APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastriyar and Mr. Justice Phillips.

1915. December 8, 9 and 22.

A. L. A. R. RM. ARUNACHALLAM CHETTIAR (THROUGH HIS AUTHORIZED AGENT M. SUBRAMANIA AYYAR), *et al* (DEFENDANTS), APPELLANTS,

v.

MANGALAM *et al* (PLAINTIFFS), RESPONDENTS.*

Estates Land Act (Madras Act I of 1908), *ss.* 4, 27, 73 *and* 143—*Levy of fee* (kanganam) *for supervision of harvest, legality of—Right of landlord to enter land and make experimental harvest—Liability of tenant to pay compensation for loss of crops by theft or cattle—Liability to pay rent for fallow lands, in the absence of custom—Right of tenant to obstruct flow of rain water into the landlord's irrigation channel—Liability to pay wet rate when water insufficient—Remission of rent, legal right to.*

Where the landlord is entitled to a share of the produce, the levy of a fee (called *kanganam*) by the landlord on the tenant for supervising the harvest in order to protect his interests is not illegal, and it is not opposed to section 73 or 143 of the Estates Land Act.

Devanai v. *Raghunatha Row* (1913) M.W.N., 886 and *Karri Peddi Reddy* v. *Receiver of Nidadavole and Medur Estates* (1915) 18 M.L.T., 171, followed.

A landholder entitled to a specific share of the produce is not entitled to enter upon the land and make an experimental harvest of a small portion of the land with a view to throw on the tenant the burden of proving that the yield of the other portions was not equal to that of the experimental harvest. A landlord is not entitled to levy a fee (called *Panchamati*) as compensation for the loss caused to the crop by cattle, theft etc., as the tenant is not an insurer and is not liable for acts beyond his control.

Raja Parthasarathi Appa Row v. *Chevendra Chinna Sundara Ramayya* (1904) I.L.R., 27 Mad., 543, followed.

In the absence of a custom to charge rent for lands left fallow by the tenant, no rent is claimable in respect of such lands. Section 4 of the Estates Land Act should be read subject to section 27 of the Act.

Segu Rowthen v. *Alagappa Chetty* (1914) 26 M.L.J., 269, *Arunachellam Chettiar* v. *Muthayanai Thevan* (1914) 26 M.L.J., 575 and *In re Arunachalam Chettiar* (1915) 2 M.L.W., 828, followed.

Appalaswami v. *Raja of Vizianagram* (1913) 25 M.L.J., 50, distinguished.

In the absence of a custom to that effect, a tenant owning dry land within the bed of an irrigation tank, has no right to obstruct the flow of rain water into the tank by putting up ridges on his land so as to retain for his cultivation

* Second Appeal No. 1782 of 1912, etc.

the water so obstructed. If he so obstructs the flow of water, he is liable to pay the higher rate called *Sarasari* as for wet crops.

A tenant is liable (*a*) to pay *Sarasari* wet rate, if he raises on his wet land dry crops, when he can raise wet crops and (*b*) to pay only the usual dry rate, if he raises only dry crops owing to insufficiency of water.

Remission of rent is a matter of grace and not of right.

Alagappa Chettiar v. *Tirunagavalli* (1903) 13 M.L.J., 377, followed.

SECOND APPEALS against the decrees of A. C. DUTT, the District Judge of Ramnad at Madura, in Appeals Nos. 431, 432, 434 to 444, 447, 454, 457, 459 to 528 of 1911 and Nos. 198 to 203 and 205 to 209 of 1912, preferred respectively against the decree of S. V. KALLABIRAN PILLAI, the Special Deputy Collector of Ramnad, in Summary Suits Nos. 9, 10, 12 to 14, 16, 17, 19 to 21, 65 to 67, 70, 77, 80, 86, 116 to 134, 140 to 150, 205 to 224, 290 to 294, 296 to 308 and 631 of 1910 and against those of the Sub-Collector of Ramnad Division, in Summary Suits Nos. 1434, 1438, 1440, 1441, 1443, 1445, 1451 to 1453, 1455 and 1456 of 1911.

