Court under section 28 of the Legal Practitioners Act. Independently of the promissory note, the respondent is entitled to recover the out-fees advanced by him and, under section 217 of the Indian Contract Act, he is entitled to retain the same out of the sums received by him to the credit of his client. The appellant's pleader admits that the amount actually advanced by the respondent for out-fees was Rs. 200 and it is therefore unnecessary to remit an issue for the purpose of taking an account as to the sums actually advanced by the respondent for out-fees.

The second appeal, therefore, fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Benson.

1897. March 11, 12. September 27.

LAKSHMANA PADAYACHI AND OTHERS (DEFENDANTS), APPELLANTS IN SECOND APPEAL No. 1498.

SUPPA ASARI AND OTHERS (DEFENDANTS Nos. 1, 2, 4 AND 5), APPELLANTS IN SECOND APPEAL No. 1568.

v.

RAMANATHAN CHETTIAR (PLAINTIFF), RESPONDENT IN BOTH THE CASES. *

Tanjore custom—Free occupation of manaikats belonging to mirasidars by artizans—Conditional on rendering services.

There is a practice in the Tanjore district by which purakudis or artizans are allowed to occupy manaikats belonging to mirasidars, free of rent, so long as they cultivate the lands of the mirasidars or render them services in other ways.

SUIT(1) to recover possession of a manaikat, with mesne profits.

The plaintiff sued as a trustee of the Thulapureswaraswami temple, to recover possession of a manaikat and for the removal of the building thereon, alleging that the manaikat sued for belonged to the said temple, that defendants' ancestors were permitted to occupy it on condition that they should cultivate

(1) Directed to be reported.

* Second Appeals Nos. 1498 and 1568 of 1895, presented against the decree of V. Srinivasa Charlu, Subordinate Judge of Kumbakonam, in Appeal Suits Nos. 384 and 385 of 1894, presented against the decree of J. C. Fernandez, District Munsif of Shiyali, in Original Suit No. 93 of 1893.

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the temple lands and render other services to the temple and vacate the premises on failure to perform such conditions, that the conditions of their holding were performed by defendants and by their ancestors before them till December 1889 after which they failed to do so, and that defendants had failed to quit though called upon to do so. The plaintiff also claimed Rs. 6 on account of mesne profits for the two years prior to suit.

The defendants denied the conditions of occupation alleged in the plaint and claimed that the manaikat was their ancestral property. An issue was framed raising this question. The District Munsif found that defendants had failed to make out their title and had only succeeded in proving long possession. He held, from the facts which were proved and upon a practice which was spoken to by a witness called by the plaintiff, that a very strong presumption arose, in the absence of anything to rebut it, that the defendants' family had come into occupation of the manaikat in the manner alleged by plaintiff. The custom referred to was that purakudis were allowed house-sites free of rent so long as they cultivated the lands owned by mirasidars. He decreed in plaintiff's favour for recovery of possession of the manaikat, exclusive of the trees thereon, and ordered defendants to remove the building within two months of the date of decree. He gave defendants liberty to cut down and remove the trees within the same period.

Defendants appealed to the Subordinate Judge, who upheld the Munsif's finding, but modified his decree by ordering the trees also to be delivered to plaintiff (who had filed a memorandum of objections against this part of the Munsif's decree).

Defendants preferred this second appeal.

V. Krishnasami Ayyar for appellants in Second Appeal No. 1498.

P. R. Sundara Ayyar for appellants in Second Appeal No. 1568.

T. Rangaramanuja Chariar for respondent in both appeals.

The Court passed the following

ORDER.—No doubt the manaikats were the property of the mirasidars at the time of the paimash many years ago, but before the defendants, who have been in possession for more than the statutory period, are ejected, the plaintiffs must show that their possession was as tenants of the plaintiff. There is evidence that

the defendants were cultivating lands of the temple or were rendering services to the temple. The Courts below, having regard to these facts, and to the practice said to prevail in the district of purakudis (tenants), or artizans being allowed to occupy manaikats free of rent, so long as they cultivated the lands of the mirasidars or rendered services as artizans, found that the possession of the defendants was as tenants. There is little or no evidence in support of the alleged practice, but its existence appears to have been assumed by the Courts in consequence of evidence which came before the Courts in other cases. As the practice does not appear to have been admitted by the parties, or recognized by established authorities, it must be proved by satisfactory evidence. There was no issue as to the practice, and this may be the reason why the evidence as to it is so meagre. We must, therefore, direct the Subordinate Judge to take further evidence on both sides and return a finding within two months from receipt of this order, on the following issue, viz.:—

Whether there is a practice in the Tanjore district by which purakudis or artizans are allowed to occupy manaikats belonging to mirasidars, free of rent, so long as they cultivate the lands of the mirasidars or render them services in other ways.

