APPELLATE CIVIL.

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

SUBBAROYA GOUNDAN (EIGHTH DEFENDANT), APPELLANT,

v.

S. RANGANADA MUDALIAR AND SEVEN OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 TO 7.), RESPONDENTS*

1915. September 10, 14 and 24 and December 15.

Inamdar—Jodi payable to Government—Right of Government to a first charge—Assignment of jodi by Government—Right of assignee to a charge—Assignment of jodi to a zamindar or mittadar under permanent sanad—Right of zamindar or mittadar to a charge.

Jodi payable by an inamdar to the Government, where it has not been assigned, is recoverable by the Government as revenue and is a first charge on the interest of the inamdar.

A zamindar or mittadar, who under his sanad has a right to collect jodi payable by an inamdar to the Government, has no charge for arrears of jodi on the interest of the inamdar.

Per WALLIS, C.J.—Where the Government assigned its revenue to an inamdar, the latter did not acquire a charge upon the land but was left to recover rent from the occupiers under the Madras Rent Recovery Act (VIII of 1865).

Per SESHAGIRI AYYAR, J.—If the Government assigned the right to collect jodi or other revenue *as such*, the assignee would have a first charge: he would be entitled to the security which the Government had although he might not be entitled to all the statutory remedies which the assignor had.

Case law on the subject reviewed.

APPEAL against the decree of H. O. D. HARDING, the District Judge of Salem, in Original Suit No. 20 of 1911.

The plaintiff was the mittadar of Pallappatti, in Salem district. The first defendant is the *inamdar* of Pudu Agraharam, a village in the mitta of Pallappatti, paying a sum of Rs. 1,412 and odd as jodi and Rs. 295 as quit-rent. Under the permanent sanad issued to the plaintiff (mittadar), he was entitled to collect the jodi and quit-rent due to the Government from the *inamdar* of Pudu Agraharam, while the *mittadar* was liable to pay a fixed *peshkash* fixed on the entire *mitta* including the *inam* village in question. The first defendant failed to pay the *jodi* and quit-rent to the plaintiff for *faslis* 1319 and 1320. But the plaintiff paid the *peshkash* due by him to the Government, and sued to recover the *jodi* and quit-rent due from the *inamdar* (the first

* Appeal No. 198 of 1913.

SUBBAROYA GOUNDAN *v.* RANGANADA MUDALIAR.

defendant), and his undivided sons (defendants Nos. 2 to 6). The seventh defendant was the purchaser of the *kudivaram* right of the village under the first defendant; the eighth defendant was a mortgagee of the village from the first defendant, and he had brought a suit on his mortgage in Original Suit No. 2 of 1904 on the file of the District Court of Salem and obtained a decree for over Rs. 40,000; he also held a decree in Original Suit No. 3 of 1910 in the same Court for sale of the village on account of payment by him of *jodi* and quit-rent in a previous year which the first defendant (the *inamdar* and mortgagor) had failed to pay. The plaintiff claimed priority in the present suit over the two decrees obtained by the eighth defendant on the ground that he was entitled to a first charge in respect of arrears of *jodi* and quit-rent which were originally due to the Government as revenue. The learned District Judge, who tried the original suit, held that the plaintiff was entitled to a first charge on the village as well as to a personal decree against the defendants Nos. 1 to 6 and to a decree for sale as against all the defendants. The learned Judge observed in his judgment: "The *mittadar* collects this *jodi* and quit-rent on behalf of Government. He is a mere collecting agent. The sums are due to Government as reduced revenue from the *inam* lands. This is a *shrotriyam inam* village, one granted to a Brahman or Brahmans. . . . Quit-rent is a small extra charge imposed in consideration of freeing the holding from restrictions, and *jodigai* and quit-rent are the conditions on which the *inamdar* holds the property. They form like all other revenue a first charge on the land. Plaintiff, having paid for first defendant dues which were a charge on the inam village, is entitled to a charge in his turn." The District Judge held that the eighth defendant was entitled to a charge and priority over the plaintiff in respect of his decree in Original Suit No. 3 of 1910, as he had paid *jodi* and quit-rent on behalf of the first defendant for some previous years, but that in respect of his mortgage-decree in Original Suit No. 2 of 1904 he was not entitled to priority over the plaintiff. The learned District Judge further held that the seventh defendant was a purchaser of *kudivaram* right only, that the *inam* comprised both *melvaram* and *kudivaram*, that the *jodigai* and quit-rent were a charge on the entire *inam*, and that his interest was liable to be sold for the plaintiff's claim. The learned Judge accordingly

SUBBAROYA GOUNDAN v. RANGANADA MUDALIAR.

passed a decree for recovery of the suit amount personally from the defendants Nos. 1 to 6 and also by the sale of the village of Pudu Agraharam and directed that the money realized by the sale should be applied in discharge of, first the eighth defendant's jodi decree, secondly the plaintiff's decree (in this suit) and lastly the eighth defendant's mortgage decree. Against the decree of the District Judge, the eighth defendant preferred an appeal to the High Court.

T. R. Ramachandra Ayyar, T. R. Krishnaswami Ayyar and *N. A. Krishnayya* for the appellant.

K. V. Krishnaswami Ayyar for the first respondent.

C. S. Venkatachariar for the eighth respondent.

This appeal came on for hearing before WALLIS, C.J., and SESSHAGIRI AYYAR, J., who delivered the following judgments:—

WALLIS, C.J.

WALLIS, C.J.—The question involved in this appeal is whether a zamindar or mittadar who under his sanad has a right to collect the jodi payable by an inamdar has a charge for arrears of such jodi on the interest of the inamdar. Before considering this question it may be well to refer to the right of Government to a charge for arrears of revenue and to the right of the inamdar for arrears against the ryots themselves.

