APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Ayling.

1911. March 13 and 14.

SRIMATU RAJAH Y. MALLIKARJUNA PRASADA NAIDU, BAHADUR (PLAINTIFF), APPELLANT IN ALL THE SECOND APPEALS,

v.

V. SUBBAYYA AND ANOTHER, MINOR SONS OF V. JANAKIRAMAYYA (DECEASED), BY MOTHER AND GUARDIAN SUBBAMMA (LEGAL REPRESENTATIVES OF THE DEFENDANT), RESPONDENTS IN SECOND APPEAL No. 954 OF 1908.

M. CHINNA SUBBANNA AND OTHERS (DEFENDANTS), RESPONDENTS IN SECOND APPEALS Nos. 955 AND 957 TO 966 OF 1908.*

Patta, suit to enforce acceptance of—Zamindari land converted into wet with Government water—Consideration, failure of—Enhancement—Rent Recovery Act (VIII of 1865), section 11.

Certain dry zamindari lands were converted into wet by the use of water from a channel constructed and maintained solely by Government.

Held that there was no consideration for the zamindar to levy enhanced rent notwithstanding a stipulation for enhancement, should the land be cultivated as wet. The conditions laid down in the Rent Recovery Act (Madras Act VIII of 1865), section 11, not being present, the zamindar was precluded from enhancing the rent.

SECOND APPEALS presented against the decrees of A. L. HANNAY, the Acting District Judge of Kistna, in Appeal Suits Nos. 269, 270, 272, 273, 274, 275, 276, 277, 278, 270, 280 and 281 of 1906, respectively, presented against the decisions of P. NAGESA RAO Pantulu, the Deputy Collector, Bander Division, in Summary Suits Nos. 228, 230, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241 and 242 of 1905, respectively.

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

C. V. Anantakrishna Ayyar for appellant.

T. Prakasam for respondents.

JUDGMENT.—The suits are brought to enforce acceptance of pattas which were tendered by the plaintiff to his tenants. The main contention is as to the rate of Rs. 3-3-0 per acre which is

* Second Appeals Nos. 954, 955, 957, 958, 959, 960, 961, 962, 963, 964, 965 and 966 of 1908.

entered in the pattas as payable on dry lands converted into wet by means of Kistna water.

The Judge has found that till fasli 1278 the village was entirely under dry cultivation and the sharing system was in force. In fasli 1279 the money rent system was introduced and it was agreed between the parties that the ryots were to pay a rent of Rs. 27-4-0 per *khatti*, and in the event of the ryots cultivating dry lands with wet crops by means of Kistna water without the zamindar's permission they were to pay Rs. 100 per *khatti*.

The pattas produced by the zamindar for fasli 1300 contain this stipulation and they also state that the right of cultivation should be relinquished if the lands are cultivated without such permission. Following the decision in *Appa Rau* v. *Ratnam*(1), the Judge has expressed his opinion that this stipulation was penal and unreasonable. It was the plaintiff's case that the question of the settlement of wet rates, if cultivation of wet crops was effected by means of Kistna water, was reserved until such cultivation actually began. The Judge has held that the plaintiff has failed to prove such reservation. In 1897, the ryots executed muchilikas for five years in which they agreed to pay Rs. 3-3-0 per acre for *bapat* wet lands, *i.e.*, for dry lands cultivated with wet crops not only for the period of five years but also subsequent to it. The wet crops are raised with the aid of water from Kistna channel constructed and maintained solely by Government and it is contended that therefore there is no consideration for this agreement. The Judge has upheld this contention. It is argued by the appellant's pleader that this was an adjustment of disputes between the parties. But it is found as a fact by the Judge that there were no disputes, and Exhibit IV series which, it is alleged, prove that there were disputes only show, as pointed out by the Judge, that these lands were not to be cultivated without the permission of the zamindar. We are therefore unable to agree with the appellant's pleader that this rate was agreed upon to avoid future disputes. It is then contended that the landlord is entitled to revert to the sharing system, and the parties could properly agree to a fixed rate for the future in lieu of a fluctuating *varam*. There is however nothing to show that the plaintiff is entitled to claim *varam* in the absence of this

(1) (1890) I.L.R., 13 Mad., 249 at p. 253.

SANKARAN NAIR AND AYLING, JJ.