In addition to evidence adduced by the parties, the Subordinate Judge may, of his own motion, record further evidence, oral or documentary, which appears to him to be of value in regard to the alleged practice.

In compliance with that Order the Subordinate Judge submitted a finding, material portions of which were as follows:—

I have been asked to try the following issue:—

"Whether there is a practice in the Tanjore district by which "purakudis or artizans are allowed to occupy manaikats belong-"ing to mirasidars, free of rent, so long as they cultivate the "lands of the mirasidars or render them services in other ways."

2. The plaintiff (respondent) now examined five witnesses and the appellants (defendants) three. Their evidence, as a whole, establishes the practice, mentioned in the issue, of purakudis and artizans and other servants being given, by the mirasidars, manaikats to build on and occupy, so long as they continue to do the work required of them by the landlords. The witnesses Nos. 1, 2, 3 and 4 examined by the plaintiff referred also to the practice which has

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obtained in recent times of some landlords, particularly managers of temples, obtaining written evidence, in the form of leases for a term of years, of the holding of purakudis and artizans of manais left for their occupation and of their paying also "*some rent*" (as the first witness stated, evidently meaning a nominal rent) to obviate the difficulty, which sometimes exists, of proving their title to the manais, whenever disputes arise between them and their lessees. But the consideration for the letting is *not* this small rent that is promised by the tenant but his doing cultivation or other work, such as that of a carpenter or blacksmith and in temples that of a piper or drummer or even of a *dasi*, that is expected of these people. The fourth witness Dandapanyaier said it was "a small rent, nominally fixed and entered in the leases" but "was never collected."

3. The defendants' witnesses have also emphasized the existence of this custom in their evidence, while under cross-examination. Their first witness stated—

"Mirasidars own lands and manaikats appertaining to them. "On these manaikats dwell their Kudianavan, *i.e.*, such as cultivate "their land. These cultivators have occupied them from genera- "tion to generation and cultivated the lands of their landlords. "If the cultivators default to cultivate their lands, they used to be "ejected at once and other cultivators introduced into the manais "they occupied and moneys also recovered from them; they would "also cultivate their lands. For cultivating their lands, the "mirasidars give them their manais to live on. Similarly, to "artizans, village common manais are given for them to live on, "in order that they might do to the village people services that "they know of. If they default to do their work properly, they "used to be ejected."

In re-examination he added:—"From artizans who have long "remained on village manais, rent deeds used not to be had and "no rent used to be collected. From such as are introduced "newly, say, within the last 15 years, rent deeds used to be "obtained and rent collected."

Similarly deposed the defendants' second witness also.

The defendants' third witness, a man of the purakudi class, who has come to buy a small miras holding in a village called Sithankatterooppoo, while admitting the custom of mirasidars to grant manais to their purakudis to live on and of village common

manais being similarly granted for the use of the village artizans, stated that they were not granted rent free but that rent was collected from such people: but he was not able to mention one instance in which it was collected within his *personal* knowledge.

4. In addition to this oral evidence, on the side of the plaintiff, a number of judgments passed by the different Courts of this district, in which this practice was alleged and proved, have been also produced. I have also called for, from the records of the District Court, similar judgments passed by the Courts in what are commonly known in this district as manaikat suits, which are similar to the present suits. The defendants filed no documentary evidence. It may not be necessary that every one of these documents should be specially noticed and discussed. It will be sufficient if reference be made to some of them.

[He set out the numbers and descriptions of about twelve cases.]

5. In Suit No. 183 of 1866 on the file of the District Munsif's Court of Shiyali, Mr. White, the then District Munsif, who heard that suit, remarked as follows in the penultimate paragraph of his judgment:—

"The evidence of plaintiff's witnesses with respect to the "ownership of the property is fully confirmed by the documents "adduced by the defendant himself, as they show that he held as "purakudi cultivators under the arrangement, so well known in "this district, by which such tenants occupy sites belonging to a "proprietor while cultivating for him." (Exhibit E.)

6. In suits Nos. 130 and 131 of 1893 of the same Court, the issue as to the custom was directly raised and tried: and Mr. Munsif Fernandez has ably discussed all sides of the question and arrived at the conclusion that it was proved. In paragraph 10 of his judgment in Suit No. 131 (exhibit L) he has referred to a judgment of Doctor Burnell, a late District Judge of Tanjore, in a suit of 1880, upholding the custom. The Judge remarked as follows: "House-sites like the one in dispute "always belong in this part of India to a mirasidar, but the "defendant (appellant) has admitted he is not a mirasidar in this "village, and the presumption is, therefore, against him. The "appellant puts in a paimash account; this, however, makes him "out to be a purakudi, as he is obliged to admit he is; and it is, "therefore, impossible he can have any property in the village.

