PICHU-VAYYANGAR v. SESHAYYAN-GAR.

This petition came on for hearing on the 23rd November 1893 before the Full Bench.

Mahadeva Ayyar for petitioner.

Rajagopalachariar for respondent.

Reference was made in the argument to Civil Procedure Code, sections 239, 235, 545, 579, 582, 587, 610; Limitation Act, Schedule II, Article 176; *Kristo Kinkur Roy* v. *Rajah Burroda-caunt Roy*(1), *Noor Ali Chowdhuri* v. *Kuni Meah*(2), and *Daulat and Jagjivan* v. *Bhukandas Manekchand*(3), as well as to the cases mentioned in the order of reference.

JUDGMENT.—We are of opinion that when there has been an appeal against the decree of the District Munsif and a decree has been passed thereon, the District Munsif has no longer any power to amend his decree.

We therefore answer the question in the affirmative.

This petition coming on for final disposal before MUTTUSAMI AYYAR and SHEPHARD, JJ., the Court delivered the following judgment:—

JUDGMENT.—Following the ruling of the Full Bench we dismiss the petition for amendment and cancel the amendment made with reference to it.

The petitioner is entitled to his costs.

APPELLATE CIVIL.

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

1893. July 13. 1894. July 10, 16. December 20.

VENKATA NARASIMHA NAIDU (PLAINTIFF), APPELLANT,

v.

RAMASAMI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Rent Recovery Act (Madras)—Act VIII of 1865, *ss.* 9 *and* 11—*Enforceable terms of patta—Established rates of rent.*

The Zamindar of Vallur sued certain raiyats in his pargana of Gudur to enforce the acceptance of pattas providing, among other conditions, that the raiyats should relinquish their holdings at the end of the term unless fresh pattas were tendered to them, that they should pay half the cost of repairs by a cess proportioned to the wet rate, that if they irrigated dry land they should pay a wet rate to the

(1) 14 M.I.A., 465, 490. (2) I.L.R., 13 Calc., 13.
(3) I.L.R., 11 Bom., 172. * Second Appeals Nos. 449 to 456 of 1892.

Zamindar, as well as the water rate due to Government, that they should not cut crops without permission and should supply grass and vegetables to the Zamindar's servants. It appeared that in 1853 the pargana in question was surrendered to Government who restored it subject to the payment of a newly-assessed peishcush in 1862, a date when the present defendants were already in occupation of their respective holdings. In the interval, Government collected village rents in money. The pargana was not surveyed and a money assessment fixed prior to 1859. The District Judge expunged the conditions in the patta above referred to and held that the Zamindar was entitled to collect by way of rent from the raiyats respectively the quota of the village rents which each raiyat paid in 1861. He found, however, that there was no contract express or implied as to the rent to be paid; and that prior to 1851 the raiyats held their lands under the Zamindar on the sharing system, and that for the first year after the restoration of the pargana the arrangement enforced by Government had remained in force, but that from 1863 to 1870 the sharing system was in force and varam was paid by the raiyats, after which for five years individual money rents were collected, and then there were two leases with money rents each for a period of five years:

Held, (1) that the conditions in the patta above referred to were unenforceable and had been rightly expunged;

(2) that the plaintiff's rights were not limited by the rates of rent paid to Government in 1861, but that the rent should be discharged in kind according to the established rate of varam in the village;

(3) that the plaintiff was entitled to recover from the raiyats half the water-tax payable on the poramboke lands irrigated from the Kistna anicut.

SECOND APPEALS against the decrees of G. T. Mackenzie, District Judge of Kistna, in appeal suits Nos. 1388 to 1395 of 1890, modifying the decisions of W. E. Hall, Assistant Collector of Kistna, in summary suits Nos. 452 to 459 of 1889.

Suits under Rent Recovery Act by the Zamindar of Vallur against certain tenants on his Zamindari to enforce the acceptance of pattas and execution of muchalkas. The Assistant Collector directed that certain modifications be made in the pattas tendered by the Zamindar. Against this decision the Zamindar and the tenants preferred appeals and memoranda of objections, respectively, with the result that the District Judge modified the decision of the Assistant Collector and declared what should be the terms of the pattas which the Zamindar could impose upon his raiyats. From the pattas actually tendered he directed that certain conditions should be expunged, viz., conditions that the raiyat should relinquish his holding at the end of the term unless a new patta is tendered to him, (2) that the raiyat should pay half the cost of repairs by a cess proportioned to the wet rates, (3) that the raiyat irrigating dry lands should pay a wet rate to the Zamindar as well as the water rate due to Government, (4) that the raiyat

