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consent should be given actually at the time the adoption is made, but it seems to us that at any rate a consent previously obtained from a deceased sapinda cannot be efficacious to validate an adoption which is not approved by the persons who are the nearest sapindas at the time the adoption is actually made.

We think the decree of the lower courts is correct and dismiss the Second Appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911. November 2 and 7.

SENGODA GOUNDAN (PLAINTIFF), APPELLANT,

v.

VARADAPPAN *alias* RASA GOUNDAN AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Tree Patta—Effect of cancellation of, on land-pattadar—No resumption or grant to the latter—Right of tree-pattadar for the trees even after cancellation as against land-pattadar—Possessory right, protection of, as against trespassers.

A person who was in possession until dispossessed by defendants who having no title as owners were mere trespassers is entitled to rely on his possession and succeed in a suit to eject them.

Narayana Rao v. *Dharmachar* (1903) I.L.R., 26 Mad., 514 and *Subbaroya Chetty* v. *Aiyasami Aiyar* (1909) I.L.R., 32 Mad., 86, followed.

In the absence of proof to the contrary, a cancellation of a patta issued by the Government in favour of the plaintiff in respect of trees standing on certain lands for which lands the patta was being issued in favour of defendants does not amount to a resumption of possession of the trees by the Government or to a grant of them by the Government to the defendants. The only effect of cancellation of the patta for the trees was that the Government no longer made any demand on the tree pattadars for revenue in respect of the trees.

The facts that when both pattas were in existence the land-pattadar was credited with whatever revenue was collected from the tree-pattadar, and that on cancellation of the tree patta the whole revenue was payable by the land-pattadar cannot amount to a grant of the trees to the land-pattadar. On the rights of tree-pattadar and land-pattadar. Reference under Section 39 of Madras Forest Act, [(1889) I.L.R., 12 Mad., 203] and *Theivu Pandithan* v. *Secretary of State for India* [(1898) I.L.R., 21 Mad., 433], referred to.

SECOND APPEAL against the decree of W. B. AYLING, the District Judge of Salem, in Appeal No. 188 of 1909, presented against

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* Second Appeal No. 726 of 1910.

the decree of T. S. THIAGARAJA AIYAR, the District Munsif of Namakkal, in Original Suit No. 1192 of 1908.

The facts of this case are set out in the judgment.

T. R. Venkatarama Sastriar for the appellant.

V. Viswanada Sastry for first respondent.

JUDGMENT.—In this case, the plaintiff (appellant) held a patta for certain trees on land in certain survey fields, and the defendants (respondents) held the patta for the land. The plaintiff had possession of the trees for more than twenty years prior to 1906. In that year, the Revenue authorities cancelled the patta which they had given to the plaintiff. The defendants then interfered with the plaintiff's enjoyment of the trees and deprived him of their possession. The plaintiff therefore brought this suit to recover possession of the trees and for mesne profits.

The District Munsif gave him a decree, but the District Judge reversed it on appeal and dismissed the suit. We think the decree of the District Munsif is right.

The successive standing orders of the Board of Revenue, Madras, in regard to tree-pattas are to be found at pages 5, 6 and 7 of Maclean's edition of 1878, and at pages 36 and 40 of the Government Editions of 1900 and 1907, respectively.

The respective rights of parties in the position of the plaintiff and defendants, who for the sake of brevity are called tree-pattadar and land-pattadars, respectively, are discussed in the cases reported in *Reference under section 39 of Madras Forest Act*,(1) and *Theivu Pandithan* v. *Secretary of State for India*(2). It was there held that the tree-pattadar "has an interest, during the continuance of his patta, in the tree itself, and in all that is necessary for the growth of the tree, including the soil in which it grows."

The District Judge held that the plaintiff's interest in the trees ceased to exist as soon as the patta was cancelled and that he could not rely on his possession, because it was not really adverse to the defendants but was rather that of a licensee, and when the tree-patta was cancelled the effect was to "complete the land-pattadar's natural and usual proprietary right in his land by cancelling the limitation which the existence of the tree-patta imposed on him."

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(1) (1889) I.L.R., 12 Mad., 203. (2) (1898) I.L.R., 21 Mad., 433.

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We do not think that this view is correct. So far as appears in this case, the only effect of the cancellation of the tree-patta was that Government no longer made any demand on the tree-pattadars for revenue in respect of the tree.

It is not shown, or even contended, that Government resumed possession of the trees, or made any grant of them to the defendants. The District Judge no doubt states that when both pattas were in existence the land-pattadar was credited with whatever revenue was collected from the tree-pattadar and that on the cancellation of the tree-patta, the whole revenue was payable by the land-pattadar.

But this cannot be taken to evidence a grant of the trees to the land-pattadar and the District Munsif points out that no revised patta was issued to the latter enhancing the revenue payable by him. The Government is no party to the suit and it is unnecessary to consider how far, if at all, the position of the tree-pattadar *quoad* the Government is affected by the cancellation of the tree-patta. For all that appears, the rights of the tree-pattadar may have been, and probably were, in existence before the land patta was granted. Even if it is assumed that Government by cancelling the tree-patta could and did reserve complete ownership of the trees, there was no grant of them to the defendants, and there is no foundation for regarding the defendant as the owners of the trees. The plaintiff was in possession of the trees until dispossessed by the defendants some two years prior to the suit. The defendants having no title as owners were mere trespassers, and the plaintiff was entitled to rely on his possession in a suit to eject them [*Narayana Row* v. *Dharmachar*(1) and *Subbaroya Chetty* v. *Aiyasami Aiyar*(2).]

On this ground we must set aside the decree of the District Judge and restore that of the District Munsif with costs in this and the lower Appellate Courts.

(1) (1906) I.L.R., 26 Mad., 514 (2) (1909) I.L.R., 32 Mad., 86.