APPELLATE CIVIL.

Before Mr. Justice Wilkinson and Mr. Justice Handley.

1891. Nov. 18. Dec. 15. 1892. Sept. 14.

SOBHANADRI APPA RAU (PLAINTIFF'S REPRESENTATIVE), APPELLANT,

v.

GOPALKRISTNAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Regulation XXV of 1802 (*Madras*), *ss.* 4, 12—*Zamindar's sanad, assets mentioned in—Quit-rent on an agraharam village—Inam title-deed, rate mentioned in—Joint liability of agraharamdars.*

The plaintiff was a zamindar holding his estate under a sanad dated 1802. This sanad followed almost *verbatim* the language of Regulation XXV of 1802, s. 4, and where it referred to "lands paying a small quit-rent," added "which quit-rent unchangeable by you is included in the assets of your zamindari." The suit was brought to recover arrears of jodi or quit-rent accrued due on an agraharam village in the zamindari. The defendants, who were the agraharamdars, had divided the village and held it in separate shares. They pleaded that they were not liable to pay jodi in excess of the rate fixed by the Inam Commissioner and specified in the inam title-deed granted by him for the village in 1869:

Held, (1) that the decision of the Inam Commissioner did not affect the zamindar's claim, and that the question to be determined was what was the jodi payable in respect of the village at the time of the permanent settlement on which the peishcush of the zamindari was fixed;

(2) that the defendants were jointly and severally liable for the amount that should be found due to the zamindar.

On its appearing that Rs. 6 per putti was the recognised rate from 1832 to 1879, and that there was no evidence to show the agraharamdars had ever paid any other rate, or had paid Rs. 6 under coercion, the Court presumed that that was the rate at the time of the permanent settlement.

APPEAL against the decree of Venkata Ranga Ayyar, Subordinate Judge of Ellore, in original suit No. 25 of 1886.

Suit by a zamindar to recover arrears of jodi accrued due on an agraharam village in the zamindari.

The sanad dated 8th December 1802 under which the zamindari was held after stating the amount of the assessment on the estate thereby permanently settled proceeded in paragraph 4 as follows:—

"This permanent assessment of the land tax on your zamin-
"dari is exclusive of the revenue derived from the manufacture

* Appeal No. 81 of 1888.

"and sale of salt, and saltpetre, exclusive of the sayer or duties of "every description, whether by sea or land, the entire adminis- "tration of which the Government reserves to itself; exclusive "of the abkari or tax on the sale of spirituous liquors, and "intoxicating drugs; exclusive of the excise which is or may "be levied on commodities or articles of consumption; exclusive "of all taxes, personal and professional, as well as of those from "markets, fairs and bazaars; exclusive of lakheraj lands (lands "exempt from the payment of public revenue) and all other "alienated lands paying a small quit-rent (which quit-rent, "unchangeable by you, is included in the assets of your zamin- "dari); and exclusive of all lands and russums heretofore appro- "priated to the support of public establishments. The Govern- "ment reserves to itself the entire exercise of its discretion in "continuing or abolishing, temporarily or permanently, the articles "of revenue included, according to the custom and practice of "the country under the several heads above stated."

In 1869 the Inam Commissioner granted a title-deed of the village to eight persons, the predecessors in title of the defendants in which it was stated that "the inam is subject to a jodi or quit-rent of Rs. 135 payable to the zamindar." The zamindar's present claim was in excess of this rate, and it was contended that to that extent it was illegal.

The further facts of the case appear sufficiently for the purposes of this report from the following judgment of the High Court.

Bhashyam Ayyangar for appellant.

Subramanya Ayyar and *Anandacharlu* for respondents.

JUDGMENT.—In this suit plaintiff, a zamindar, seeks to recover from defendants, the holders of an agraharam village within the limits of his zamindari, arrears of jodi or quit-rent.

