

Re JEREMIAH,
 AYLING AND
 PHILLIPS, JJ.

It follows that the trial of the appellant was void.

We set aside the conviction and direct the refund of the fine if paid. In view of the pettiness of the case, we do not order a retrial under the ordinary procedure.

S.V.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice Seshagiri Ayyar.

RAJA PARTHASARADHI APPA RAO SAVAI ASWA
 RAO BAHADUR, ZAMINDAR OF SANIVARAPPIET,
 AND FIVE OTHERS (DEFENDANTS), APPELLANTS,

v.

RAJA BOMMADEVARA SATYANARAYANA
 VARAPRASADHA RAO NAIDU BAHADUR, ZAMINDAR
 OF SOUTH VALLUR, MINOR BY THE MANAGER
 UNDER THE COURT OF WARDS (PLAINTIFF),

RESPONDENT.*

Madras Estates Land Act (I of 1908), sec. 6, sub-sec. (6) and sec. 8—Government lands under ryotwari tenure, purchased by zamindar—Release of revenue on such lands—Zamindari lands, acquired by Government under Land Acquisition Act (I of 1894)—Compensation—Substitution of ryotwari lands as zamindari lands—Suit to eject—Jurisdiction of Civil Courts—Acquisition by landholder of occupancy right—Acquisition by tenant of landholder's right, difference between.

Where a zamindar who had purchased some ryotwari lands from a Government ryot and obtained a release of revenue due on such lands in lieu of compensation payable to him for some other lands taken up by the Government under the Land Acquisition Act (I of 1894), brought a suit in 1911 in the District Court to recover such lands from a tenant who was in possession thereof since 1901, and the defendant contended that he had acquired occupancy right thereto and that the Civil Courts had no jurisdiction to entertain the suit,

Held:

(1) that, assuming that the suit lands were substituted as part of the zamindari, the plaintiff, who was a Government ryot of such lands prior to the substitution, had occupancy right therein and did not lose such right by becoming interested in them as a landholder, under the explanation to sub-section (6) of section 6 of the Madras Estates Land Act;

(2) that the provisions of section 8 (1) of the Act refer to the acquisition of occupancy right by landholders and not to the acquisition of landholders' right by ryots; and

(3) that in any event the general provisions of section 8 (1) cannot affect the special provisions of the explanation to sub-section (6) of section 6 of the Act.

APPEAL against the decree of F. A. COLERIDGE, the District Judge of Kistna, in Original Suit No. 109 of 1912.

The plaintiff was a half-sharer in the zamindari of Vallur. In 1887 certain lands included in the estate were taken up by the Government under the Land Acquisition Act. The Zamindar asked for some banjar lands instead of the lands taken from him and was allowed the lands in the village of Vallur which was a Government village, as he had purchased the same from a ryot in 1885. The Board accepted the selection and allowed the Zamindar to hold this land free of kist. Thereafter the lands were entered in the name of the Zamindar in the Government accounts and in the settlement accounts as zamindari land. In 1901, the Zamindar leased the lands to the defendants for five years under ijara tenure and at the end of the lease the defendants continued in possession on an oral lease till the end of fasli 1318 when the plaintiff gave the defendants a notice to quit. The defendants refused to quit claiming occupancy right under the Estates Land Act as having been in possession of ryoti land of an estate at the time the Act came into force. The Zamindar brought this suit in the Civil Court to eject the defendants who pleaded that the Civil Court had no jurisdiction to entertain the suit and that they had acquired occupancy right to the suit lands. The lower Court decreed the suit in favour of the plaintiff, and the defendants preferred an appeal to the High Court.

T. Prakasam for the appellants.

Hon. Mr. *S. Srinivasa Ayyangar* for the respondent.

The following judgment of the Court was delivered by WALLIS, C.J., SESHAGIRI AYYAR, J.—Assuming without deciding that the effect of the arrangement between the plaintiff and the Government was that the suit lands were substituted as a part of his zamindari for the zamin lands which were acquired under the Land Acquisition Act, it must be borne in mind that prior to the exchange the Zamindar as regards the suit lands was in the position of a Government ryot and ~~owner~~ ^{as such owned} of the kudivaram right. He had therefore, in our opinion, a right of occupancy in the lands within the meaning of the explanation to sub-section (6) of section 6 of the Madras Estates Land Act and

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therefore he did not by the terms of the explanation lose such occupancy right by becoming interested in the land as landholder, that is, by the land becoming part of his estate.

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It is then said that this is opposed to the plain provisions of section 8 (1) which provide that in such a case the owner shall hold the land as a landowner and not as a ryot. The language of section 8 (1) is no doubt wide enough to cover such a case, but the rest of the section rather indicates that in framing it the legislature was thinking of the acquisition of occupancy rights by landholders and not of the acquisition of landholders' rights by ryots. But, however this may be, the general provisions of section 8 (1) must, we think, yield to the special provisions of the explanation as to this particular, on the principle *generalia specialibus non derogant*. For this reason, we think that the appeal fails and must be dismissed with costs.

K.R.

APPELLATE CRIMINAL.

1915

Before Mr. Justice Abdur Rahim and Mr. Justice Ayling.

November 17,

MAHOMED KANNI ROWTHER (COMPLAINANT), PETITIONER,

v.

PATTANI INAYATHALLA SAHIB AND FIVE OTHERS

(ACCUSED NOS. 4 TO 7, 9 AND 10), RESPONDENTS.*

Criminal Procedure Code (Act V of 1898), sec. 345—Compounding an offence—Complainant resiling before hearing, effect of.

Per ABDUR RAHIM, J. (AYLING, J. *absente*).—A composition arrived at between the parties of a compoundable offence is complete as soon as it is made; and it has the effect of an acquittal of the accused under section 345, Criminal Procedure Code in respect of that offence, though one of the parties, later on, resiles from the compromise and no statement or petition recording the compromise is filed in Court by the parties.

Murray v. Queen Empress (1894) I.L.R., 21 Cal., 103, referred to.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of J. R. KRISHNAMMA, the First-class Sub-Divisional Magistrate of Kumbakonam, in Criminal Appeal No. 38 of 1915, preferred

* Criminal Revision Case No. 448 of 1915 (Criminal Revision Petition No. 61 of 1915).