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SANKARAN NAIR, J.

It is true that the question that the building was not attached during the tenancy was not raised in the Court below. But Exhibit II was a part of the plaintiff's case and it was for the defendant to raise any plea that may get rid of the inference to be drawn from Exhibit II.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.

1913. July 15 and 21 and August 12.

MAHARAJAH SRI RAJAH VELUGOTI SRI RAJA G. K YACHENDRA BAHADUR VARU, K.C.I.E., PANCHA-HAZAR-MANSUBDAR, RAJAH OF VENKATAGIRI (PLAINTIFF), APPELLANT,

v.

J. AYYAPAREDDI AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

Madras Estates Land Act (I of 1908), sec. 3—'Ryoti land'—'Ryot'—Rent—Pasture land not ryoti land—Rent for pasturing not 'rent' under the Act—Sections 189 and 77 of the Act—Suit for ejectment and recovery of pasture rent, cognisable, nly by Civil Courts.

Land usually fit only for pasturing cattle and not for cultivation, *i.e.*, ploughing and raising agricultural crops is not 'ryoti' land, though it may have been 'old waste' and a tenant of such land is not a 'ryot' and any amount agreed to be paid for pasturing cattle is not 'rent' within the definitions of section 3 of the Madras Estates Land Act (I of 1908): hence a suit to eject such a tenant from the land or to recover the amount due for pasturage is cognisable only by a Civil Court and not by a Revenue Court, as the jurisdiction of Civil Courts exists in all cases where it has not been expressly taken away.

SECOND APPEAL against the decree of E. L. VAUGHAN, the District Judge of Nellore, in Appeal No. 163 of 1910, preferred against the decree of J. RAMAYYA PANTULU, the Special Deputy Collector of Nellore in Regular Suit No. 886 of 1910 transferred from the Court of District Munsif of Nellore where the suit was filed as Original Suit No. 285 of 1909.

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* Second Appeal No. 1487 of 1911.

The facts appear fully from the judgment of SADASIVA AYYAR, J.

S. Subrahmanya Ayyar for the appellant.

P. Nagabhushanam for the respondent.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The plaintiff, the Raja of Venkatagiri, is the appellant in this Second Appeal. The defendants are the tenants of certain lands in the Venkatagiri Estate.

The said lands according to the third paragraph of the plaint are waste lands which have been always used for the pasturing of cattle. Pasture rent is alleged to have been collected from the defendants for the use of these lands till fasli 1317 at the rate of 5 annas 1 pie per acre for about 40 years. In the muchilikas for faslis 1317 and 1318, however, the defendants agreed to pay rent for the lands at a higher rate if any person applied for the grant of lands on darkhast for purposes of cultivation. They further agreed by these muchilikas to quit possession of the lands on demand if they refused to take up the lands at the higher rate. The suit was brought, claiming three reliefs :—

(*a*) Ejectment of the defendants, because on the 3rd August 1907 the defendants, when notice was issued to them to take up the lands themselves at the higher rate failed to take them up.

(*b*) For recovery of rent for faslis 1317 and 1318 at the rates offered by a person who applied for grant of the lands on darkhast in April 1907.

(*c*) For mesne profits subsequent to date of suit till delivery, that is, mesne profits for fasli 1319, etc. There was first the question whether this suit, which was originally filed in the Munsif's Court, was cognisable by the said Court. The Munsif returned the plaint to be presented to the Revenue Court. The Revenue Court again returned it to be presented to the Munsif's Court. There was an appeal against this order of the Revenue Court to the District Court, which set aside the Revenue Court's order and directed it to try the suit. The question as to which Court has jurisdiction to try this case depends, it need hardly be said, upon the allegations in the plaint and upon the case set up by the plaintiff in the plaint. Assuming for this purpose that the allegations in the plaint, supplemented by the plaintiff's documents, are correct, it seems to us clear that the lands in dispute are within the definition of "old waste" in section 3, clause 7, of the Madras