The main question in issue is whether the plaintiff is legally entitled to recover from defendants kattubadi at the rate claimed by him. Plaintiff claims jodi at the rate of Rs. 6 per putti on the grain yielded by the village. Defendants maintain that the jodi was fixed by the Inam Commissioner in 1866 at Rs. 135 per annum, which sum was entered in the inam title-deed (exhibit I), and that only jodi at this rate can be demanded from them. The Subordinate Judge held that the amount of jodi specified in the

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inam title-deed is binding on the zamindar and has decreed for him at that rate only. Plaintiff appeals.

It is argued for appellant that the Inam Commissioner had no power to determine the amount of jodi payable to the zamindar; that all that was deputed to him by Government was the power to determine the matters reserved for its determination by section 4 of Regulation XX of 1802, viz., in the case of lands like this agraharam paying only favorable quit-rent, whether the favorable quit-rent should be continued or whether the full revenue or any less than the full revenue should be assessed on the lands; that the jodi which was payable at the time of the permanent settlement was included in the assets on which the peishcush of the zamindari was fixed, and therefore Government and the Inam Commissioner had no concern with that but only with the quit-rent, or, in other words, the exemption with the agraharamdars enjoyed from full assessment; and therefore that any order passed by the Inam Commissioner fixing the rate of jodi was *ultra vires* and could not bind the then zamindar or his successors. In our opinion this is the correct view of the respective rights of Government, the zamindar and the agraharamdars.

The sanad of this zamindari (exhibit V) follows almost *verbatim* the language of section 4 of Regulation XXV of 1802, and in speaking of "lands paying a small quit-rent," adds in a parenthesis the words "which quit-rent unchangeable by you is included in the assets of your zamindari." The quit-rent or jodi then being included in the assets of the zamindari, Government had no interest in it, and the Inam Commissioner had no power to alter or deal with it in any way. All he had to deal with was the difference between the quit-rent and the full assessment which was the benefit the inamdars enjoyed as against the Government. This benefit he could either, according to the rules laid down for his guidance, abolish altogether and fully assess the lands, or commute the surplus revenue over and above the quit-rent into a fixed annual payment to Government. According to the Inam Rules inams of the nature of this agraharam were to be enfranchised on payment of a fixed annual sum to Government bearing a certain proportion to the difference between the quit-rent payable to the zamindar and the full revenue. To calculate the sum thus payable to Government on

enfranchisement, it was necessary for the Inam Commissioner to ascertain the amount of the quit-rent payable to the zamindar, but if he took an erroneous amount of quit-rent as the basis of his calculation, the zamindar could not be made to suffer thereby.

It is said that the then zamindar agreed to the rate of jodi fixed by the Inam Commissioner. There is nothing to show this except the statement in the extract from the Inam Register (exhibit II) that the quit-rent of Rs. 135 was fixed by the zamindar, and two documents (exhibits III and V) which go to show that, on a reference by the Collector in 1865, the Inam Commissioner informed him that the jodi on inams of this nature in this zamindari had been fixed by the then Inam Commissioner Mr. Taylor with the assent of the zamindar. These same documents also show, however, that if the zamindar did assent when the jodi was fixed, he immediately retracted his consent and proceeded to levy jodi on the produce of the inam lands as before. According to the findings of the Subordinate Judge the jodi fixed by the Inam Commissioner was never collected in this village at least, and the agraharamdars had in some cases paid the jodi claimed by the zamindar at the rate of Rs. 6 per putti of produce. Even if the then zamindar assented to the jodi fixed by the Inam Commissioner, we think such assent would not bind his successors or give legal effect to the decision of the Commissioner on a matter over which he had no jurisdiction.

It is argued for respondents that upon the true construction of section 4 of Regulation XXV of 1802, lands paying only favorable quit-rent being excluded from the permanent settlement, the amount of jodi or quit-rent was reserved for determination by Government as well as the other matters relating to the favorable assessment of inams. And it is said that section 12 of the regulation supports this view. In our opinion that section does not help respondents' contention but the contrary, for it shows that agraharams and other inams of that sort paying a favorable quit-rent are included in the term lakheraj, and that what Government is concerned with in such inams is the extra assessment over and above the favorable quit-rent already payable, for it only prohibits the zamindar from fixing a *new* assessment on likheraj lands without the consent of Government.