The facts of the case appear from the judgment

The defendant, the landholder, preferred these Second appeals.

S. Srinivasa Ayyangar, *R. Krishnamachariar* and *S. Soundararaja Ayyangar* for the appellants.

C. Madhavan Nair, C. S. Venkatachariar, G. S. Ramachandra Ayyar and *K. Sundara Rao* for the respondents.

KUMARASWAMI SASTRIYAR AND PHILLIPS, JJ.

JUDGMENT.—Defendant is the appellant. The questions raised in these appeals relate to the propriety of the terms of the *patta* as settled by the Special Deputy Collector and varied in appeal by the District Judge.

The first question relates to the *kanganam* fee which the defendant wants to levy. *Kanganam* is, in effect, a contribution paid by the tenant to reimburse the landlord for the cost of the supervision of harvest out of which *melvaram* has to be delivered to the landlord. The Special Deputy Collector found that this was an item included in the total *jama* of the Ramnad taluk at the time of the Permanent Settlement and formed one of the items of assets in fixing the *peshkash,* that it was not an illegal cess so as to bring it under section 143 of the Estates Land Act and that it was being paid for a series of years. He, however, was of opinion that it could not be levied after the Estates Land Act came into force, as it was a charge for supervision not allowed by the Act which removes all restraints on harvesting

ARUNA-CHALLAM CHETTIAR v. MANGALAM.
——
KUMARA-SWAMI SASTRIYAR AND PHILLIPS, JJ.

by the tenant on the part of the landholder. The District Judge on appeal confirmed the judgment of the Special Deputy Collector, on the ground that the service for which the fee was paid was no longer required. We are of opinion that on the facts found by the Special Deputy Collector, *kanganam* fee falls under section 3 (ii), clause (*a*) of the Estates Land Act as being a sum payable by a ryot as such in addition to the rent due by him in respect of the land held by him. As the landlord is entitled to a share of the produce, the necessity for supervision is obvious. It is difficult to see how there can be any restraint on the harvest, simply because the landlord employs a person to watch his interests.

Section 73, clause (2), provides that though the tenant may be in exclusive possession of the produce until it is divided, he must not remove it from the threshing-floor, so as to prevent the due division thereof at the proper time and clause (3) provides that he should, before commencing to cut or gather the crops, give reasonable intimation to the landholder or his authorized agent of his intention to do so.

Section 74 contemplates the presence of the landholder or his agent at the time when the division is to be made.

The only change introduced by the Estates Land Act is to prevent the landlord from claiming that the tenant should not harvest without getting his permission to do so or from fettering the discretion of the tenant as to when he should harvest the produce. Supervision is just as necessary now as it was before the Act came into force. *Kanganam* was being paid by the ryots even before the Permanent Settlement and ever since, and, unless there is something in the Estates Land Act to render the payment illegal, we see no reason why it should not be included in the *patta*.

Section 28 of the Act provides that in all proceedings under this Act, the rent or rate of rent for the time being, lawfully payable by a ryot, shall be presumed to be fair and equitable until the contrary is proved.

At the date when the Act came into force, *kanganam* was being paid and, unless the Act explicitly takes away from the *zamindar* the right to collect it, it must be presumed that it is a fair and proper charge to be levied.

In *Devanai* v. *Raghunatha Row*(1), it was held that *russums*, which were being paid by the ryots to the *mittadars* from the beginning of last century and as to which there was no evidence that they were not paid at any time, constituted a charge or fees payable with the rent according to established usage. It appeared in this case that *russums* were sometimes incorporated with the rent in the *rosewari chitta* although they were shown separately in the *pulli tirva*.

