APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Moore.

1902. March 18. April 3.

NARAYANA AYYANGAR (FIRST DEFENDANT), APPELLANT,

v.

R. G. ORR AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Landlord and tenant—Tenants holding kudivaram rights in perpetuity—Right to trees growing on the lands—Claim by zamindar—Regulation XXV of 1802—*Regulation IV of* 1822.

Plaintiffs, as lessees of a zamindari in the district of Madura, sued their tenants to recover the value of trees cut by the tenants on their holdings and carried away therefrom. The tenants admittedly held the *kudivaram* right in perpetuity, and it was not shown that they derived their title from the zamindar, or that the ordinary *kudivaram* right was limited, in their case, by any contract or special or local usage:

Held, that plaintiffs were not entitled to recover.

SUIT to recover the value of trees. Plaintiffs, as lessees of the Sivaganga zamindari, in the district of Madura, sued certain of their tenants to recover the value of trees which they alleged, the tenants had illegally cut and carried away from their holdings. Plaintiffs claimed that all the trees on the zamindari belonged to them and not to the tenants, and claimed the value of about 50 cart-loads of *babul* trees which the tenants had cut and carried away. The tenants were admittedly the holders of the kudivaram right in perpetuity. It was not contended that they derived their title from the zamindar, or that the ordinary kudivaram right was limited in their case by any contract or special or local usage. The amended issue which raised question of the plaintiffs' right was in the following terms:—"Whether the plaint trees belong, by law, to plaintiffs, or to defendants." The District Munsif decided this issue in plaintiffs' favour and gave them a decree for the amount claimed. This was confirmed by the Subordinate Judge on appeal.

Defendants preferred this second appeal.

S. Sreenivasa Ayyangar for appellant.—The question is whether an occupancy ryot in a zamindari is entitled to cut trees on his

* Second Appeal No. 59 of 1901, presented against the decree of C. Venkobah, Subordinate Judge of Madura (East), in Appeal Suit No. 62 of 1900, presented against the decree of V. T. Subramania Pillai, District Munsif of Manamadura, in Original Suit No. 442 of 1898.

holding and dispose of them for any purpose he likes without the zamindar's permission. The lower Courts hold that the zamindar owns the trees as proprietor under Regulation XXV of 1802. The term "proprietor" in the regulation is used with reference to the payment of revenue and not as meaning "owner." Regulation XXV was explained by IV of 1822 as not affecting the right of tenants. The true position of an occupancy tenant in a zamindari is that he is the holder of the *kudivaram* in the land. He is not a tenant in any sense, least of all in the English sense. The ordinary law of landlord and tenant does not apply. This has been established by the two recent cases in *Muthia Chetti* v. *Orr*(1), *Cheekati Zamindar* v. *Ranasooru Dhora*(2). All trees upon the holding, unless they are fruit trees or assessed trees, are the absolute property of the ryot. The ryot pays tirva for punja lands, but the crops are his; and trees such as *babul* are really crops. In the case of fruit trees, the fruits will be the crops (*Venkayya* v. *Ramasami*(3)). Unless there is an express contract or custom, the tenant is bound to pay only the tirva and all the products of the land are his. The cases of *Rangayya Appa Rau* v. *Kadiyala Ratnam*(4), *Appa Rau* v. *Narasanna*(5) do not really decide the question. First, they were not cases relating to occupancy ryots, but apparently only to tenants holding on short leases; secondly, the true theory as to the position of an occupancy ryot was not fully established till the decisions in *Venkata Narasimha Naidu* v. *Dandamudi Kotayya*(6), *Cheekati Zamindar* v. *Ranasooru Dhora*(2); thirdly, no reasons are given in those cases and the ryot is apparently treated as an ordinary tenant. The case of *Bhupathi* v. *Rajah Rangayya Appa Rau*(7) does not carry the matter further.