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"On the other hand, there is a considerable amount of oral "evidence (of mirasidars in the village) that the plaintiff (admit- "tedly a mirasidar) owns this house-site." In paragraph 11 of his judgment, Mr. Fernandez observed: "Not only is there "satisfactory evidence in this case to prove the alleged custom, "but the state of things I have pointed out above can only be "explained by some such recognized practice as that alleged. The "varam system of cultivation generally adopted in this district "renders it a matter of great importance to the mirasidars to "secure permanent cultivators for their lands, and among the "privileges which the mirasidars offer as an inducement to their "purakudis is that of providing them a place for their residence "free of rent. The purakudi has no claim to the place of residence "so provided for him, if he ceases to cultivate the mirasidar's "lands, to afford facilities for which such provision is made for "him."

6-A. This judgment of Mr. Fernandez was confirmed on appeal by Mr. Sewell, District Judge, in these words: "The custom is "not an unreasonable one and is found in many other countries. "It is proved by various instances in which the claim has been "asserted and upheld, before the Collector in 1845 (exhibits "S and T), by judgments of the Courts (exhibits O, Q and R) in "1887, 1888 and 1889 and the evidence of respectable mirasidars. "The rebutting evidence is very weak. I think the custom "clearly proved (exhibit L2)." In the judgment of the Munsif are described in detail the documents S and T. They are copies of two orders issued to two Tahsildars by two former Collectors, Messrs. Cotton and Cadell, setting out the respective rights of mirasidars and purakudis in manaikats occupied by the latter, which the Munsif found to fully bear out the custom now alleged. I make particular reference to them in this case to prove that this custom is not of recent origin, but has existed in this district all along, and had been asserted and proved even in those early times.

7. In a similar suit which arose in the Trivalore District Munsif's Court in 1889 (297 of 1889), the District Munsif in the Original Court and the Sub-Court of Tanjore on appeal, threw out the case as unsustainable (exhibits N and N1). But the High Court on second appeal passed the following order (exhibit N2):—[He set out the order of the High Court, which called for a finding.]

In his revised finding, the Subordinate Judge held the plaintiff's claim proved and remarked in paragraph 3 that "though there "was no evidence of the original contract of the tenancy, it seems "that purakudis are allowed to live in their landlords' manaikats "only so long as they cultivate their lands. This fact is established "on plaintiff's side by the oral evidence of his witnesses and is "not rebutted by any satisfactory evidence on the defendants' "side."

This finding was confirmed by the High Court and the plaintiff's claim for the manaikat sued for decreed with costs in all the Courts.

8. As I have stated already, I need quote no more from any other judgments which I have sent for and perused. Each judgment evidences an instance of a landlord asserting and proving a title for a manaikat let out either to a purakudi or other servant on condition of cultivating lands or doing services to him. If, in a few instances, the suits have failed, they failed not because no practice existed but because in those special cases, either the landlord had failed to prove his title to the specific manai claimed or his opponent was found to have acquired a title by adverse possession of over 12 years. Even in these cases, the ground of claim asserted was the same as alleged in the other cases.

9. True, the oral evidence establishes that purakudis occupying manais of one mirasidar and cultivating his lands are permitted to cultivate the lands of another mirasidar also. But that cannot disprove the practice of mirasidars having manaikats appurtenant to their lands, letting them out to their purakudis, when the latter are admitted to cultivate their lands.

10. There is also a document D filed on the plaintiff's side which is registered and proved by plaintiff's second witness. It is a lease of a manai to a drummer, who has agreed by it to occupy the manai rent free, so long as he served as a drummer and to pay a rent for it when he ceased to do that service or quit it if the landlord so desired.

11. As remarked by a Munsif in one of the judgments I have sent for, a manaikat is a matter of a necessity to a landlord. He may not be able to secure good and willing tenants to cultivate his lands without giving them a manai to live on near the lands which he undertakes to cultivate. These purakudis, once they are admitted, live on the manais given and continue to cultivate

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the mirasidars' lands from generation to generation. In one of the cases which have come before the Courts, it has been found that a landlord having no manai to let for his purakudi to live on had actually converted a part of his nanjah land for such purpose and gave it to be occupied by his purakudi; and the latter having afterwards refused to vacate it, when he ceased to cultivate the lands, was ejected from it by a suit in Court (exhibit K).

12. Similarly, the presence of an artizan in a village to mend the plough and other tools of husbandry is of equal necessity, and an artizan like a purakudi takes and occupies a village manai and carries on his business from generation to generation.

13. This practice is also referred to in the District Manual, page 382.

14. I hold for these reasons that the practice referred to, which is not unreasonable, has existed in this district for a long time and was repeatedly asserted by landlords and established by decisions of Courts also, though, in recent times, written leases in respect of these manais reserving a small rent have come to be taken in some localities to make the proof of title easy, when a dispute may arise about it. This is my finding upon the issue referred.

The second appeals came on for disposal after the return of the finding, when the Court passed the following

JUDGMENT.—No objection is taken to the finding. We accept it, and dismiss these second appeals with costs.