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should not cut crops without the Zamindar's permission and that he should supply grass and vegetables to the Zamindar's servants. With regard to the rates of rent the Judge found that there was no implied contract and held that the settlement rates were the proper rates for fasli 1299, to which these suits related. He pointed out that in 1853 that portion of the plaintiff's Zamindari in which were situated the lands now in question, viz., the village of Mukkollu, had been given up to Government because it hardly defrayed its peishcush. In 1861, the Government, by Government Order, No. 1214, dated 18th June, restored the Gudur estate to the Zamindar "as an act of grace and not of right on such peish-"cush as may be adapted to its improved condition." During the time when the estate was in the hands of Government, a period to which dated the tenancy of the present defendants, the settlement rates were imposed by Government, but it was left in doubt whether this took place before or after 1st January 1859. The District Judge referred to *Palaniappa* v. *Raya*(1) as an authority for saying that the Zamindar was entitled, under the re-grant of 1861, to collect the revenue at those assessed rates only.

The plaintiff preferred these second appeals against the decrees of the District Judge.

Pattabhirama Ayyar for appellant.

Parthasaradhi Ayyangar and *Seshagiri Ayyar* for respondents.

These second appeals came on for hearing on 13th July 1893, when the Court (MUTTUSAMI AYYAR and DAVIES, JJ.) made the following order :—

ORDER.—There is no finding as to what are the rates that the Judge considers to be binding. The Government Order to which he refers is not in evidence. Nor do the judgments of either of the courts below specify the settlement rates. The parties were at issue on the question of rates and the appellant is therefore clearly entitled to a finding as to what those rates are. There is no decree of the Assistant Collector on record and the decree of the District Judge does not mention any rates. Under section 11 of Madras Act VIII of 1865, the settlement rates prescribed for adoption must have been on a survey made previous to 1st January 1859, as noted by the Judge, but the Judge has not decided this

(1) I.L.R., 7 Mad., 325.

question. It does not appear that the plaintiff had an opportunity of showing that what was assigned under the Government Order was not limited to the Government revenue. We must therefore ask the Judge to return findings on the following questions:—

(1) Whether the lands have been surveyed by Government previous to 1st January 1859, and if so, what money rent was fixed thereon?

(2) If the first issue is found in the negative, what was the nature of the interest assigned under the Government order of the 18th June 1861?

(3) What are the rates to be inserted in the patta?

The Judge finds there was no implied contract, and as this is a question of fact, we must accept the finding.

The Judge also finds that certain conditions in the patta are unreasonable and has expunged them. We see no reason to differ from his findings on this point.

The return to the issues specified above will be made within eight weeks from the receipt of this order. Each party will be at liberty to adduce fresh evidence. A copy of the Government Order of the 18th June 1861 and the issue paper (if any) should also be forwarded to this Court with the findings. Seven days will be allowed for filing objections after the finding has been posted up in this Court.

In compliance with the above order, the District Judge submitted the following finding:—

FINDING.—The Gudur pargana in the Vallur Zamindari is said to have been attached for arrears in 1851 by the Collector of Masulipatam. In 1853, the Zamindar surrendered the pargana to Government, but in 1861 Government decided to restore it, and it appears to have been restored in 1862.

The defendants in the present suits have called five witnesses, who say that, when the pargana came under the Collector of Masulipatam in 1851, the villages were surveyed, and that money rents were imposed upon the fields. The Zamindar calls six witnesses, who say that the system followed by the Collector of Masulipatam was to impose a lump sum on each village, and that the raiyats, amongst themselves, classified their lands and arranged what each was to pay, so as to make up the total which the Collector required from each village. Both sides rely upon documents. The raiyats produce the village accounts which show classification of fields and money rents due by viduals. The Zamindar relies upon a village rent lease for a

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whole village signed by Mr. T. D. Lushington who was Collector of Masulipatam from 1849 to 1855.

Although I have studied Act VIII of 1865 for the last twenty-four years, I have never been able to find out why the date 1st January 1859 was inserted in section 11 of that Act or what survey and money assessment in Zamindari tracts, the framers of that section had in mind. I do not know of any survey or any money assessment on fields in any Zamindari estate in the Madras Presidency. I have never met any person who could give any explanation of this section and I can find nothing in the statement of objects and reasons for the Act.