A similar view was taken in *Karri Peddi Reddy* v. *Receiver of Nidadavole and Medur Estates*(2), where it was held that fees payable with the rent can be included in the *patta* and that under section 3 (11), such fees are included in the term "rent."

Our attention has been called to *Chidambaram Chetty* v. *Ayyavu*(3), where *kanganam* was disallowed; but the facts of that case show that the *kanganam* claimed there, was not in respect of wet crops but was in respect of dry crops as to which a fixed money rent was payable. In such cases, the *kanganam* fee can only be voluntary, for no supervision is necessary.

We are of opinion that both the Lower Courts were wrong in refusing to allow *kanganam*.

The next item refers to the claim of the *zamindar* to enter upon the land for the purpose of forming an estimate of the outturn.

It is difficult to see what right the landlord has under the Act to enter upon the land of the tenant for the purpose of making what has been described by Mr. Srinivasa Ayyangar as "an experimental harvest." The object seems to be to arrive at an arbitrary figure by harvesting a small portion of the crops and to throw upon the tenant the burden of showing that the actual crop was not equal to the experimental harvest.

We are of opinion that such a right is clearly opposed to the provisions of section 73 of the Act and that both the Lower Courts were right in disallowing this claim.

The next item refers to *panchamati* or compensation for loss caused to the crop by cattle, theft or clandestine removal.

What the landlord really wants to do is, to make the tenant an insurer and to cast on him the burden of making good loss

---

(1) (1913) M.W.N., 886. (2) (1915) 18 M.L.T., 171.
(3) (1914) 29 M.L.J., 746.

ARUNA-CHALLAM CHETTIAR v. MANGALAM.

KUMARA-SWAMI SASTRIYAR AND PHILLIPS, JJ.

caused by acts beyond his control. We do not think that the Act casts on the tenant any such liability.

Sections 73 to 76 of the Act prescribe the rights of the landlord. If the loss is caused by the negligence of the tenant in the custody or preservation of the crops cut, he would be answerable in a suit for damages; but it is difficult to see how the tenant can be placed in a worse position than a bailee so far as the landlord is concerned simply because the Act allows him to be in exclusive possession of the crops until they are divided.

In *Raja Parthasarathi Appa Row* v. *Chevendra Chinna Sundara Ramayya*(1), it was held that a term in the *patta* making the tenant responsible for theft of crops is improper. No doubt this decision was under the Rent Recovery Act of 1865, but we do not think that the present Act has made any difference in the liability of the tenant for theft of or damage to crops owing to circumstances beyond his control.

The next point is as regards taxes on palmyra trees. The Deputy Collector found on the evidence that palmyra trees which were not tapped for toddy were not taxed although they were bearing fruit, that no palmyra trees were taxed in the villages of Vallam, Sirugudi, Vaniavallam, Thuliyadikottai, Nallirukkai and Koneri, that only 102 trees were taxed in Karadandagudi and that only the trees that were tapped for toddy, were liable to be taxed.

On appeal the District Judge was of opinion that it has been proved that in addition to the trees taxed in Karadandagudi, two trees were taxed in Nallirukkai village and that the only palmyra trees that were ever taxed were 102 trees in Karadandagudi and two trees in the village of Nallirukkai.

It has been argued in appeal that the custom has been to tax all palmyra trees when they are tapped: but we do not think that we can go behind the findings of both the Lower Courts that the custom has not been proved. Both the Courts found it proved from the documents that, although there were numerous trees in the *zamin*, 102 trees have been uniformly taxed in one village and that except two trees in Nallirukkai village, no other

(1) (1904) I.L.R., 27 Mad., 543.

trees have been taxed in the whole of the suit villages It is difficult to accept the explanation now given by Mr. Srinivasa Ayyangar that the tax was not levied because the fact that the trees in the other villages were tapped escaped the notice of the village servants. The custom pleaded has not been proved and we do not think that we can disturb the finding of fact arrived at by the District Judge in the matter.

