APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

APPARAU (PLAINTIFF'S REPRESENTATIVE), APPELLANT,

1891.
July 13, 23.

v.

NARASANNA (DEFENDANT), RESPONDENT.*

Rent Recovery Act—Act VIII of 1865 *(Madras), s.* 9*—Lands irrigated from Kistna anicut—Act VII of* 1865 *(Madras), s.* 4*—Rate of rent—Restriction as to felling trees—Implied contract.*

A zamindar holding lands irrigated by the Kistna anicut, from whom no extra peishcush is on that account levied by Government, is not entitled to impose on his tenants a "wet" rate of rent without the permission of the Collector.

The fact that the tenants have paid rent at such a rate for six years is not sufficient to establish an implied covenant to continue to do so.

It is allowable for a landlord to insert in his pattas a term to the effect that the tenant shall not fell trees without his consent.

SECOND APPEAL against the decree of G. T. Mackenzie, Acting District Judge of Kistna, in appeal suit No. 9 of 1887, modifying the decree of P. Ramachandra Rau, Acting Head Assistant Collector, in summary suit No. 39 of 1886.

Suit by a zamindar to enforce the acceptance of a patta and the execution of a corresponding muchalka by the defendant under the Madras Rent Recovery Act.

The facts of the case are stated sufficiently for the purposes of this report in the judgment of the High Court. The proposed conditions of the patta therein alluded to as mentioned in paragraps 15—17 of the judgment of the District Judge were stated by him as follows, viz. :—

"The first of these conditions recites that the raiyats are not "to neglect or refuse to take a patta in succeeding faslis. If a "raiyat cultivates so neglecting or refusing to take a patta he is "to pay half his sist in excess as a penalty.

"The second condition stipulates that raiyats converting dry "land into wet or garden land must pay wet or garden rates. If "it is without the zamindar's permission, the rates on neighbour- "ing lands must be paid. If it is with the zamindar's permission

* Second Appeal No. 552 of 1889.

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"rates will be fixed. The third condition is that if cattle graze "or heaps are placed on any land in the zamindari, the trespasser "is to pay double the sist for the first offence, quadruple sist for "the second offence, and sextuple sist for the third offence, and "so on."

The provision in the patta as to trees to which the memorandum of objections related was as follows:—

"As the matarfa (tax) on the fruit trees, palmyra trees and "Indian date trees standing on the said lands and the tumma "(babul) trees thereon are not included in the said sist, you "should obtain my permission and fell tumma (babul) trees only "if required for cultivation."

The Head Assistant Collector made certain modifications in the patta and it was further modified by the District Judge.

The landlord preferred this second appeal and the tenant filed a memorandum of objections.

Bhashyam Ayyangar and *P. Subramanya Ayyar* for appellant.

Mr. *Ramasami Raju* and *Pattabhirama Ayyar* for respondent.

PARKER, J.—The facts found are that a general village rent was paid up to fasli 1280, in which year a system of individual holdings with rates per acre was introduced. For four years there were quarrels and disturbances about the rates of rent which the zamindar wished to levy, but for faslis 1285—1291 the rates paid have been Rs. 2-9-0 for dry and Rs. 8-8-0 for wet. The tenants object to the wet rate, and claim that they are only liable to pay the dry rate (Rs. 2-9-0 per acre) *plus* Rs. 4 Government tax upon dry land converted into wet by the water of the Kistna canal, thus distinguishing this wet land from the old mamul wet for which nanjah rates have to be paid to the zamindar.

After careful consideration I find myself unable to distinguish this case from *Narasimha* v. *Ramasami*(1).

The six years (fasli 1285—1291) during which these rates have been paid are not sufficient to establish an implied contract. No extra peishcush is levied from the zamindar, nor is it found that he has contributed to the cost of the improvements. In either case he has not obtained the sanction of the Collector to the

(1) I.L.R., 14 Mad., 44.

enhancement of rent and that the charge of such consolidated assessment is an enhanced rate there is no doubt. The argument that the zamindar is only charging the mamul wet rates is of no force, since it is clear that no extra rate is demanded from him and section 4, Madras Act VII of 1865, exempts him from extra payment for lands to which he is entitled to irrigation free of separate charge.

I agree with the District Judge that the three conditions referred to in paragraphs 15—17 of his judgment must be omitted. No argument was addressed to us with respect to the first and third, while the retention of the second would be inconsistent with the principle of this decision.

The memorandum of objections was not pressed except with regard to the trees. *Primâ facie* a tenant has no right to cut down trees without his landlord's permission and I can see no reason to omit this clause in the patta.

I would dismiss this second appeal and memorandum of objections with costs.

WILKINSON, J.—I am of the same opinion. It was held in *Ramesam* v. *Bhanappa*(1) that the water tax of Rs. 4, which Government levies upon all lands irrigated from the Kistna channels, is not rent, and that if the landlord desires to add the tax to the rent and claim it as rent, he must obtain the sanction of the Collector. I can see no reason why the zamindar should be allowed to charge the mamul wet rate of Rs. 8-8-0 upon dry lands converted into wet by the use of the Kistna water, seeing that his doing so would be to enhance the rent from Rs. 6-9-0 to Rs. 8-8-0 without the consent of the Collector.

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(1) I.L.R., 7 Mad., 182.