re-marriage, forfeit any property, or any right to which she would otherwise be entitled; and every widow who has re-married, shall have the same rights of inheritance as she would have had, had such marriage been first marriage."

"The right of inheritance from her son, after her re-marriage, did not, as it appears to me, fall within any of the exceptions referred to in section 5."

This has been followed in *Chamar Haru* v. *Kashi*(1), and has not been dissented from by any of the High Courts of India from that time to the present, so far as we are aware.

We agree with the decision, and it is now established as the law.

This second appeal is therefore dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Boddam.

THE RECEIVER OF NIDADAVOLE ESTATE (PLAINTIFF), APPELLANT,

v.

VEGASENA SUBBARAJU AND OTHERS (DEFENDANTS), RESPONDENTS.*

1904. December 14, 15, 21.

Rent Recovery Act (Madras) VIII of 1865, *s.* 11—*Enhancement of rent, sanction of Collector for, not binding on Courts, as regards existence of conditions justifying or the amount of the enhancement—Sanction not a judicial proceeding, and may be general—Civil Procedure Code, Act XIV of* 1882, *s.* 561—*Power of Appellate Court to uphold decree of lower Court on grounds not relied on or disallowed by lower Court.*

The sanction of the Collector, under section 11 of the Madras Rent Recovery Act, authorising an enhancement of rent by the landlord, has not the binding force of a decision between the parties, and Courts dealing with the matter, are not precluded from questioning the existence of the conditions required by the proviso to section 11, or the amount of the enhancement, although they cannot award more than the amount sanctioned. Such sanctions, as containing the

(1) I.L.R., 26 Bom., 388.

* Second Appeal No. 1091 of 1903, presented against the decree of L. G. Moore, Esq., Acting District Judge of Godavari, in Appeal Suit No. 7 of 1902, presented against the decisions of M.R.Ry. K. Narasimha Row, Deputy Collector, General Duty, Narasapur, in Summary Suit No. 13 of 1900.

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opinion of unbiassed experts, ought to be respected by Courts, and ought not to be disregarded except on the strongest grounds.

Siriparapu Ramanna v. *Mallikarjuna Prasada Nayudu*, (I.L.R., 17 Mad., 43 at p. 46), commented on.

Kottaseswry v. *Sandanna Naik*, (5 M.H.C.R., 294), approved.

Sanctions under section 11 of the Madras Rent Recovery Act are not judicial proceedings. Omission to hear the tenant before granting sanction will not necessarily invalidate it, although it may detract from the weight to be attached to it by the Courts. The observations in *Bhupathi* v. *Rajah Rangayya Appa Rau*, (I.L.R., 17 Mad., 54 at p. 57), commented on.

It is incumbent on the landlord to show that the lands, in respect of which enhancement is claimed on the ground that additional water rate is imposed by Government, are actually liable to pay water rate to Government.

The sanction of the Collector under section 11 of the Madras Rent Recovery Act may be general.

Under section 561 of the Code of Civil Procedure, an Appellate Court may uphold the decree of the lower Court on any grounds warranted by law, though such grounds may not have been referred to, or even disallowed, by the lower Court.

THE batch of suits, out of which these appeals arose, were brought by the appellant, the Receiver of the Nidadavole estate, against the respondents, tenants of the estate, to enforce acceptance of pattas for fasli 1309. The defendants contended, *inter alia*, that the rates of tax charged in the pattas for wet lands, were higher than the mamool rates, and that the plaintiff had no right to charge such higher rates, and that the sanction granted to the plaintiff by the Deputy Collector under section 11 of the Rent Recovery Act, to levy enhanced rates for faslis 1306 and 1307, was not binding for fasli 1309. The sanction in question was granted by the Deputy Collector in August 1898, and authorised the recovery of the additional water rate of Re. 1 per acre imposed by Government, by rateably apportioning it on the excess area irrigated, over and above the mamool wet land.

The facts are very fully set out in their Lordships' judgment. The Deputy Collector held that the sanction was valid and binding and allowed the enhancement, reducing the amount however, to As. 2-9 per acre, for reasons referred to in the judgment of the High Court. Appeals were preferred to the District Court by the Receiver, in all the cases, on the ground that the reduction of the amount was not legal and proper, and in some of the cases the tenants appealed on the ground that no enhancement whatever should have been allowed.

The District Judge held that the Deputy Collector's sanction was *ultra vires*; that under section 11 of the Rent Recovery Act,

it must first be ascertained which lands were mamool wet, and which were the lands for which the Receiver collected water rate by virtue of an agreement with Government.