I am disposed to believe the Zamindar's witnesses who say that the Collector of Masulipatam imposed village rents from 1851 to 1861. That would be in accordance with the Revenue Administration which then existed in the Masulipatam district. (*See* page 355 of the *Kistna District Manual.*)

These village rents were fixed by the Collector upon the best estimate he could frame of the capability of the land and for the purposes of this estimate the fields were classified and individual money rents were imposed by the villagers themselves, but, so far as the Collector was concerned, all the raiyats of the village were jointly and severally liable for the whole village rent. I cannot find that this system of village rents with a rough individual adjustment of the burden was a survey and a fixing of money assessment on the fields, within the meaning of section 11 of the Rent Act.

I am next directed to find what was the nature of the interest assigned under the Government Order of the 18th June 1861. That order restored the pargana to the Zamindar and the view I take of the matter is as follows:—

It may be that Government has the power to increase a raiyat's sist, but, when Government assigns that land revenue to a Zamindar, the Zamindar can collect only the sist which the raiyat was then paying to Government and cannot increase the amount. As authority for the proposition, I cited Special Appeal Suit No. 15 of 1812 in which the Sudder Court reinstated a raiyat at the rates prevailing before the permanent settlement, and *Palaniappa* v. *Raya*(1) where Turner, C. J., and Hutchins, J., held that section 11 of the Rent Act does not enable a landlord to collect more. It appears to me that these two decisions have conferred this right upon the raiyats who hold under Government in the Madras Presidency. It appears to me that when the Zamindar of Vallur surrendered this pargana to Government in

(1) I.L.R., 7 Mad., 325.

1853, the raiyats in that pargana at once became raiyats holding under Government with all their rights. It follows that in 1861 Government had not the power to thrust back these raiyats into their former status. Government in 1861 might make what stipulations seemed fit about peishcush and such matters, but could not confer upon the Zamindar against the raiyats powers which the case-law of this Presidency does not permit.

This is a large question in this district. Except the Palnad taluk, all this district was once held by Zamindars. Many of these estates were attached and sold for arrears and bought in by Government, so that now the greater part of the district is directly under the Collector. The raiyats in those tracts which once were Zamindari estates are treated in every respect by the Courts as are raiyats in tracts that have always been under Government. It would astonish these raiyats to be told that Government could now hand them back again to the old pensioned Zamindars who live in their ruined forts in the Kistna district and that these Zamindars could then enhance the rents of all raiyats who could not prove occupation from 1801. But this consequence will follow if the High Court now decides that Government had power to reduce defendants to their former status. Most of Zamindaris in this district were sold in 1846. That is only forty-seven years ago. If the eight years from 1853 to 1861 will not protect the defendants, the forty-seven years from 1846 to 1893 will not protect the mass of raiyats in the Kistna district.

Whether this view be unsound or not, the presumption is that the grant in 1861 was a fresh grant. It will be remembered how the Privy Council held that there was a fresh grant of Nuzvid in 1802. *Raja Venkata Rao* v. *Court of Wards*(1). The burden is upon the Zamindar to show that the grant purported to restore to him the rights he had over his raiyats in 1853. This the Zamindar has not shown. All he has produced is Board's Proceedings, No. 1878, dated 20th March 1862, which cites a sentence from the Government Order, proposes certain settlement rates as a basis for the calculation of the new peishcush and recommends Government to distinctly provide that the Zamindar shall settle with the raiyats at the rates assumed in this calculation. It is not known what orders were passed by the Government upon this recommendation.

I therefore find that the grant of this pargana in 1861 was a fresh grant and that the Zamindar cannot levy from defendants more than the rates which they were paying to Government at the time of the grant.

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(1) I.L.R., 2 Mad., 128.

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The question next arises what these rates were. It is ad that before 1851 the defendants held under the Zamindar (sharing system. Their second witness, the karnam, has ext from the accounts which were the basis of the Collector's r rents a statement showing what defendants then paid and thos the rates which they now claim. The Zamindar made no chan the first year after he got back the pargana, then for seven yea sharing system was in force, then for five years individual money r and for two periods of five years there were leases with money r and in fasli 1296 and subsequently there have been disputes and defendants have refused to pay more than what they called "se ment rates," that is, the rates which they paid when under Gov ment. I am of opinion that the subsequent payments do n stitute an implied contract to pay higher rates and that defh are entitled to pattas at the rates which they paid to Governm na

