APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Pinhey.

1908. September 23, 29. October 13.

SRI RAJA BOMMADEVARA VENKATA NARASIMHA NAYUDU, BAHADUR ZAMINDAR GARU (PLAINTIFF), APPELLANT IN SECOND APPEAL No. 902 of 1906,

v.

KASARANEVI CHINA BAPAYYA (DEFENDANT), RESPONDENT IN SECOND APPEAL No. 902.*

Rent Recovery Act (Madras) VIII of 1865, ss. 3, 11—Rate of rent, ascertaining of —Right of landlord to varam rate on wet crop raised on dry lands, when no contract for the rent chargeable.

By agreement between the landlord and tenant, a permanent money rent was fixed for dry cultivation and the agreement provided for extra charge for wet and garden crops without however stating the amount of such charge. The land was subsequently cultivated with wet crop, without any assistance from the landlord, and the tenants took objection to the varam rate claimed by the landlord:

Held, that the landlord had the right to claim the varam rate, as there was no contract in regard to the rent payable for wet cultivation. The contract having left the *rate* for wet cultivation undetermined was not a contract within the meaning of section 11 of the Act.

Where, under the circumstances, the landlord becomes entitled to varam rate under section 11 of the Rent Recovery Act, his claim to such rate cannot be objected to on the ground that the rent is thereby increased and it is not necessary to obtain the sanction of the Collector. In the absence of contract or survey rates, the landlord is entitled to varam rate under clause 3 of the section. An enquiry to determine the rate according to local usage is not necessary to enable the landlord to claim varam rates.

SECOND APPEAL against the decree of M. D. Bell, the District Judge of Kistna at Masulipatam in Appeal Suits Nos. 365 to 421 of 1906 and 394 to 490 of 1906, presented against the decision of C. A. Souter, the Head Assistant Collector of Bezwada in Summary Suits Nos. 7 to 63 of 1905 and 13 to 107, 189 and 190 of 1906, respectively.

The Hon. Mr. *V. Krishnaswami Ayyar* and *P. Nagabhushanam* for appellant.

The Hon. the Advocate-General for respondent.

* Second Appeals Nos. 902 to 958 of 1906 and 906 to 1002 of 1907.

JUDGMENT.—The question for decision in these second appeals is what rent is to be paid on lands cultivated with wet crops. The plaintiff appellant in the pattas tendered for fasli 1314 demanded asara or varam rates in respect of such lands. The defendants contended that they were only bound to pay the money rents fixed on the lands in fasli 1292.

The admitted facts are these: Till fasli 1283 the asara system was in force. In fasli 1284 money rents were introduced and the rates of such rents were permanently fixed in fasli 1292. At that time all the lands were dry. Wet cultivation began in fasli 1314 and the pattas now in dispute were then tendered, as the tenants refused to pay more than the rates fixed in 1292 which they had previously been paying for the lands as dry. Nothing had been done by the plaintiff to provide facilities for irrigation. In the muchilikas executed by the tenants for faslis prior to 1314 there are clauses to the effect that the plaintiff may make an extra charge if wet or garden crops are raised on dry lands. The amount of such extra charge is not however stated. If the plaintiff is entitled to demand asara rates the rates mentioned in the pattas tendered are correct. The Courts below have taken the view that the plaintiff has tendered asara pattas as a means of enhancing the rent and that as he has not done anything to justify an enhancement of the rent, and has not obtained the sanction of the Collector for the enhancement, he is only entitled to the rents fixed in fasli 1292.

For the plaintiff it is contended that inasmuch as there is no contract as to the rates of rent payable on lands cultivated with wet crops, he is entitled, under clause 3 of section 11 of Act VIII of 1865, to claim varam rates, it being admitted that no money assessment has been fixed under clause 2 of that section.

That there is no contract as to the rates of rent payable for wet cultivation is clear from the admitted muchilikas, the material clauses of which have already been referred to. The only rates fixed were for dry cultivation. The rates to be charged for wet cultivation were left undetermined. This being so the contention for the plaintiff seems to be well founded.

