta*."

Upon this reference the High Court (Muttusami Ayyar and Brandt, JJ.) delivered the following

JUDGMENT:—"The facts of the case are sufficiently stated in the letter of reference. Act V of 1882 (Madras), s. 2, explains that 'trees' include stumps, bamboos, and brushwood, and that 'timber' includes trees when they have fallen or have been felled, whether cut up for any purpose or not; but there is no definition of land, or of a tree which continues to derive nourishment from the land. The Madras General Clauses Act contains no definition of land, and the General Clauses Act, 1868, is, in

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“ terms, applicable only to Acts of the Governor-General in Council. One of the objects of the Madras Forest Act is to provide a special tribunal and procedure for the adjudication of civil rights of a particular class; and having regard to the provisions of the General Clauses Act, we have already held that for the purposes of the Code of Civil Procedure land includes standing crops(1). We understand the right claimed by the petitioner to include a right to the site on which the trees stand as well as their produce.

“ We are of opinion then that the holder of a tree *patta* is an owner or occupier of land within a meaning of the last clause of s. 6 of the Forest Act. We express no opinion as to the effect of the words ‘known or reputed’ owner or occupier in that section as they do not form the subject as reference.”

With regard to the sentence at the end of the first paragraph of the above judgment the Collector of Salem was directed to explain the matter more particularly and to make a further reference to the High Court.

These directions were contained in an order of Government (made on certain proceedings of the Board of Revenue), dated 21st November 1887, in which it was said :—

“ In Government Order No. 51, Revenue Department, dated 20th January 1887, it was held that the so-called “ tree *pattadars* are mere lessees of trees and not owners or occupiers of land ” and not therefore entitled to separate notices under s. 6 of the Forest Act.

“ Government can give and frequently have given separate *pattas* to different persons for the cultivation of the land on which trees stand and for the enjoyment of the produce of the trees themselves. Under Board’s Standing Order No. 6 (8) the tree *pattadar* has only a “ preferential claim ” to a *patta* for the land, if applied for by another for cultivation. The tree *patta* merely gives the *pattadar* a right to certain specific “ forest produce,” and this, of course, carries with it the right of access. A right to forest produce is placed on the same level in the Act (s. 11) as rights of way, water-course and pasture; but it has never been contended that persons having these latter rights are, as

(1) *Madayya v. Venkata*, I.L.R., 11 Mad., 193.

such, entitled to separate notices. The proclamations in the villages and Gazette are intended to give them notice."

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In his further letter of reference the Collector quoted Circular Orders of the Board of Revenue, dated 21st April 1858, and 28th April 1859, respectively, and the proceedings of the Board of Revenue, dated 27th March 1868, and proceeded to say:—

"In Malabar, Tanjore and Tinnevely the tree *patta* carries with it the right to the land on which the trees stand when in these districts the tree tax is considered a substitute for the land assessment, and in all districts, whenever the tree assessment is nearly equal to or exceeds the land assessment, the holder of the tree *patta* enjoys also the land.

"It was only in 1887 that the tree tax was finally decided to be credited to the Forest Revenues at all. This is now done in all cases except where it is a substitute for the Land Assessment. Before that it was credited to Land Revenue, and in later years that on trees on waste to the Jungle Conservancy Fund. The Board of Revenue in the discussions that took place about this matter in October 1886 stated 'that a very real distinction underlay the question of whether trees were cut down or were allowed to stand; that in the latter case the trees themselves formed the actual crop on the land, and that the rent paid for them was in effect the land tax due on the land.' That claims to the rights of a tree *pattadar* were intended by the Legislature to be disposed of under the head of Forest Produce seems to me to be very inconsistent with the fact above stated, viz., that the tax on *patta* trees was only decided to be credited to Forest about a year ago. The forest produce referred to in s. 10 of the Forest Act appears to me to be the forest produce properly so called and as administered before the Forest Act came into force, e.g., honey, wax, bamboos, gallnuts, &c.

"I am of opinion that the ordinary tree *patta*, that is a *patta*, without conditions as in this case, gives the tree *pattadar* an interest in the site on which the trees stand, and that he is at the very least an occupier of such site and entitled to a special notice under s. 6 of Madras Act V of 1882."

The renewed reference having come on for hearing before Kernan and Muttusami Ayyar, JJ., the matter was referred to the Full Bench by the following

ORDER OF REFERENCE TO THE FULL BENCH. We said in

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our previous order that we understood the right claimed by the petitioner to include a right to the site on which the trees stand as well as their produce. This is said to be a false or erroneous assumption both by the Government and the Board of Revenue. They do so on two grounds: the first is that the tenure evidenced by tree *pattas* does not include a right to their site, and the second is that the right to the produce does not stand on a higher footing than the forest produce referred to in s. 10 of the Forest Act. It is no doubt true that the Forest Act does not contemplate the issue of a separate notice in respect of right to mere forest produce. The questions we shall have to consider are—(1) Whether a tree *pattadar* is a mere usufructuary without an interest in the soil, regard being had to the special tenure evidenced by such *pattas*. (2) Whether the right to the produce of the trees is a right to forest produce or in the nature of such right within the meaning of the Forest Act. Of course the opinions of Government and of the Board of Revenue are not binding upon us, but the question is one of considerable general importance, and the questions were neither fully argued nor considered. It is desirable to allow them to be fully argued on both sides and given an authoritative decision once for all. In order that the decision may be authoritative, it is desirable to have the matter argued before a Full Bench, including a Judge who has had a practical knowledge of the special tenure.