These rates are as follows, as detailed in the statement prepa the karnam :—

		ACRES.	RS.	A.	P.
449	Chandana Ramaswami ..	2-33	5	7	10
450.	Sammeta Sami	18-62	43	11	1
451.	Ambati Venkatasami	20-12	17	4	6
452	Chandana Venkatasami ..	4-98	12	6	6
453.	Sammeta Raghavayya ..	5-46	29	6	0
454.	Chandana Venkataratnam ..	16-9	48	0	9
455.	Sammeta Subbanna	20-16	21	7	4
456.	Chandana Ratnam	2-36	13	9	8

The High Court calls for the issue paper. The only issue p is the remarks printed at the opening of the Assistant Collec judgment.

This finding will be submitted to the High Court.

These second appeals next came on for hearing on 10th an 16th July 1894, when the Court made the following order.

The parties were represented as before.

ORDER.—Appellant is Zamindar of Vallur in the Distric of Kistna and respondents are raiyats cultivating lands in th pargana of Gudur which is part of the Zamindari. For fasl 1299 the former tendered pattas which the latter refused to accep Thereupon the Zamindar brought the suits from which thes second appeals arise to enforce acceptance of the pattas under section 9 of Act VIII of 1865. But the Judge found on appeal that they were not such as the tenants were bound to accept and that the latter properly objected to certain conditions and rates of

1853, embodied in the pattas. The Judge then proceeded under Gover 10 of the Act to decide what pattas ought to be offered ment ; so doing declared, *inter alia*, that respondents are liable to statu ly those rates of rent which they paid to Government at the fit a when the pargana was restored to the Zamindar, viz., 1862. Zami rged on appellant's behalf that this declaration is contrary denc e provisions of section 11 of Act VIII of 1865.

r
It was admitted before the Judge that prior to 1851 the raiyats all their lands under the Zamindar on the sharing system. In wer the Collector of Masulipatam attached the pargana for that lecte rs of peishcush, in 1853 the Zamindar surrendered the par- are tre to the Government, in 1861 the Government decided to have it, and in 1862 it actually restored the pargana to the raiyats subject to the payment of a peishcush which was fixed to the ference to its then improved condition. During the period Kiststhe pargana was under the Government, village rents were rents according to the Revenue Administration then in vogue in this district of Masulipatam. The village rents were money rents. ernm Collector fixed the rent due on each village upon the best Mos ate which he formed of the capability of the lands situated fort in, and held the raiyats jointly and severally responsible for not entire amount charged on the village. The raiyats without will tervention apportioned the rent so fixed upon their individual the ags and recognised this rough individual adjustment of the Pri len imposed by the Collector as regulating the quota payable *Raj* ach holding. It is the quota each raiyat paid at the time of Za re-grant that is now claimed by the respondents and recognised h the Judge as the rent payable by them to appellant. After he pargana was restored in 1861, the Zamindar made no change or the first year. For the next seven years the sharing system as in force and varam was paid by respondents. Then for five ears individual money rents were collected. Afterwards there ere two leases with money rents, each for a period of five years. pon these facts the Judge found with reference to the provisions section 11 of the Rent Act, that there was no contract express implied as to the rent to be paid. He also found that the pargana was not surveyed and a money assessment fixed upon the fields prior to 1859 as contemplated in that section. Upon these findings, which we must accept on second appeal, it is clear that rules I and II contained in section 11 of Act VIII of 1865 do not

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apply. Instead of then proceeding to apply rule III, embodied in section 11, the Judge held that the rate of money rent paid by respondents to Government at the time of re-grant is the proper rent now payable to appellant by respondents. In his judgment, however, he specified only the name of each raiyat, the aggregate extent of his holding and the amount of rent paid by him to the Government instead of the rate of rent and the description of land comprised in each holding and its extent. We are unable to concur in the opinion that the rent paid in 1861 to the Government is all that is payable to appellant. It must be observed that even on the view that the grant of 1861 was a new grant, it was the grant of a permanently-settled estate in the pargana, and the incidents attaching to such grant have to be determined with reference to the provisions of Regulation XXV of 1802 as explained by Regulation IV of 1822 and to the terms of the grant. In the cases before us the grant or the Government Order 1214, dated 18th June 1861, under which it was made, is not evidence. Subsequently to the date of the grant, the rents lev for more than twenty years were, as already shown, not limi to the money rents paid to the Government in 1861. There is proof nor finding that the grant expressly limited the rent wh the grantee was entitled to collect. In support of his opini however, the Judge relies on two decisions as constituting the law of this Presidency on the subject. *Palaniappa* v. *Ra* was a case decided between a raiyat and an Inamdar whose did not consist in the grant of land but in the assignment of third of the revenue due thereon and in an arrangement mad 1868 by the Collector with the Inamdar to the effect that t remaining two-thirds, which the raiyat paid direct to Governmen till then as quit-rent should thenceforward be collected by th Inamdar and paid by him to Government. The ground of decisio was that the limited character of the inam tenure showed that th only patta which the Inamdar was entitled to grant was a pat prescribing payment of the revenue. In the cases before us, t appellant is the grantee of a permanently-settled estate who is entitl to waste land and to lands relinquished by raiyats in the parga and who has an interest in occupied land as landholder though on subject to the prior rights already vested in the tenants. The raiyat