The next question relates to *Nanjatharam Punja* and *Punja.* The Deputy Collector found that no rent was payable in respect of waste land and that it was proved that from time immemorial, only cultivated extents were being charged and not lands left uncultivated. The District Judge on appeal confirmed the decision of the Deputy Collector and held that the evidence showed that the custom in the zamindari had been not to charge for dry waste. These findings of fact are binding on us in Second Appeal. It is argued by Mr. Srinivasa Ayyangar, that under section 4 of the Act, the landholder is entitled to collect rent in respect of all ryoti land in the occupation of the ryot, and that it does not make this liability subject to any custom but only subject to the other provisions of the Act.

Mr. Srinivasa Ayyangar states that he does not press his objection as regards wet land which has been left waste owing to want of water or irrigation facilities but argues that, as regards dry waste where money assessment is fixed, land, if left waste, can only be so, owing to the default of the tenant.

It is argued by Mr. Madhavan Nayar for the respondent that both the Courts have found that the custom is not to tax dry waste, that section 4 should be read with sections 27 and 28 of the Act, and that, where there is a custom to exclude dry waste, rent, as defined in section 3 (11) of the Act, can only mean whatever is lawfully payable for the remaining portion of the land.

There is considerable force in the argument of Mr. Srinivasa Ayyangar that section 4 of the Act does not refer to any custom as governing its provisions, and that where it was the intention of the legislature that any of the provisions of the Act should be subject to any custom it has been stated in the sections of the Act. We, however, think that the question is covered by authority and we are not prepared to dissent from the judgments of several Benches of this Court,

ARUNA-CHALLAM CHETTIAR v. MANGALAM.

KUMARA-SWAMI SASTRIYAR AND PHILLIPS, JJ.

In *Segu Rowthen* v. *Alagappa Chetty*(1), the CHIEF JUSTICE was of opinion that section 4 would not help the plaintiffs where the parties meant and intended that rent should not be charged for waste. He observed :

" The plaintiffs relied upon section 4 and the definition of 'rent' contained in section 3, sub-section 11. Section 4 says that the landlord is entitled to collect rent in respect of all ryoti land in the occupation of a ryot. *Prima facie* it is so; but, if the evidence shows that it was not the intention of the parties that he should collect rent in respect of all land in occupation of the ryot, but should collect rent only in respect of the land in fact cultivated by the ryot, of course, the intention of the parties overrides the provisions of the Act. This section of the Act merely lays down the general rule and, in my opinion, can be displaced by evidence as to what the parties meant and intended."

Mr. Justice TYABJI was of opinion that in such cases the charging by the landlord of rent in respect of cultivated and uncultivated land would really be an enhancement which was prohibited by the Act.

In *Arunachellam Chettiar* v. *Muthayanai Thevan*(2), it was held that,

" section 4 of the Estates Land Act should be read subject to the provisions of section 27 and a custom of paying rent on the basis of only the cultivated area in the holding is not illegal."

Their Lordships observe :

" But the Lower Courts found that by immemorial custom, one of the conditions appertaining to the holdings in the plaint *mittah* is that no rent should be charged for lands left fallow, in other words, the rent for the whole holding in any particular *fasli* should be calculated only on the cultivated area. We think that condition is not against the statutory provision in section 4 of the Estates Land Act, as section 4 by its opening clause saves such and similar conditions. Our view, we think, is supported by the judgment of this Court in Second Appeal No. 2034 of 1910."

This was a case between the present appellant and another tenant in the same *zamindari*.

In *Udayal* v. *Arunachella Chettiar*(3), it was held that

" a tenant is entitled to take advantage of a custom in a *zamindari* that no rent should be charged for lands which are allowed to lie fallow by him."

(1) (1914) 26 M.L.J., 269. (2) (1914) 26 M.L.J., 575. (3) (1915) M.W.N., 190.