In regard to the cross appeals by the tenants, the District Judge held that the order of the Deputy Collector was also open to the objection, that no individual notices were given to the tenants before the order was passed. The District Judge dismissed the appeals by the Receiver (plaintiff), and allowed, with costs, the cross appeals of the tenants.

The plaintiff preferred these second appeals to the High Court.

P. R. Sundara Ayyar and *C. R. Tiruvenkatachariar* for appellant.

V. Krishnaswami Ayyar for respondent.

JUDGMENT.—This is a batch of cases out of some hundreds of suits instituted by the Receiver, in charge of the permanently-settled estate of Nidadavole, to compel the acceptance of pattas for fasli 1309 against certain ryots holding lands in the Baharzalli paragana of the estate. The lands to which the dispute relates are wet lands subject to payment of rent in money. In the pattas tendered by the Receiver the amount of rent that was payable and continued to be paid prior to the fasli in question is entered, and a note is added, that an enhancement of rent at the rate of As. 3–7 per acre is due. The Deputy Collector, who tried the cases in the first instance, sustained the claim for enhancement to the extent of As. 2–9 per acre, deducting 10 pies for reasons which will be referred to by and by. In all the cases, the Receiver appealed to the District Court against the reduction of the 10 pies, and in fourteen of them, the ryots also appealed objecting to the enhancement even to the extent permitted by the Deputy Collector. The District Judge dismissed the Receiver's appeals and allowed those of the ryots. The present second appeals are by the Receiver against the decrees thus passed by the District Court.

The question for determination is, whether the claim for the enhancement, so far as it comes before us, is maintainable?

The facts bearing on the matter are these: In or about the year 1859, the Government introduced canal irrigation in the paragana referred to. In doing so, by agreement with the proprietor of the estate, the existing irrigation works there, were taken charge of by the Government, added to, and improved, and

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made part of the irrigation system in the locality. Later on, it was ascertained and settled that 25,000 and odd acres of wet land in the paragana, being those supplied by the old works, were entitled to receive canal water free of charge, and that water rate was to be imposed by the Government only upon lands supplied with water over and above the 25,000 and odd acres. In thus allowing canal irrigation to these lands, the ryots are permitted to take advantage of the concession in so far as they may wish, each year. Consequently, the extent of irrigated land for which water rate is levied by the Government is not uniform, but varies from fasli to fasli. For the purpose of ascertaining and fixing the actual extent thus liable to pay water rate from time to time, the Government employs a Special officer, who, about April in each year, settles the acreage of land irrigated in the year.

Water rate was originally levied by the Government at the rate of Rs. 3 an acre and subsequently at Rs. 4 an acre for many years. In fasli 1305, the water rate was increased to Rs. 5 an acre.

It is with reference to the additional rupee levied by the Government from the proprietor upon lands other than the 25,000 acres referred to, that the receiver professes to claim the enhancements in question. In compliance with the concluding part of the first proviso to section 11 of the Rent Recovery Act (VIII of 1865), application for sanction therein prescribed, as one of the conditions to a landholder being allowed to enhance the rent, was made to the Collector and the proceedings of the Deputy Collector, dated the 29th August 1898, is relied on as the sanction supporting the present claim for enhancement.

What the Deputy Collector therein laid down was this:—When the Special officer employed by the Government, referred to above, has fixed for the year, the extent of land irrigated in the year and liable to pay water rate, the amount payable to the Government at the rate of Re. 1 an acre in respect of the extent so fixed, should be divided by the number of those acres *plus* 25,000 acres entitled to irrigation free of charge, and the proprietor may claim enhancement in respect of every tenant holding wet land in the paragana at the rate of the quotient arrived at as above, irrespective of the question whether the holding of the particular tenant consists of land forming part of 25,000 and odd acres irrigable without payment of water rate or not.