The true construction of section 4 is, as we have said above, in our opinion that the matters reserved for determination by

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Government relate to the terms on which the favorable assessment was to be continued to the inamdars, not to the jodi already payable to the land-owner and included in the assets of his zamindari. It would be clearly inconsistent with the principles of the permanent settlement that one of the sources of revenue to the zamindar on which his peishcush was fixed should be liable to be varied at the will of Government or their deputy, the Inam Commissioner.

It is also urged for respondents that the fact that the jodi was included by the sanad in the assets of the zamindari would not oust the power of Government to deal with the jodi expressly reserved to it by the Regulation, and the case of the Karvetnagar Zamindar reported as *Vedanta* v. *Kanniyappa*(1) was relied on, as deciding that the matters reserved by section 4 of Regulation XXV of 1802 for the decision of Government could not be included in the permanent settlement. We have already answered this argument in holding that the quit-rent on inams payable to the zamindar is not one of the matters reserved for determination by Government by section 4 of the regulation. In the case quoted the question was as to moturpha, or taxes on arts and trades, which is clearly one of the sources of revenue excluded from the permanent settlement by section 4 of the regulation.

In our opinion the question to be determined in this suit is what was the jodi at the time of the permanent settlement on which the peishcush of the zamindari was fixed. This question has not been decided by the Lower Court and we must send down an issue upon it.

For third defendant a memorandum of objections is filed. The only point raised in that which was argued before us, besides the points common to him and the respondents, is that the holders of the agraharam having divided it, and holding it in separate shares, are each only liable for a part of the jodi proportionate to his share. We think the Subordinate Judge was right in holding that the defendants are jointly and severally liable to plaintiff's claim. Any division amongst themselves to which the zamindar was no party could not affect his right to look to all the lands of the village for his jodi. We shall ask the Subordinate Judge to find upon the following issues :—

(1) I.L.R., 9 Mad., 14.

(1) What was the jodi payable to the zamindar in respect of the village in question at the time of the permanent settlement on which the peishcush of the zamindari was fixed?

(2) What is the amount due to plaintiff for arrears of jodi?

Fresh evidence may be taken.

Finding is to be returned within two months from the date of the receipt of this order, and seven days, after posting of the finding in this Court, will be allowed for filing objections.

[In compliance with the above order the District Judge of Kistna submitted a finding to the effect that the jodi at the permanent settlement of 1802 was Rs. 6 per putti.]

This appeal having come on for final hearing, the Court delivered the following judgment:—

JUDGMENT.—The District Judge has found that the jodi at the time of the permanent settlement was Rs. 6 per putti. The defendants have put in a memorandum of objections and it is argued that the finding of the District Judge is unsupported by the evidence on record.

Exhibits E, F and G show that from the year 1864 to 1879 the agraharamdars recognised their obligation to pay kattupadi sist at Rs. 6 per putti. In exhibit II, the extract from the Inam Register, the jodi is entered at Rs. 6 per putti. This statement which bears date 1859 was prepared from materials supplied by the inamdars themselves. They represented to the Inam Deputy Collector that they were only paying a quit-rent of Rs. 135 which had been fixed at the discretion of the zamindar, and the Deputy Collector, finding that the average collections of the zamindar amounted to Rs. 154 per annum, assumed that Rs. 135 was a fair amount and used that to determine the amount of quit-rent payable to Government. But exhibit III shows that the zamindar at once repudiated the alleged settlement and claimed that jodi was payable to him at the rate of Rs. 6 for every putti raised. Exhibits A, B, C, D and N, which are accounts prepared by the zamindari kurnams in the ordinary course of business, show that in the years 1832, 1834, 1837, 18[illegible] and 1853 quit-rent was collected at Rs. 6 per putti. Non[illegible] the records carry us nearer to the permanent settle[illegible]nt exhibit A of 1832. But we think it may fairly be pr[illegible] the rate at the settlement was Rs. 6 per putti w[illegible]

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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.