SRIMATU RAJAH MALLIKARJUNA PRASADA NAIDU BAHADUR v. SUBBAYYA.

stipulation. We have already stated that the reservation at the time of the agreement of fasli 1279 has not been proved, nor is it proved that the rent of Rs. 27-4-0 was to be payable only when the land was cultivated with dry crops. It has been repeatedly held that the proviso to section 11 of the Rent Recovery Act precludes the zamindar from enhancing the rent except under the conditions laid down by that section. *See Venkatagiri Rāja* v. *Pitchana*(1), *Fischer* v. *Kamakshi Pillai*(2), *Gopalasami Chettiar* v. *Fischer*(3), *Arumugam Chetti* v. *Raja Jagaveera Rama Venkateswara Ettappa*(4), *Suppa Pillai* v. *Nagayasami Thumbichi Naicker*(5), and *Paramasawmi* v. *Pusala Thevan*(6), and if any rent under the sharing system is in effect higher than the money rent now being paid by the defendant it would, in our opinion, be clearly an enhancement of rent under section 11 of the Rent Recovery Act. Mr. Anantakrishna Aiyar contends that the landlord has by this agreement precluded himself from applying to enhance the rent under that section. It is enough to say that neither of the conditions which give him a right to apply exists in this case; the improvement was not made by the landlord, and he has not been required to make any additional payment to Government; there is no such right in him to apply which he has given up. There was thus no obligation on the part of the tenant to pay any higher rent. Any agreement to pay such rent is unsupported by any consideration and is therefore not enforceable. As to the cases cited *Suppa Pillai* v. *Nagayasami Thumbichi Naicker*(5) is a case where money assessment was substituted for *varam* and a provision that the tenant must pay an increased rate for certain cultivation may not be an enhancement, if it was in the power of the landlord to claim the higher rent in *varam* in the absence of such stipulation. In Second Appeals Nos. 1121 to 1125 of 1908 the learned Judges held that the plaintiff was entitled to revert to *varam*, and the agreement to pay the money-rent in lieu of that *varam* was therefore upheld. A contract may be enforceable, as pointed out in that case, though the effect of it may amount to an enhancement of rent without the Collector's sanction. But a contract involves consideration and there was consideration as

(1) (1886) I.L.R., 9 Mad., 27.
(2) (1898) I.L.R., 21 Mad., 136 at p. 137.
(3) (1905) I.L.R., 28 Mad., 328.
(4) (1905) I.L.R., 28 Mad., 444.
(5) (1908) I.L.R., 31 Mad., 19 at p. 21.
(6) (1910) 20 M.L.J., 142.

above pointed out in that case. In these cases there is no consideration. We therefore dismiss the Second Appeals with costs.

SANKARAN NAIR AND AYLING, JJ.

SRIMATU RAJAH MALLIKARJUNA PRASADA NAIDU BAHADUR v. SUBBAYYA.

APPELLATE CIVIL.

Before Mr. Justice Ayling.

1911. April 12 and 20.

SRI RAJA V. N. APPA RAO BAHADUR (PLAINTIFF), PETITIONER (IN BOTH),

v.

P. NAGANNA (DEFENDANT), RESPONDENT IN CIVIL REVISION PETITION No. 358 OF 1910

AND

P. GANNIAH (DEFENDANT), RESPONDENT IN CIVIL REVISION PETITION No. 359 OF 1910.*

Rent, suit for private lands—Madras Estates Land Act (I of 1908), ss. 3 (10), 19 and 189.

A revenue court has no jurisdiction to try a suit for rent of private lands as defined in section 3 (10) of the Madras Estates Land Act (I of 1908); such a suit must be brought in a civil court.

PETITIONS under section 25 of the Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the orders, dated the 19th day of April, 1910, of T. GOPALAKRISHNA PILLAI, the Subordinate Judge of Kistna at Ellore, in Small Cause Suit Nos. 139 and 140 of 1910.

Dr. *S. Swaminathan* for petitioner (in both).

T. Prakasam for respondent in Civil Revision Petition No. 358 of 1910, and for respondent in Civil Revision Petition No. 359 of 1910.

JUDGMENT.—These are suits for rent of private lands as defined in section 3 (10) of the Madras Estates Land Act, 1908; and the only question is whether they are cognizable by a revenue or by a civil court. The exact scope and meaning of section 19 of the Act are not altogether free from doubt; but it appears to me that in the absence of any provision corresponding to section 134 it

* Civil Revision Petitions Nos. 358 and 359 of 1910.