APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SIRIPARAPU RAMANNA (PLAINTIFF), APPELLANT,

v.

MALLIKARJUNA PRASADA NAYUDU (DEFENDANT), RESPONDENT.*

1893. April 26. March 20.

Rent Recovery Act (Madras)—Act VIII of 1865, ss. 4, 7, 11—Enhanced rent on irrigated land—Customary contribution to a temple—Implied contract.

A zamindar tendered to raiyats on his estate pattas providing (*inter alia*) for the payment of (1) certain fees to a Hindu temple, (2) rent in which the land assessment was consolidated with a water-cess in respect of certain land irrigated under the Kistna anicut. There was nothing to show that the former of these items constituted a charge on the land and the latter had not been sanctioned by the Collector under Rent Recovery Act, s. 11, but it was found that both had been paid by the raiyats for many years. The Court of first appeal held on this finding that there were implied contracts on the part of the raiyats to pay both items:

Held (1) that the temple fee was *primâ facie* voluntary and should not be treated as a payment which the zamindar could compel a raiyat to make and consequently that the patta tendered to him was an improper patta;

(2) that the finding as to the existence of an implied contract to pay the second of the above items was a finding of fact and must, therefore, be accepted on second appeal; and was a correct finding, in accordance with the ruling in *Venkatagopal* v. *Rangappa* (I.L.R., 7 Mad., 365).

The first proviso to Rent Recovery Act, s. 11, is not restricted in its application to rates of original rent as contradistinguished from its enhancement on account of improvements.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 176 of 1889, reversing the decision of S. H. Habibuddin, Special Assistant Collector of Kistna, in summary suit No. 2 of 1889.

Suit by a tenant to set aside a distraint.

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

The plaintiff preferred this second appeal.

Parthasaradhi Ayyangar for appellant.

Pattabhirama Ayyar for respondent.

* Second Appeal No. 557 of 1891.

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JUDGMENT.—This is a second appeal from the decree of the District Judge of Kistna, disallowing appellant's claim with costs. Respondent is the zamindar of Devarakota and appellant is a *jirayati* raiyat in his zamindari. A *patta* was tendered for fasli 1297 by the former, but the latter refused to accept it. The zamindar then distrained the raiyat's property for arrears of rent which he claimed for 1297 and the tenant sued to set aside the distraint as being illegal. The question for determination was whether the *patta* tendered, exhibit I, was one which appellant was bound to accept and the requirement of section 7, Act VIII of 1865, was thereby complied with. Appellant objected to two items in exhibit I, viz., the rate of Rs. 9-8-0 *per* acre charged on dry land irrigated under the Kistna anicut, and the fee entered as payable to a temple at Sivaganga. The Special Assistant Collector considered that the consolidated wet assessment of Rs. 9-8-0 *per* acre was too high and that the usual dry rate of Rs. 2-2-0 *plus* a water rate of Rs. 4 *per* acre was the proper charge. As to the contribution claimed for the Sivaganga goddess, he thought its inclusion in the patta to be unobjectionable, as he found it to be a charge warranted by established usage. On the former ground he held that appellant's refusal to accept the *patta* was justifiable and decreed his claim with costs. On appeal, however, the District Judge found that the *patta* tendered for 1297 was similar to *pattas* tendered in previous faslis, that they all contained the fee payable to the Sivaganga temple and imposed a consolidated wet rate of Rs. 9-8-0 *per* acre on lands irrigated with Kistna water, and that the consolidated rate and fee had been paid for twelve years or more. He concluded that payment of rent at a particular rate and of a fee for a series of years created a presumption of a contract and that the tenant did not rebut the presumption. Adverting to the evidence that appellant had twice asked the zamindar to reduce the rate, the Judge observed that it was not sufficient that the raiyat murmured against the rate now and then, but that it was incumbent upon him to get it lowered by the Revenue Courts. In the result he reversed the decree of the Special Assistant Collector and dismissed respondent's suit with costs. Hence this second appeal.

For the appellant, it is contended (1) that the Collector's sanction not having been obtained for enhancing the rent, the *patta* tendered was not a proper *patta*, (2) that in the circumstances of

this case there was no presumptive evidence of a contract to which Courts can give effect, and (3) that the fee entered in the *patta* for the Sivaganga goddess was unauthorized. As regards the fee payable to the temple at Sivaganga, it can only be included in the *patta* under section 4 of Act VIII of 1865 on the ground that it is payable with rent according to established usage or law. A duty to contribute to the expense of a temple is not an ordinary incident of the relation of landlord and tenant, nor has it any connection with the *jirayati* tenure on which the raiyat holds his land. *Primâ facie*, the contribution is voluntary and unless the fee is shown to be a charge on the land, it cannot be treated as a payment which the zamindar can legally compel the raiyat to make. Suppose the raiyat to be a Muhammadan or a Christian it is obvious that in no sense would he be bound to make it. Moreover a tenant may, at his pleasure, discontinue a voluntary payment although he may have made it for several years, and there is nothing in this case to show that the fee is a charge on the land. We do not agree in the opinion of the Judge that appellant was under a contractual obligation to pay the fee claimed for the goddess at Sivaganga.