The Acting Government Pleader (Subramanya Ayyar) for the Crown.

The tree *pattadar* is not an owner or occupier within the meaning of s. 6 of the Forest Act and is not entitled to specific notice of the proclamation or notification. Specific notice is only required for owners or occupiers, not for those who have rights to forest produce as referred to in s. 10. It is only under that section that the Collector could entertain the appeal. Section 2 includes trees under forest produce, and therefore the tree *pattadar* is one of those persons whose claims have to be dealt with under s. 11. He has no right to the site. Thus the Board of Revenue say in their Order, upon which the further reference has been made:—

“Collectors are authorized to grant tree *pattas* or permanent tree-rent licenses for scattered trees standing in unoccupied waste land, the *pattadar* to pay tree-tax at the revised rates, and to have the usufruct of the trees with the right of transfer or alienation,

but to have no power to fell without permission. When an application or darkhast is made for waste land containing scattered trees which are held separately in this way, the holder of the trees is to be offered the first choice of taking the land at the *taram* assessment. The tree tax is here credited to Land Revenue, Miscellaneous.”

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It also appears from the terms of the reference that the tree *pattadar* cannot fell the trees without permission, and if any one applies for the land on which the trees stand he is required either to take the land or to submit to eviction. He may have an interest in immovable property, but not necessarily an interest in land. Though the tree *pattadar* may have a right in or over land comprised within the limits of a forest still he has only a right to forest produce and cannot be regarded as the owner and occupier within s. 6.

The Full Bench (Collins, C.J., Muttusami Ayyar, Parker and Wilkinson, JJ.) delivered the following

- JUDGMENT :—This is a case referred to the High Court under s. 39 of the Madras Forest Act by the Collector of Salem, and the question for the Full Bench is whether the holder of a tree *patta* is an owner or occupier of land within the meaning of the last clause of s. 6 of the Forest Act. The Collector states his opinion—though with some hesitation—that the holder of the tree *patta* does fall within the section, but the Acting Government Pleader has been instructed to argue against this view.

It is urged for Government that the holder of a tree *patta* has only a right to forest produce (s. 10, clause (d)), and that his claim can only be dealt with under ss. 11-13 of the Forest Act. On the other hand the Collector is of opinion that a tree *patta* gives the *pattadar* at any rate an interest as occupier in the site on which the trees stand.

It appears to us that the view of the Collector is correct. In *Sukry Kurdeppa v. Goondakull Nagi Reddi*(1) it was held that a document creating a right of use of growing trees for a term of years was an interest in immovable property within the meaning of the Registration Act. The owner of a tree *patta* has it seems to us more than a mere right of access to gather the fruits of trees

(1) 6 M.H.C.R., 71.

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found in a forest (see definition of forest produce, s. 2*); he has an interest during the continuation of his *patta* in the tree itself, and in all that is necessary for the growth of the tree including the soil in which it grows. Such interest, though far inferior to the interest of the owner or lessee of the soil, is still an interest in land.

In our view the class of rights referred to in s. 10, clauses (a) to (d), of the Forest Act are village communal rights. With regard to these it is reasonable that the Legislature should have provided that notice of the intention to acquire them should be made by public proclamation since it would be almost impossible to serve a separate notice upon every person interested; but the Legislature has been careful to provide that a separate notice shall be served upon every *known* or *reputed* owner or occupier of land, and the holder of a tree *patta* in a village is certainly, *quoad* his right to the trees in his *patta*, a *known* occupier.

This view can be tested by a precisely similar case in which there could be no doubt that a lease of what is defined as forest produce is an interest in land. If for instance there was a gravel quarry within the limits of land taken up as a reserved forest which had been leased to a contractor for a term of years, there could not be a doubt that that contractor was a known occupier of land within the meaning of s. 6 and entitled to a special notice. Yet surface soil is forest produce within the meaning of s. 2. Our answer to the reference is that the holder of a tree *patta* is a known occupier of land within the meaning of s. 6 of the Forest Act.

* “ ‘Forest produce’ includes the following things when found in or brought from a forest (that is to say)—minerals (including limestone and laterite), surface-soil, trees, timber, plants, grass, coat, canes, creepers, reeds, fibres, leaves, moss, flowers, fruits, seeds, roots, galls, spices, juice, catechu, bark, caoutchouc, gum, wood-oil, resin, varnish, lac, charcoal, honey and wax, skins, tusks, bones and horns.”