(1) I.L.R., 7 Mad., 325.

in occupation at the date of the grant in 1861 may have rights of occupancy as against appellant, but we see no reason to hold that the rent actually paid then was rent fixed in perpetuity. The Judge himself observed that it might have been competent to Government to revise it. Even assuming that assessment paid in 1861 constituted the assets upon which peishcush was fixed, we think that by reason of the permanent settlement the relation of landlord and tenant which existed between the Government and the raiyats, with such incidents as the law and the conditions of the grant attached to it passed to the Zamindar.

The other decision relied on by the Judge is that in Sadr Adaulat No. 15 of 1812. In that case one Ramaswami Ayyan holding lands under a mirasi tenure of which he had been deprived, sued the Zamindar of Ponneri to recover possession of those lands and damages sustained in consequence of his dispossession by the Zamindar, and further to compel the latter to grant him a patta under section 9 of Regulation XXX of 1802. The Zilla Court, the Provincial Court and the Court of Sadr Adaulat upheld the claim to recover possession of the lands and damages and to obtain a patta. As regards the rent for which a patta should be tendered, the Zilla Court and the Provincial Court held that it should be a money rent at the annual fixed beriz of star pagodas 60-6-16 which amount was assessed on the land in question and paid by the raiyat to the Government in the year Raudri (when the permanent settlement was made); but the Court of Sadr Adaulat set aside this decision observing that there was not a tittle of evidence to show that a right to a patta with money rent paid to Government in the year Raudri existed on the part of Ramaswami Ayyan, that the evidence showed that the rent was not fixed, but was derived from a division of the produce which must fluctuate with the seasons and the commutation price, and that Ramaswami Ayyan was only entitled to receive a patta defining the rate of division of the produce which rate was, as prescribed by section 9, Regulation XXX of 1802, to be determined according to the rates prevailing in the year preceding the assessment of the permanent zamma on those lands. This decision does not appear to us to support the proposition put forward by the Judge, that the beriz paid to the Government in the year in which the permanent settlement was made is the rent properly payable by the raiyats to the Zamindar. On the other hand it appears to be an authority against such proposition. The

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reference to section 9 of Regulation XXX of 1802 was a reference to the rent law which then prescribed the mode in which the rates of assessment in money or of division in kind were to be determined.

Thus, there being no case-law, as stated by the Judge, the decision should be that the rent be discharged in kind according to the varam. The appellant makes that claim before us and it is in accordance with the *proviso* of rule III embodied in section 11 of Act VIII of 1865.

Before we finally dispose of these appeals, we must ask the Judge to ascertain what is the established rate of varam in th village. On this point additional evidence can be admitted.

The finding is to be submitted in a month from date of receipt of this order in the lower Appellate Court, when seven days will be allowed for filing objections after the finding has been posted up in this court.

In compliance with the above order the District Judge submitted his finding.

These second appeals came on for final disposal when the Court delivered the following judgment:—

JUDGMENT.—Though the Judge concludes his finding with the remark that there "is no established rate of varam in the village," it is clear from his return on the finding called for that the rate of varam prevailing in the village was 460 seers to the raiyats and 440 to the Zamindar out of every 900 seers, the raiyat's 460 including 57 seers, costs of cultivation, and the Zamindar's 440 including 37 seers for karnam's and other's fees. As regards water-tax on poramboke lands irrigated from the anicut, the Zamindar is entitled to recover a moiety from the raiyats. The patta will be amended as indicated in our former order and in accordance with the above finding.

Each party will bear his own costs of this appeal.