SOBHANADRI APPA RAU v. GOPALKRISTNAMMA.

that from 1832-79 that was the recognised rate. There is no evidence to show that the agraharamdars ever paid any other rate, or that they paid Rs. 6 per putti under coercion. With reference to the argument that the Circuit Committee fixed the average beriz of the agraharam at Rs. 33-12-9, and that that sum therefore is to be taken as the amount on which the peishcush was fixed, we remark that we have nothing before us to show how the Circuit Committee arrived at these figures. They are taken from an account prepared in the year 1828 by the Collector, and the account shows that in that year the annual beriz had risen to Rs. 228-5-0. It is suggested that as the duty of the Committee was to fix the amount of money payable as peishcush, it was necessary for them to ascertain the average collections, and that in some rough way they fixed upon Rs. 33-12-0 as that sum. But that has nothing to do with the present question. If the zamindar at the time of the permanent settlement was entitled to quit-rent at Rs. 6 per putti, he is still so entitled, and we think that the Judge was justified in finding that he was so entitled. The decree of the Subordinate Judge will be modified by giving plaintiff a decree for Rs. 5,060-8-10 with proportionate costs in this and the Lower Court.

The objection taken to the amount found due is not pressed.

The memorandum of objections is dismissed with costs.

APPELLATE CIVIL.

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

1892. February 25. March 15.

SURYANARAYANA (PLAINTIFF), APPELLANT,

v.

APPA RAU (DEFENDANT), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, s. 13—Inamdar—Tenant—Right of distraint.

zamindar, holding his estate under a sanad, which included, among the of the zamindari, the jodi payable by an inamdar, proceeded under the Rent to recover arrears of jodi by distraint.

* Second Appeal No. 792 of 1891.

In a suit by the inamdar to release the distraint, it appeared that the plaintiff had sublet the land, and that the rate, at which the jodi was claimed, exceeded that entered in the Inam Commissioner's patta :

Held, (1) that the inamdar was a tenant of the zamindar within the meaning of the Rent Recovery Act ;

(2) that the fact that the inamdar had sublet the land did not confer on him a higher status than that of a tenant ;

(3) that the zamindar accordingly had a right to proceed under the Rent Recovery Act, and that his claim was not limited to the amount of jodi entered in the Inam Commissioner's patta.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 388 of 1889, confirming the decision of L. M. Wynch, Acting Head Assistant Collector, in summary suit No. 34 of 1885.

The plaintiff was an inamdar in a zamindari of the defendant, and, as such, was liable to the payment of jodi. The sanad of the defendant comprised the jodi in question among the assets of the zamindari. The jodi having fallen into arrears, the defendant proceeded under the Rent Recovery Act, 1865, to distrain the property of the plaintiff for the amount. The suit was brought to release the property from distraint and for damages. The contention of the plaintiff was that he was not a cultivating tenant liable, after tender of a proper patta, to the provisions of the Rent Recovery Act as to distraint, but that he was a farmer of the revenue liable to those provisions only if he had taken a written agreement from the zamindar. The Head Assistant Collector dismissed the suit. The District Judge, on appeal, held that the plaintiff was a cultivating tenant, and that the zamindar was not bound by the commutation of the rate of jodi entered in the inam title-deed, and, on these findings, he affirmed the decision appealed against. As to the second part of the plaintiff's contention, as stated above, he said, that, if the plaintiff was not a cultivating tenant it might be argued that the inam title-deed was such a document as would render the plaintiff liable nevertheless to the provisions in question.

The plaintiff preferred this second appeal.

Narayana Rau for appellant.

Bhashyam Ayyangar for respondent.

JUDGMENT.—The first question argued in this seco whether the plaintiff is a tenant within the meaning of 1865. It is contended that, as the plaintiff is a

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not a cultivator of the land, he cannot be regarded as a tenant of the zamindar. The argument is founded upon a misconception of th decision of the Privy Council in *Ramasami* v. *Bhaskarasami*(1). The sole question before the Privy Council is whether a certain document required registration. On behalf of the appellant (defendant in the case), it was argued that the document was a patta and that therefore it was exempted from registration. All that the Privy Council decided, with reference to the construction of sections 3, 8 and 9 of Act VIII of 1885, was that the provisions were made upon the assumption that there is an existing relation which would warrant the application for a written patta. The case of *Rama* v. *Venkatachalam*(2) is distinguishable as, in that case, what the renter claimed to collect was the kattubadi and road-cess payable to Government, a deduction being allowed as a remuneration for his trouble. In the present case the jodi, which the zamindar seeks to collect, was included by the sanad in the assets of the zamindari and is payable direct to the zamindar. The definition of a tenant in Act VIII of 1865 is "a person who is bound to pay rent to a landholder." It is not denied that the zamindar is a landholder and it is conceded that plaintiff is bound to pay to the zamindar jodi or quit-rent upon his inam. We think, therefore, that the Lower Courts were right in holding that the plaintiff was a tenant, and that the zamindar was entitled to proceed against him under Act VIII of 1865. The relation of landlord and tenant undoubtedly has long existed between the zamindar and the plaintiff and his predecessors in title. With reference to the contention that the zamindar can only claim the amount of jodi entered in the patta granted by the Inam Commissioner, it is conceded that, since the decision of this Court in *Sobhanadri Appa Rau* v. *Gopalakristnamma*(3), the finding of the Lower Appellate Court cannot be questioned.

It is not contended by the respondent that the opinion of the istrict Judge, that the inam title-deed is such a document as is templated by section 13, Act VIII of 1865, can be upheld, and ave no doubt that the Judge was in error. The plaintiff t claim to be an intermediate landlord. He admits that indar, an holder of land with a right of occupancy and

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Mad., 67. (2) I.L.R., 8 Mad., 576. (3) See *ante*, p. 34.

merely contends that he sublets the land to others. This will not confer on him any higher status than that of a tenant.

It does not appear that the other points raised, in the memorandum of appeal presented to the Lower Appellate Court, were argued or pressed upon the attention of the Judge, and no issue was recorded on these points in the Court of First Instance. We cannot, therefore, allow any weight to them here.

The appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

SHARIFA BIBI (PLAINTIFF), APPELLANT,

v.

GULAM MAHOMED DASTAGIR KHAN AND OTHERS, (DEFENDANTS), RESPONDENTS.*

1892. Aug. 23, 24, 30.

Muhammadan Law—Death-bed gifts—Consent of heirs—Mushaa—Delivery of possession.

A Muhammadan on 27th February executed two deeds of gift, by one of which (attested by all his sons) he conveyed his one-fourth share in a certain mitta to his daughters; and by the other (attested by all his daughters), he conveyed the rest of his landed property to his sons. The donor died on 6th March, and it was found on the evidence that the above dispositions of his property was death-bed gifts. It appeared that the donor had separate possession of the lands disposed of by him, though part of it was held under joint pattas, in which others were interested; and also that on the date of the gift, the transfer of ownership of the mitta property was proclaimed by beat of tom-tom, and that the tenants were called upon to attorn to the donees, who subsequently collected rent. The widow took no exception to the gifts, but after two years one of the daughters brought this suit to have them set aside as invalid and to recover her share as an heiress of her father:

Held, (1) on the evidence, that the attestation of the heirs was regarded by the parties concerned as evidence of consent, and that they did consent to the bed gifts at the time they were made;

(2) that this consent not having been revoked on the donor's de there having been sufficient delivery of possession the gifts were complete

(3) that the gifts were not impeachable on the ground of *p*

Evidence of undue influence considered.

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* Appeal No. 116 of 1891.