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Estates Land Act. "Old waste" includes according to that definition, any land which, *not being private land,* has continuously remained uncultivated and in the possession of the Zamindar for 10 years or has at the time of any letting by the landholder after the passing of the Act remained without any occupancy rights being held therein within a continuous period of not less than 10 years immediately prior to such letting. The plaint lands are therefore old waste lands. But old waste lands might be of two kinds. They might be old waste lands which are also ryoti lands or they might be old waste lands which are not ryoti lands. But, a ryoti land in order to come under the definition of old waste should be land in respect of which before the passing of the Act "the landlord had obtained the final decree of a competent Civil Court establishing that the ryot has no occupancy right." See the last paragraph of clause 7, section 3; ryoti land is described in section 3, clause 16, as cultivated land other than private land, communal land or service tenure land. It is clear from the muchilikas filed in this case that the plaint land is pasture waste and is not permanently cultivable. When ryoti land is defined as cultivable land, we think it means land permanently cultivable for all practical purposes and not land which might be occasionally cultivated. This is made clear by section 6, clause 4, of the Act, which says that waste land let under a contract for the pasturage of cattle, any reserve forest land let under a contract for the temporary cultivation of agricultural crops shall not, by reason only of such letting for pasturage or for temporary cultivation, become ryoti land. Hence land fit usually only for pasturing cattle and not for ploughing and raising agricultural crops is not ryoti land. The land in dispute in this case according to the allegations in the plaint and according to the terms of the muchilikas is not cultivable land, though it might be occasionally capable of cultivation under extraordinary and unusual circumstances and hence it is not ryoti land. No doubt, the usual presumption under section 23 of the Act is that a land is ryoti land other than old waste, but in this case, such presumption has no place as the land is clearly ordinary old waste which is not ryoti land.

Then the next question is whether the tenant of such old waste let for pasture is a ryot. A ryot is defined in section 3, clause 15, as a person who holds (*a*) for the purpose of agriculture ryoti land. The tenant of an old waste which is not ryoti land does not

therefore come under the definition of ryot. On another ground also, the tenants of the plaint land are not ryots, because they do not hold land for the purpose of agriculture. 'Agriculture' is defined in the Act as including 'horticulture,' see section 3, clause 1. The ordinary meaning of 'agriculture' is the raising of annual or periodical grain crops through the operation of ploughing, sowing, etc. In *Soman Gope* v. *Raghubir Ojha*(1), it was held under the Bengal Tenancy Act that to turn land let for agricultural purposes into an orchard was to render it unfit for the purpose of the tenancy. In *Lakshmana* v. *Ramachandra*(2), the same principle was laid down. See also *Murugesa Chetti* v. *Chinnathambi Goundan*(3). While 'agriculture' is by a special definition made to include 'Horticulture' in the Estates Land Act, it has not been made to include 'silviculture' and 'pasturing.' This clearly shows that the legislature did not intend pasturage of cattle to be included within the meaning of the term 'agriculture.' The matter seems to be finally clinched by the select committee's report (see Duraiswami Ayangar's book, appendix IV, page XCII) where the select committee make the following statements: "1. (i) 'Agriculture'; from the definition, we have omitted 'silviculture' and 'pasturing.' The general right of a ryot to use the land in his holding in any manner which does not materially impair its value for agricultural purposes is declared in clause 10 (11); and ordinarily, neither silviculture nor pasturing would be inconsistent with such use; but we recognise that the former cannot always be exercised as an unrestricted right, and that both silviculture and pasturing may be undertaken in circumstances which do not give a person admitted to use public cultivable land for those purposes alone any claim to the status of a ryot [clause 6, 16 (i)]. For 'pasturing' we have made special provision in clause 6 (*d*). As to 'silviculture' the limitations of a ryot's right to plant trees has been declared in clause 22 (12)." It being thus clear that the defendants in this case according to the plaintiff's allegations do not come under the designation of ryots, the next question is whether a suit for ejectment of these tenants of old waste who are not ryots is cognisable by the Revenue Court or by the Civil Court. Section

(1) (1897) I.L.R., 24 Calc., 160. (2) (1887) I.L.R., 10 Mad., 351
(3) (1901) I.L.R., 24 Mad., 421.