K. Sreenivasa Ayyangar for respondents.—The zamindar is the proprietor and owns the trees. Occupancy right is only a right to occupy the land for purposes of cultivation. The tenant can, no doubt, cut trees for purposes of cultivation. But for any other purpose, he has no right to use the land and its products except with the landlord's permission. The cases of *Muthia Chetti* v. *Orr*(1) and *Cheekati Zamindar* v. *Ranasooru Dhora*(2) only decide

(1) I.L.R., 20 Mad., 229.
(2) I.L.R., 23 Mad., 318.
(3) I.L.R., 22 Mad., 39.
(4) I.L.R., 13 Mad., 249.
(5) I.L.R., 15 Mad., 47.
(6) I.L.R., 20 Mad., 299.
(7) I.L.R., 17 Mad., 54.

NARAYANA AYYANGAR v. ORR.

that a tenant in a zamindari tract is *primâ facie* a permanent tenant. They do not decide that he is the owner of the land and everything growing upon the land. On the other hand, this Court has held in *Ramanadhan* v. *Zamindar of Ramnad*(1), *Orr* v. *Mrithyunjaya Gurukkal*(2) that an occupancy tenant in a zamindari cannot build dwelling houses on his holding even though he pays the accustomed tirva or rent. Those cases proceeded upon the principle that the permanent tenant's right is only for purposes of cultivation. In this case, the tenant has cut the trees and sold them as firewood and made a profit. The position taken up by the appellant equally applies to valuable timber or other trees. The cases of *Rangayya Appa Rau* v. *Kadiyala Ratnam*(3), *Appa Rau* v. *Narasanna*(4), *Bhupathi* v. *Rajah Rangayya Appa Rau*(5) are conclusive on the point. They are all cases of occupancy tenants in zamindaris and govern the present case.

JUDGMENT.—The plaintiffs are the lessees of the Sivaganga zamindari in the Madura district. The defendants are ryots with permanent occupancy rights in their lands. The question for decision is whether *babul* trees which have grown on the defendants' pattah land belong by law to the plaintiffs or to the defendants. The Courts below have held that they belong to the plaintiffs. Against this decision the first defendant appeals. We have no doubt that the appeal is well-founded. The plaintiffs do not rely on any agreement or any custom whereby their right to the trees is established. The first issue as to the ownership of the trees was originally in general terms, but, at the request of the plaintiffs' vakil, it was restricted to "whether the plaint trees belong, by law, to plaintiff or to defendants." The plaintiffs contend, and the Courts below have held, that, according to Regulation XXV of 1802, the proprietary right in the soil vests in the zamindar; and as it is a well established principle of law that the trees go with the land to which they are attached, the zamindar is the owner of the trees also. We think that this view is radically unsound. It takes no account of Regulation IV of 1822, and it ignores the true relations and mutual rights that exist between zamindars and their so-called tenants in this part of India. Regu-

(1) I.L.R., 10 Mad., 407.
(2) I.L.R., 24 Mad., 65.
(3) I.L.R., 13 Mad., 249.
(4) I.L.R., 15 Mad., 47.
(5) I.L.R., 17 Mad., 54.

lation IV of 1822 was passed expressly because Regulation XXV of 1802 and some other early regulations had been misunderstood and had been so construed so as to infringe the established rights of the actual cultivators of the soil. The regulation recites that such rights are "properly determinable by judicial investigations only," and it declares that Regulation XXV of 1802, and certain other regulations "were not meant to define, limit, infringe or destroy the actual rights of any description of landholders or tenants; but merely to point out in what manner tenants might be proceeded against, in the event of their not paying the rents justly due from them." The rights of the ryots in regard to their lands were not altered by the passing of the regulation. The mutual relationship and rights of the ryots and of the zamindar were recently explained in the case of *Venkata Narasimha Naidu* v. *Dandamudi Kotayya*(1). It was there pointed out that there is no substantial analogy between an English tenant and an Indian ryot, for the simple reason that the rights of the ryots, in most cases came into existence, not under any letting by the Government of the day, or its assignees, the zamindars, etc., but independently of them. This view was further developed in the case of *Cheekati Zamindar* v. *Ranasooru Dhora*(2). In *Venkata Narasimma Naidu* v. *Dandamudi Kotayya*(1) it was also pointed out that the interest in the land is divided into the two main heads of the *kudivaram* interest and the *melvaram* interest, and that the holder of the *kudivaram* right, far from being a tenant of the holder of the *melvaram* right, is really a co-owner with him. The *kudivaram* right originated in priority of effective occupation and beneficial use of the soil, and the claim of Government and the assignees of Government, was always, in these parts, to a share in the produce raised by the ryots. Lastly, it was pointed out that "in essence there is no difference between a ryot holding lands in a zamindari village and one holding lands in a Government village," and that in both cases the ryot "in the absence of proof of contract or of special or local usage to the contrary, is entitled to occupy his lands so long as he pays what is due and if he should commit any default in this or other respect, until he is evicted by the processes provided by law."