The absolutely unwarranted character of this action is manifest, in that it sanctions enhancement in respect of lands, for the irrigation, of which, the Government is not entitled to, and does not, collect any water rate, while the proviso under which the sanction is accorded, permits the grant of a sanction only in respect of lands as to which water rate is actually levied by Government. The consequence of this is, not only partly to relieve those on whom the whole liability should fall, but also to increase the burden unjustly cast upon lands, not liable to payment of water rate, in proportion to the extent to which canal irrigation is availed of in respect of other lands. Be this as it may, this sanction cannot, for the reason stated later on, prove of any service to the plaintiff in these cases, unless, as contended for the Receiver, the Courts dealing with the matter were inevitably precluded from going into the question, whether the conditions prescribed by the proviso (other than the condition as to sanction) exist in the particular case, and were bound to accept the sanction as conclusive upon the question of the existence of such conditions, as well as the amount of enhancement. We have no hesitation in holding this contention to be totally unsound. There is nothing in the language of the proviso to warrant the view that the Legislature intended to invest the Collector's sanction granted under it with such a startling efficacy. Had the Legislature meant to do so, apt words to that effect would have been introduced, which is not the case. As already stated, the sanction is but one of the conditions precedent to be satisfied before a landholder can claim an enhancement of rent.

Relating as the other conditions do to pure questions of fact, viz., has the land concerned been benefited by an improvement effected by the landholder or Government? Has the proprietor to make any payment to Government with reference to any improvement effected by Government? It is impossible to see why the Courts should be prohibited from trying these questions in the usual course. And in the absence of express provision to the contrary, the jurisdiction of the Courts to deal with such matters according to the ordinary law must be admitted. The right view of the proviso in our opinion therefore, is what Mr. Krishnasawmi Iyer in his able and succinct argument contended for, viz., that having regard to the peculiar nature of the questions connected with improvements and enhancement dealt with by the proviso,

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the Legislature in prescribing the sanction as a condition precedent intended, on the one hand, to provide a check upon landholders harassing their tenants by putting forward claims for enhancement without tangible and adequate grounds, and on the other, to furnish the authorities on whom it is incumbent to deal with those questions judicially, the help of expert opinion of accredited public servants, well conversant with the matter, an opinion therefore, not only free from bias but specially valuable. In this view it is clear that the sanction of the Collector does not bind the Court either as to the question of the truth of the improvement alleged, or its effect upon the land concerned, or the amount to be allowed by way of enhancement of rent, save, that the amount to be allowed by the Court can in no case exceed that stated in the sanction, the reason for the exception being that, inasmuch as a sanction is an essential preliminary to the landholder's claim for every enhancement, allowance of any amount over and above that approved of by the Collector, would be virtually an allowance of a claim without any sanction. The argument that this view would tend to deprive such sanctions of all real effect is entitled to no weight, for though it is competent to the Courts to decline to be bound absolutely by such sanctions, yet Judges must not and will not refuse to act upon them unless the strongest grounds for any departure therefrom are proved by clear and convincing evidence In *Siriparapu Ramanna* v. *Mallikarjuna Prasada Nayudu*(1) referred to on behalf of the Receiver, no doubt the Collector's sanction granted under the proviso, was spoken of as conclusive evidence. This was, however, a mere passing observation unnecessary for the determination of any point which arose in the case. On the other side attention may be drawn to the passage cited by Mr. Krishnaswami Aiyar from the judgment of Scotland, C.J., and Collet, J., in *Kottasawmy* v. *Sandama Naik*(2), and which runs as follows:—"It seems to us that the very important and by no means easy task of arbitrating between the landholder and his ryots on such occasions has been imposed by the Legislature on the Collector *in the first instance at least.*" These concluding words clearly imply that the learned Judges were not prepared to go the length of attaching a conclusive effect to these sanctions. It is noteworthy that that was their inclination even with reference

(1) I.L.R., 17 Mad., 43 at p. 46. (2) 5 M.H.C.R., 294.

to the language of the proviso as it stood when the opinion was expressed, as that language was different from and more capable of being relied on in support of ascribing conclusiveness to the sanction, than the language of the proviso as it stands now after amendment by Act II of 1871, made presumably, in deference to the criticism to which the doubtful language of the proviso was subjected in the said decision of the learned Judges, given in the previous year.

The view we have above taken as to the true nature and effect of the sanction, involves also, the rejection of the suggestion made by the learned Vakil for the Receiver, that such sanctions partake of the nature of judicial proceedings. To accede to this cannot but lead to undesirable consequences, for, then, parties to such litigation as the present, would be entitled to attack such sanctions on the ground that the forms of law as to hearing both sides, receiving evidence in their presence subject to cross-examination and so forth, have not been duly complied with. To subject those officers in connection with the granting of these sanctions to such set procedure would be to impose on them, restrictions that would go far to defeat the obvious intention of the Legislature, that the opinion is to be arrived at after an examination of all the circumstances of the case, conducted unfettered by any technical rules.