As to the contention that the object of the plaintiff in charging varam rates is to enhance the rent, we must observe that if the circumstances are such that under section 11 of Act VIII of 1865 the plaintiff is entitled to claim varam rates, the fact that he

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thereby gets an enhanced rent is immaterial. Reference may be made to *Natesa Gramani* v. *Venkatarama Reddi*(1) where it is observed that "In the absence of contract or survey rates the "landlord is entitled under clause 3 to revert to the varam "system, an incident of which is that the landlord necessarily "shares the benefit of the tenant's improvements." There are observations in *Suppa Pillai* v. *Nagayasami Thumbichi Naicker*(2) to the same effect.

It is contended for the respondents that in fasli 1292 it was settled for ever that rents should be paid in money, that therefore varam rates cannot be reverted to, and that if the rates of money rent have not been fixed it is for the Court to fix reasonable money rates. In settling disputes regarding rates of rent the Court has to be guided solely by section 11 of Act VIII of 1865. A contract to pay rent in money, the amount payable being left undetermined, is not in our opinion a contract for rent within the meaning of clause 1 of section 11. Clause 1 of section 11 clearly refers to contracts which, on proof, can be enforced as they stand. If there is no contract as to the rate of rent, the Court must, in order to determine the rate, proceed to apply the rules contained in section 11 in the order there given. It is only when all the other rules are inapplicable that the Court can fix rates that appear to it just. Thus, though there may have been a contract to pay rent in money, the rules in section 11 may demand that rent be paid in kind.

Another contention on behalf of the respondents is that under section 11, if there are no contract or survey rates, the rates of rent must be determined according to local usage, and when such usage is not clearly ascertainable according to the rates for neighbouring lands; that it is only when either party is dissatisfied with the rates so determined that varam rates can be claimed; that in the present case there has been no enquiry as to local usage or neighbouring rates, and that therefore the plaintiff is not entitled to claim varam rates. This contention involves the absurdity that if one of the parties declares that he means to claim varam rates in any case, no matter what the result of an enquiry as to local usage, etc., may be, the Court must nevertheless hold such an enquiry, an enquiry which can serve no purpose.

(1) (1907) I.L.R., 30 Mad., 510 at p. 516. (2) (1908) I.L.R., 31 Mad., 19.

This can never have been the intention of the Legislature. We have been referred to the judgment in the case of *Venkata Narasimha Naidu* v. *Lavu Lakshmayya*(1) in which the respondent was the same person as the respondent, in one of the cases now before us, and the appellant the same as the present appellant. Those appeals arose out of suits to enforce acceptance of asara pattas in respect of dry lands. It was held that there was a contract to pay rent in money at the rates fixed in fasli 1292. This judgment has no bearing on the question now under consideration as it does not deal with the rent payable on wet lands. The result is that we hold that the pattas tendered by the plaintiff were proper pattas and that the defendants must accept them. The defendants will pay the plaintiff's costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.

YOGAMBAL BOYEE AMMANI AMMAL (DEFENDANT), APPELLANT,

v.

NAINA PILLAI MARKAYAR (PLAINTIFF), RESPONDENT.*

1909. July 6, 7, 22.

Contract Act IX of 1872, *ss.* 69, 70—*S.* 70 *of the Contract Act does not apply where, the party sought to be made liable, though benefited, had no option but to enjoy the benefit.*

In order to enable a party to recover money paid by him from another under section 70 of the Indian Contract Act, it is necessary that the party sought to be made liable must not only have benefited by the payment but must also have had the opportunity of accepting or rejecting such benefit. Where no such option is left to him and the circumstances do not show that he intended to take such benefit, he cannot be said to have "enjoyed such benefit" within the meaning of the section.

When the person paying is interested in making the payment, he cannot be presumed, in the absence of evidence to show that he intended to act for the other party also, to have acted for such other party.

Section 70 of the Contract Act reproduces the English Law as laid down in *Lampleigh* v. *Brathwait*, (1 Sm.L.C., 163).

(1) S.A. Nos. 83 to 86 of 1903 (unreported).

* Second Appeal No. 1163 of 1906.