This is a case which relates to the Rāmnād *zamindari* and the respondent therein is the appellant in the present case. It was found by the Sub-Collector that it was a custom in the Rāmnād *zamindari* not to charge any rent for lands which were allowed to lie fallow by the tenants.

As regards the argument that section 4 applied, Their Lordships observe :

"In the argument before us, section 4 of the Estates Land Act was relied upon as indicating that the tenant is bound to pay the rent upon every portion of his holding whether he cultivates it or not. This general provision is subject to any custom that may be proved to exist in particular localities."

In *In re Arunachellam Chettiar*(1), it was held that

"section 4 of the Madras Estates Land Act does not debar a tenant from claiming that by agreement and custom he is not liable to pay rent for the portion of his holding left fallow."

Appalasawmi v. *Raja of Vizianagaram*(2), which has been cited by Mr. Srinivasa Ayyangar does not affect the present question, as, in that case, the tenant had built upon a portion of the land demised to him and claimed exemption from paying rent on the ground that it was not used for agricultural purposes. All that was there held was that it was not necessary that the ryot should actually use the land for purposes of agriculture. No agreement or custom was set up in that case whereby lands built upon were not to be charged.

In the present case, the findings of fact are clear and the cases referred to show that in the Rāmnād *zamindari* there was a custom whereby only cultivated lands were to be charged with rent. It is not suggested by Mr. Srinivasa Ayyangar that it was the practice to exclude such lands from the *pattas* so as to entitle the landlord to let the lands to third persons if he chose. The custom, as found by both the Courts, is that, though the land was included in the holding, rent was not charged for it. We confirm the judgment of the District Judge on this point.

The next point for consideration is the right to levy *sarāsari* where *kulankorvai* lands (lands in the tank-beds) are cultivated.

It is not disputed that for purposes of cultivating these lands, ridges were raised and the contention for the appellant is that,

(1) (1915) 2 M.L.W., 828. (2) (1913) 25 M.L.J., 50.

ARUNACHALLAM CHETTIAR v. MANGALAM

KUMARASWAMI SASTRIYAR AND PHILLIPS, JJ.

as the ridges obstruct surface rain water from flowing to the tank and thereby reduce the wet ayacut, the plaintiffs should not build ridges at all, or, if they do so, they should pay *sarāsari*. *Kulankorvai* is land in the bed of tanks just within the limits of the full water spread which is cultivated with paddy, and it is not disputed that such lands are classed as *punja* lands. The Deputy Collector was of opinion that, while the landlord had a right to the flow of rain water into the bed of the tank free from obstruction, the tenants had an equal right to catch such rain water as fell on their *kulankorvai* lands and to cultivate the lands with the help of such water. He decreed that the usual rates should be charged so long as the tenants did not put up ridges, or if they put them up, so long as the ridges did not exceed one span in height and that *sarāsari* should be charged if the height exceeded one span.

On appeal the District Judge was of opinion that the ridges which were being put up by the tenants would obstruct the flow of rain water into the tank, that it was unreasonable to permit the ryots to retain tank water by putting up ridges on their land to the detriment of legitimate wet area without paying any extra charge for it and that no uniform custom had been made out by either side in the matter, though the balance of evidence was in favour of the *zamindar*. He was also of opinion that the ryot ought not to be liable to pay *sarāsari* simply because he utilized rain water falling on his land. He tried to reconcile the interests of both the parties by directing that the tenants were not to construct ridges on their lands so as to divert from the tank any water other than rain water falling on their respective holdings and that, if the rule was contravened and paddy crops were raised, *sarāsari* should be charged.

It is difficult to see how this direction can be enforced by either party. In the absence of proof of any custom by the tenants to put up ridges, we think that the landlord has got the right to prevent tenants from putting up ridges on lands in the tank-bed so as to prevent the tanks having the full benefit of the rain water flowing into them. It is proved by Exhibits 39, 40, 42, 56, 56 (*b*), 58 (*a*), 81 series and 85 series, that the right of the tenants to put up ridges on *kulankorvai* land was not upheld. As against these exhibits our attention has been called by the respondent's counsel to Exhibit CC (judgment in Summary

Suits Nos. 245 to 262 of 1900) where the right of the tenants to put up ridges was found by the Head Assistant Collector.