The fact that the provisions of the enactment as to the grant of the sanction make no reference to the necessity of a notice to the tenant in the matter or to any enquiry by the Collector with reference to his arriving at an opinion on the point or the manner in which it is to be made, shows that the framers of the enactment could not possibly have thought that the grant of the sanction was to be a judicial Act. The observations in *Bhupathi* v. *Rajah Rangayya Appa Rau*(1), are not warranted by anything to be found in the provisions of the enactment, but rest upon an assumption as to the character of the sanction, viz., that it has the price of a binding contract, which, it will be seen from what has already been stated, is altogether destitute of any real foundation. It is scarcely necessary to add that we are not to be understood as in the slightest degree suggesting that the tenant need not be heard before a sanction is given, but only as pointing

(1) I.L.R., 17 Mad., 54 at p. 57.

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out that an omission in the matter would not render the sanction invalid, whatever, under the circumstances of the particular case, the effect of such an omission might be on the weight to be attached to the sanction by the Court which has to act thereon.

Turning now to the appeals themselves, it is plain that the claim for enhancement cannot be sustained inasmuch as the plaintiff at present is not in a position to allege and prove that the lands, in respect of which enhancement of rent is claimed, or any of them, are lands not forming part of the 25,000 acres entitled to irrigation free of charge, and therefore liable to pay any water rate.

It was strongly urged that the disallowance of the claim for the enhancement in question will entail serious loss on the landholder. Whether this will be really so is by no means clear having regard to the circumstances brought to light in the course of this litigation, and which form the ground for the Deputy Collector's reduction of the 10 pies alluded to above. The Deputy Collector refers in his judgment to instances in which ryots holding lands liable to pay water rate, have by express contract agreed to pay to the landholder the whole of the additional rupee collected in pursuance of the orders passed in fasli 1305 but which lands nevertheless, had been taken into account by the plaintiff in arriving at the figure As. 3-7 entered in the pattas. To what extent lands, in respect of which the proprietor gets the whole water rate under contracts with the ryots concerned, have nevertheless been included in the calculations made by the plaintiff, as the result of which, the above figure was arrived at, thus enabling him so far to recover more than he is entitled to, it is impossible to say. It may, therefore, well be doubted whether the complaint under notice on behalf of the proprietor has any foundation in truth. But assuming it were otherwise, the proprietor alone is to blame for, had he been willing to have the 25,000 acres located and demarcated as is said to have been done elsewhere, no difficulty could possibly have arisen. But he did not want that to be done. This was so perhaps, because he would by the location lose the profit which if we are not mistaken, the present arrangement as between him and the Government is calculated to secure to him. Say for instance, that in a particular year a thousand out of the 25,000 and odd acres exempted from water rate are left waste, and are not irrigated, but that an equal extent of land liable to the

payment of water rate is cultivated and irrigated. The effect of the said present arrangement exonerates him from having to pay to Government any water rate on the 1,000 acres not entitled to irrigation free of charge, without preventing him from recovering the same from the occupant's thereof. Whatever be the proprietor's objection to the location, obstacles in the way of the Courts allowing him to enhance the rent with reference to the additional rupee in question, will probably continue to arise so long as that remains uneffected. Once that is carried out, the proprietor would simply have to apply to the Collector for a sanction in general terms to enhance, permanently or temporarily, according as the irrigation is permanent or temporary, the rent payable in respect of lands, wet or dry, in the whole paragana or in other definite tract irrigated by canal water, and not entitled so to be irrigated free of charge. Such general sanction will in our opinion satisfy the requirements of the law on the point and enable the proprietor to assert and maintain successfully his right to enhance in each individual case. All that he would have to do to make good that sanction in such cases would be to specify in the pattas, the parcels, which according to him, come under the category mentioned in the sanction of the Collector, and if his allegation as to it be challenged, to establish it by evidence. It ought to be added that, having regard to the practice now prevailing with reference to canal irrigation in the locality, more than a general sanction would be impracticable since, as will appear from what has already been said, it would not at any time be stated for certain, what lands would be irrigated, and for what period.

It only remains to say that the argument that it was not competent to the District Judge under section 561 of the Civil Procedure Code to uphold, in the cases in which the ryots had not appealed, the disallowance of the 10 pies by the Deputy Collector, is untenable, as that section in no way prevents an Appellate Court from upholding the decree of the lower Court on any ground which in law warrants such upholding, even though that ground may not have been referred to, or disallowed, in the lower Court.

The second appeals fail and are dismissed with the costs of the respondents who have appeared.