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189, clause 1, is the section which bars the jurisdiction of Civil Courts in certain specified cases, and it is unnecessary to state that, where the general jurisdiction of the Civil Courts is specially taken away only in particular classes of cases, the Civil Courts retain their jurisdiction as regards all other classes of cases not so excluded. Now section 189 (i) excludes the Civil Courts' jurisdiction (investing the Collector or other Revenue officer with that jurisdiction) only in respect of suits and applications of the nature specified in parts A and B of the schedule to the Act. Turning to parts A and B of the schedule, suits triable by a Collector, so far as the question of ejectment is concerned, are suits coming under sections 153, 48 (ii) and 158 of the Act. Section 153 relates to the ejectment of a non-occupancy *ryot*. But, as the defendants in this case are not *ryots*, that section does not apply. Section 48 (ii) also relates to the ejectment of a *ryot* who fails to make a certain declaration. Section 158 relates to a tenant of *private land*. It is thus clear that the present suit so far as it prays for ejectment of a tenant *not being a ryot* of old waste *not being ryoti land*, let for pasture purposes and *not agriculture* is not cognisable by a Collector but only by a Civil Court. The Munsif's original order returning the plaint to be presented to the Revenue Court and the District Court's order on appeal from the Revenue Courts deciding that the Revenue Court alone had jurisdiction are erroneous so far as the claim relates to the ejectment of the defendants and the recovery of mesne profits from fasli 1319 downwards is concerned. As regards the rent claimed for faslis 1317 and 1318, the plaintiff, if his allegations are true, is entitled on the muchilikas for faslis 1317 and 1318 to recover under the fourth paragraph of muchilika rent at the sagubadi dry rate of the nearest piece of land in the village, though he may not be entitled to the higher wet cultivation rent at the rate offered by the alleged darkhastdar. The Lower Courts have not gone into the question whether there was an application by a darkhastdar in April 1907, whether defendants were asked to take up the land for temporary cultivation as provided in the muchilika for faslis 1316 to 1318 and to what rate of rent the plaintiff is entitled in faslis 1317 and 1318.

Even as regards the suit for what is called pasturage rent for faslis 1317 and 1318, the suit cannot lie in the Revenue

Court because section 77 of the Act relates to arrears of *rent* as defined in the Act and the definition of *rent* in the Act confines the expression to whatever is payable for the use of land for the purposes of agriculture (with its appurtenances like cesses, water-rate, etc.) and sums payable by a *ryot* as such on account of pasturage fees and fishery rent. Sums payable by a *ryot* as such on account of pasturage fees can only refer to sums payable by *agricultural* tenants for the use of communal pasture lands. It was ingeniously argued that even a tenant who holds waste lands (which are not ryoti lands) for purposes of pasture under section 6, clause 4, is a ryot, because such a tenant is treated as a non-occupancy ryot in section 46 of the Act, though the benefit of the provisions of that section given to non-occupancy ryots as a class is withheld from such a tenant. We think that this ingenious argument cannot prevail against the clear definition of 'ryot' found in section 3, clause 15, and that the involved grammatical implications derived from the language of section 46 should not be allowed to override the express declaration and definition found in section 3.

It therefore follows that even as regards the pasturage rent due by tenants who are not ryots, the jurisdiction of the ordinary Courts is not taken away. We accordingly set aside the original order of the Munsif dated the 10th January 1910 and the original order of the District Court passed in appeal against the Revenue Court's original order returning the plaint to be presented to District Munsif and we direct the plaint to be received by District Munsif if presented to him within two weeks of the return of same by this Court to the plaintiff and we direct District Munsif to dispose of suit according to law. Costs hitherto incurred will abide the result.

TYABJI, J.—I agree in the judgment of my learned brother which I have had the benefit of reading. TYABJI, J.

The question involved in this appeal is, whether the special Deputy Collector of Nellore presiding in the Revenue Courts, had jurisdiction to try the suit out of which the appeal arises, in which the plaintiff claims to be put into possession of the property referred to in the plaint, removing the defendants therefrom; the plaintiff also claims "mesne profits" and other incidental reliefs. The plaint was in the first instance presented in the Munsif's Court but the Munsif held that he had no

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jurisdiction to try the suit. The Special Deputy Collector also held that he had no power to order the defendants to be ejected from the land, and dismissed the suit.

TYABJI, J.

The jurisdiction of the Revenue Courts, so far as is material, for the present case is derived from section 189 of the Madras Estates Land Act (Madras Act I of 1908), and the jurisdiction of Civil Courts is by the same section taken away to the same extent to which it is granted to the Revenue Courts. It would therefore seem that in regard to any matter in which Civil Courts ordinarily have jurisdiction, they retain that jurisdiction, unless it is acquired by the Revenue Courts, and that the ordinary jurisdiction of the Civil Courts is now apportioned between the Civil and the Revenue Courts. It seems necessary to make this remark as in the course of the arguments before us it was suggested on the one hand and apprehended on the other, that it may happen that neither the Civil Courts nor the Revenue Courts might have jurisdiction to eject the defendants.

The question that arises before us now is whether the Revenue Courts have jurisdiction to try a suit in which the above-referred to reliefs are sought.