As pointed out by the District Judge the balance of evidence is in favour of the contention raised by the *zamindar* that the tenants have no right to obstruct the free flow of rain water into the tank by putting up ridges. The Deputy Collector's restriction that the height of ridges should be one span does not seem to be based on any intelligible basis, and the direction of the District Judge is unworkable because when there are ridges and the land has been submerged by tank water, the ridges must reduce the volume of tank water when the level of the tank subsides below the level of these ridges as the ridges retain water which should otherwise go into the tank.

We are of opinion that the plaintiff is bound to pay *sarāsari* if he should put up ridges and cultivate *kulankorvai* lands.

This disposes of all the points taken by the vakil for the appellant.

The respondent has filed a memorandum of objections.

The first objection is as regards dry crops raised on *nanja* lands without permission. The Deputy Collector was of opinion that *sarāsari* should only be charged if the tenant raised dry crops on *nanja* lands when there was water in the tank sufficient for a wet crop but that it should not be charged where a dry crop was raised in adverse season for want of sufficient supply of water in the tank. The District Judge on appeal held that *sarāsari* should be charged whether there was water or not so long as the tenant raised dry crop on wet land.

It is difficult to see on what principle the tenant should pay "wet *sarāsari*" if, owing to want of water in the tank, he is unable to raise a wet crop. The effect of the District Judge's judgment will be to compel the tenant either to leave the land waste when there is insufficiency of water or to penalise him if he raised a dry crop as the only possible means of raising something on the land. It stands to reason that if a tenant, having water in the tank and therefore means of raising a wet crop, chooses to raise a dry crop, this should not affect the right of the landlord to charge wet rates but where, owing to want of water, a wet crop could not be raised, there is no reason why the landlord should still be entitled to charge wet *sarāsari* rates.

ARUNACHALLAM CHETTIAR v. MANGALAM.
—
KUMARASWAMI SASTRIYAR AND PHILLIPS, JJ.

We vary the decree of the District Judge by declaring that plaintiffs will be liable to pay *sarāsari* wet rates if they raise dry crops while they could have raised wet crops and to pay the usual dry rates if they raise dry crops owing to insufficiency of water.

The next point is about remissions in respect of *punja savi nanjatharam punja savi.*

The Deputy Collector allowed the tenants right to claim remission but the District Judge was of opinion that the tenants were not as a matter of right entitled to any remission.

Remission is a matter of grace and it would require very strong evidence to show that remission can be claimed as a matter of right. Section 38 of the Estates Land Act refers only to remissions owing to permanent reduction in the yield and, so far as we can see, there is no provision for forcing the landlord to grant temporary remissions. There is no satisfactory evidence as to usage in the present case nor was any issue raised as to the right of the tenants to claim remissions. The Deputy Collector seems to have based his decision solely on a passage at page 337 of the Rāmnād Manual.

We think that the District Judge was right in holding that the right to remission has not been proved in respect of dry lands. As pointed out in *Alagappa Chettiar* v. *Tirunagavalli*(1), there can be no legal right to obtain a remission of rent.

We confirm the decision of the District Judge on this point.

Subject to the modifications mentioned above we dismiss the second appeals and the memorandum of objections. As neither party has succeeded on all the points raised by him we order that each party do bear his own costs.

Second Appeals Nos. 311 to 316 and 319 to 322 follow the decision in the above appeals and are dismissed with costs.

Second Appeal No. 318 is dismissed without costs.

Second Appeals Nos. 1792 and 1852 abate as respondents are dead and no legal representatives have been brought on record.

N.R.

---

(1) (1903) 13 M.L.J., 377.