As regards the consolidated wet rate on land irrigated with Kistna water, there can be no doubt that before imposing it on the tenant against his will, the zamindar ought to obtain the sanction of the Collector under the first *proviso* of section 11 of Act VIII of 1865. That section provides that nothing contained in it shall affect the right of any landholder, with the sanction of the Collector, to raise the rent upon any land in consequence of additional value imparted to it by works of irrigation or other improvements executed at his own expense or constructed at the expense of Government and for which an additional revenue is levied from him. *Ramesam* v. *Bhanappa*(1) and *Narasimha Naidu* v. *Ramasami*(2) are authorities for the proposition that the addition of water-cess to land assessment is an enhancement of rent within the meaning of the *proviso* and that the addition, in whatever form it is made, whether as a consolidated wet rate or as water rate in addition to the prior rent, requires the sanction of the Collector. The principle is that land assessment and water-tax are designated revenue when they are paid to the Government, whilst they are

(1) I.L.R., 7 Mad., 182. (2) I.L.R., 14 Mad., 44.

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called rent when paid to the zamindar. In the case before us, it is conceded that no such sanction has been obtained and the real question therefore is whether a contract can be inferred from the facts found to pay a consolidated wet rate for the future. In this connection two subsidiary questions arise for consideration, viz., (1) whether the first *proviso* in section 11 is restricted in its application to rates of original rent as contradistinguished from its enhancement on account of improvements, and (2) whether in the circumstances of this case, the Judge properly inferred a contract to pay the consolidated wet rate. As to the first, we see no reason why a contract between the landlord and tenant should not bind them in the case of enhancement of rent, whilst it is binding when it relates to the original rent. Having regard to the words of the *proviso* "Nothing herein contained shall affect "the right to raise the rent," &c., we think the intention was not to preclude the parties from regulating the enhancement as well as the original rent by contract, but to constitute the Collector's sanction as conclusive evidence that the enhancement is proper in cases in which there is no contract. Further the sanction of the Collector is prescribed for protecting the tenant against undue or excessive enhancement, and when there is a binding contract the tenant needs no such protection as he is a party to the contract.

The second question is whether upon the facts found a contract can be lawfully implied. Those facts are (1) that the tenant has paid the consolidated wet rate for twelve years or more, (2) that he has accepted *pattas* in the previous faslis providing for payment at that rate and that though the raiyat asked the zamindar to reduce the rate twice without success, he has taken no action in the Revenue Courts in order to get the rate lowered during the long interval of twelve years or more. It is also in evidence that the sharing system was in force in this village till fasli 1278, that fixed money rents were introduced in fasli 1279, and that the raiyat since paid the rates mentioned in the *patta* tendered up to fasli 1296. On the other hand, the usual dry rate is Rs. 2-2-0 *per* acre and if Rs. 4 are added to it for water rate, the total charge would amount to Rs. 6-2-0 *per* acre, whereas the consolidated water rate is Rs. 9-8-0, Rs. 3-6-0 in excess of the revenue which raiyats have to pay in Government villages. The Judge's finding amounts in substance to this, viz., when a

consolidated rate had been paid for seventeen years, a contract to pay at the same rate in future years may be reasonably inferred and such contract precludes an enquiry how far that rate is excessive in comparison with the rates paid by raiyats in Government villages. Again, the question whether there was an implied contract or not is one of fact and we are bound to accept the finding. In the Full Bench case (*Venkatagopal* v. *Rangappa*(1)) it was held that a contract was properly implied from payment of the same rate of money rent for a period of fourteen years. In that case the history of rent law as to rates of rent was considered by the Full Court, and it was pointed out in what cases a contract to pay a particular rate may be presumed and how the presumption may be rebutted. In the case before us no change of circumstances and no special causes are shown which may be accepted as rebutting the presumption of an implied contract. The decision of the Judge that there was a contract to pay the consolidated wet rate entered in the *patta* is correct.

We are, however, constrained to hold that the *patta* tendered was not a proper *patta*, as it contained the fee payable to the temple at Sivaganga, and reversing the decree of the District Court, we set aside the distraint.

As the appeal has failed in regard to the consolidated rent, which is the most important item in dispute, we direct that each party bear his own costs throughout.

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(1) I.L.R., 7 Mad., 365.