Section 189 of the Estates Land Act gives jurisdiction to the Revenue Courts over all suits and applications of a nature specified in Parts A and B of the schedule. Hence, in order to determine whether the Revenue Courts have jurisdiction to try a suit of this nature we have to turn to the various items in the schedule. The schedule refers to ejectment suits in items 17 and 19 of Part A, corresponding to sections 151 (1) and 153 and items 9 and 27 of Part B, corresponding to sections 48 (2) and 158 respectively. These sections refer to the nature of the land itself, and to the tenant's rights therein. Sections 151 and 153 and 48 refer respectively to suits for ejecting occupancy and non-occupancy ryots; section 158 refers to a suit against a tenant of private land. It follows therefore that unless the plaintiff can make out that the defendant is either a ryot or a tenant of private land, he cannot establish his right to sue for ejectment in a Revenue Court.

It was argued before us that the use of the land for pasturage purposes itself makes it ryoti land. 'Ryoti land' is defined in section 3 (so far as is at present material), as cultivable land in an estate other than private land. Therefore, land must be

cultivable before it can be termed ryoti land. It was argued that pasturage must be taken to be included in the term cultivation as used in the Madras Estates Land Act. But pasturage is something different from cultivation. Cultivation implies some kind of labor on the land, generally consisting of breaking up the soil; whereas pasturage has reference to a particular mode of using the natural growth on the land without its being cultivated. Land used for pasture therefore cannot ordinarily be styled as cultivated land, and on the facts of this case it is clear that the land as a matter of fact is not cultivable. That the legislature did not intend pasturage to be included in the term 'cultivation' as it is employed in the Madras Estates Land Act seems also to be indicated by a consideration of section 6, clauses 1 and 4; the latter clause expressly provides that "admission to waste land under a contract for the pasturage of cattle . . . shall not by itself confer upon the person so admitted a permanent right of occupancy." At the same time it is provided in section 6 (1) that "every ryot in possession . . . of ryoti land not being old waste . . . shall have a permanent right of occupancy in his holding." As the fourth sub-section of the same section provides that admission to waste land under contract for the pasturage of cattle . . . does not by itself confer upon the person so admitted a permanent right of occupancy," it would appear that the legislature did not contemplate pasture land as being considered ryoti land. The tenant of such lands equally does not come under the definition of a 'ryot' in section 3 (15), which requires the land to be ryoti land and to be held for the purpose of agriculture, in order that the tenant may be termed a ryot. It was argued before us that this land falls within the definition of 'old waste' in section 3 (7) and that therefore it must fall under the category of ryoti land. It is true that the expression "ryoti land not being old waste" in section 6 and in other portions of the Act shows that 'old waste,' may be ryoti land; but there is nothing to show that all 'old waste' is ryoti land; 'old waste' which is not cultivable and which consequently does not fall within section 3 (16) cannot, it would seem, be styled ryoti land.

Finally it was not contended before us that this land was private land so as to make section 158 applicable.

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TYABJI, J.

The question still remains to be considered whether the Revenue Courts had jurisdiction to try the suit so far as it relates to the recovery of *mesne* profits for *fasli* years 1317 and 1318. What is described as *mesne* profits in the plaint is nothing else than the rent due under the *muchilikas* which are now on the record before us. The section which gives to the Revenue Courts jurisdiction to order the recovery of arrears of rent by the landlord is section 77—see Schedule, Part A, item 8. The word 'rent' in the section must be understood in the sense in which it is defined in section 3 (11). It must therefore refer only to what is lawfully payable to a landlord for the use or occupation of the land in the estate for the purpose of agriculture. The land in this case, as already stated, has been used, not for agriculture, but for pasturage. Section 77 therefore does not give the Revenue Courts jurisdiction to decree the recovery of arrears of rent claimed in the plaint.

For these reasons I agree with the order proposed by my learned brother.

APPELLATE CIVIL.

Before Sir Charles Arnold White, Kt., the Chief Justice and Mr. Justice Oldfield.

1913. August 20, 21 and 27.

LAKSHMAMMAL (PLAINTIFF), APPELLANT,

v.

NARASIMHARAGHAVA AIYANGAR AND TWO OTHERS (DEFENDANTS), RESPONDENTS. *

Deed—Material alteration of—Destruction of right of suit—Negotiable Instruments Act (XXVI of 1881), sec. 87.

An alteration in a document which has the effect of enabling the payee to sue on the document in a Court where he could not have sued on it in its original form is a material alteration and as such destroys the right of action on the document.

Altering a negotiable instrument by causing the words "or order" to disappear and making it non-negotiable is a material alteration, under ordinary

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* Original Side Appeal No. 52 of 1912.