(1) I.L.R., 20 Mad., 299. (2) I.L.R., 23 Mad., 318.

NARAYANA AYYANGAR v. ORR.

In the present case the defendants are admittedly the holders of the *kudivaram* right in perpetuity. There is no suggestion that they derived their title from the zamindar or that the ordinary *kudivaram* right is limited, in their case, by any contract, or special or local usage. It is obvious that in these circumstances it is misleading to speak of the zamindar as the owner or proprietor of the soil in the sense in which an English landlord is the proprietor of the soil, and to say that the trees growing in the soil must belong to the zamindar as the owner of the soil. Rather should we say that the ryot, as the holder of the permanent right to occupy and cultivate the soil, is the owner of the soil, so far, at least, as the title to the produce of the soil, whether ordinary crops, or trees, is concerned. No doubt, in many parts of the country the zamindars are entitled by custom to a payment on account of certain classes of fruit trees, such as mangoes, palmyras, and the like, and this is in accordance with the principle that the holder of the *melvaram* right is entitled to a share in the produce in the fruit raised by the holder of the *kudivaram* right. By an extension of the same principle the zamindar is sometimes entitled by custom to a share in the profit made by the sale of timber, and it may even be that in some places he is entitled by custom to a share in the profit made by the sale of small trees, such as *babul*, which are used chiefly for firewood, though, so far as our experience, extending over some thirty years, goes, this is very rare. But such a right resting on custom, is altogether different from what the plaintiffs claim in this suit, viz., that apart from custom and contract, they are, by law, entitled as zamindars, to the ownership of all trees growing on the lands even of the permanent occupancy ryots of the zamindari. We have no hesitation in holding that this claim is not supported by any law, and that it is opposed to correct fundamental conceptions of their rights and those of the occupancy ryots in their zamindari.

The case of the true tenant in the English sense, that is, of the man who holds by a title derived from the landlord, may, of course, be very different, especially in the case of short leases and of trees in existence before the letting began. In one of the cases quoted by the Subordinate Judge (*Rangayya Appa Rau* v. *Kadiyala Ratnam*(1)) the leases were for three years only and this Court

(1) I.L.R., 13 Mad., 249.

naturally held that *primâ facie* a tenant would not be at liberty to cut down fruit trees on the holding, especially as there was evidence of a recognized custom to the same effect, and the Court added "it is shown that the prohibition does not extend to shrubs and small trees which are usually at the disposal of the tenant for the purposes of his holding." In the other case quoted by the Subordinate Judge (*Appa Rau* v. *Narasamma*(1)) it does not appear that the ryots had permanent occupancy rights, and apparently a tax on the trees had previously been payable to the zamindar. In these circumstances, the observation of Parker, J., that "*primâ facie* a tenant has no right to cut down trees without his landlord's permission" cannot be regarded as a decision opposed to the views we have set forth above. The Courts below have also relied on a series of judgments of the District Court in regard to other defendants in other villages of the zamindari, exhibits C, D, E, F, G and H. Two of these (exhibits C and F) maintain the rights of the zamindar to trees grown on the tank bunds and waste lands of the zamindari.

In regard to these waste lands the zamindar is, no doubt, the proprietor, by virtue of Regulation XXV of 1802, and his claim to the trees growing on the waste lands was rightly allowed; but they have no bearing on the rights of ryots to trees growing on their own pattah lands. In the other cases the District Court proceeded on the same view of the effect of Regulation XXV of 1802 which we have now shown to be incorrect. The present defendants were not parties to those suits, and are not bound by the decisions.

In the view we have taken it is not necessary for us to decide on the effect of exhibit I, on which the defendants rely as a bar to the plaintiffs suit.

In the result we set aside the decrees of the Courts below and we dismiss the plaintiffs' suit with costs throughout.

(1) I.L.R., 15 Mad., 47.