It was held by INNES, J., in *Subbaraya* v. *The Sub-Collector of Chingleput*(1), that "the right of the Government is only a right to charge on the land, and a right to forfeit by due course of law, the title of the person holding the land who does not pay the charge," and this was cited with approval by SHEPHARD, J., in *Secretary of State* v. *Ashtamurthi*(2). In the present case the Government assigned its right to revenue to the inamdar subject to the payment of a jodi, and it is well settled that by virtue of such assignment the inamdar did not acquire a charge upon the land, but was left to recover rent from the occupiers under the provisions of the Madras Rent Recovery Act of 1865; and it was not until the passing of the Act of 1908 that landholders, including certain inamdars acquired a statutory charge for rent. As regards the jodi payable by the inamdar to Government it is, where it has not been assigned, recoverable by Government like

(1) (1883) I.L.R., 6 Mad., 303 at p. 310.
(2) (1890) I.L.R. 13 Mad., 89 at p. 123.

SUBBAROYA GOUNDAN v. RANGANADA MUDALIAR. — WALLIS, C.J.

zamindar's peshkash by sale of the inamdar's interest under the law in force for the time being, now the Revenue Recovery Act, 1864. Under section 2 of that Act the land, the buildings upon it, and its products are to be regarded as the security for the public revenue, but provided they have paid the rent to the landholder the ryots are not affected by the landholder's default to pay the revenue due by him (section 33) and all that Government can do is to sell the interest of the defaulter free of all incumbrances. The right to sell free of incumbrance in such a case is conferred by section 42 of the Act.

Coming now to cases where the right to collect the jodi has been transferred to the zamindar or mittadar under his sanad, there is a long series of decisions in this Court that, when Government transfers the right to collect the jodi to a zamindar or mittadar in consideration of his undertaking to pay a fixed peshkash, the zamindar or mittadar has no charge upon them and that a suit by him to recover jodi is a suit for rent and nothing more and so cognizable in this Presidency by the Court of Small Causes.

It was apparently so held in *Surya Prakasa Row* v. *The Maharaja of Vizianagaram*(1) and though a different view was taken in *Venkatramadoss* v. *Zamindar of Vizianagaram*(2) [vide footnote in *Vizianagaram Maharajah* v. *Sitaramarazu* (3)], it was again so ruled by SHEPHARD and SUBRAHMANYA AYYAR, JJ., in *Mullapudi Balakrishnayya* v. *Venkatanarasimha Appa Rao*(4) and *Venkatagiri Rajah* v. *Venkat Rau*(5); *Gajapati Rajah* v. *Suryanarayana*(6), and *Appa Rao* v. *Sobhanadri Rao*(7) are to the same effect, and in *Kasturi Gopala Ayyangar* v. *Anantaram Thivari*(8) it was again laid down broadly that assignees of revenue cannot proceed under section 42 of the Revenue Recovery Act, and have only a personal claim. On the principle of *stare decisis*, I feel bound to adhere to these decisions. The fact that jodi was held to be rent payable to a landholder by a tenant within the meaning of the Rent Recovery Act of 1865 having regard to the definition of landholder [see *Lakshminarayana Pantulu* v. *Venkatraya-*

(1) Second Appeal No. 692 of 1890. (2) Second Appeal No. 822 of 1894.
(3) (1896) I.L.R., 19 Mad., 100 at p. 103. (4) (1896) I.L.R., 19 Mad., 329.
(5) (1898) I.L.R., 21 Mad., 243. (6) (1899) I.L.R., 22 Mad., 11.
(7) (1901) I.L.R., 24 Mad., 158.
(8) (1903) I.L.R., 26 Mad., 730 at p. 733.

SUBBAROYA GOUNDAN v. RANGANADA MUDALIAR.

WALLIS, C.J.

nam(1) and the cases there cited), and that similar provisions were to be found in the Madras Estates Land Act, 1908, until these provisions were themselves repealed by the Amending Act of 1909 has no direct bearing on the question but makes it more than ever undesirable to question the authority of the decisions laying down the competency of the Small Cause Courts to try suits for jodi on which the legislature may have acted in finally deciding to leave such suits to the Civil Courts. The earlier cases—*Suryanna* v. *Durgi*(2), *Alubi* v. *Kunhi Bi*(3) and *Krishnasami* v. *Venkatarama*(4) were not cases of jodi, but assignments of portions of the revenue payable directly by the ryot and in the last of these cases SHEPHARD, J., who was a party to some of the later decisions doubted if a mere assignment of revenue would convey a charge. In *Ramachandra* v. *Jaganmohana*(5) the point did not arise. These decisions in my opinion afford no sufficient ground for questioning the numerous subsequent decisions expressly in point. If the law there laid down is to be altered it should, I think, be by legislature. We must reverse the decree in so far as it affects the eighth defendant and allow his appeal with costs throughout. The memorandum of objections by the seventh defendant is dismissed with costs. As regards the defendants Nos. 2 to 6 the decree is varied so as to make it a decree against the joint family property in their hands under Order XLI, rule 33 of the Code of Civil Procedure.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—It is not without hesitation that I have come to the conclusion that the appeal should be allowed.

The first question is whether the *jodi* due from the inamdar is a charge upon the land. I understood Mr. Ramachandra Ayyar to concede that if it is directly payable to Government, it would be a first charge. Apart from this admission, I am of opinion that there is a first charge for the *jodi*. It was pointed out in *Secretary of State for India* v. *Bombay Landing and Shipping Co.*(6) that by the common Law of this country, the debt due to the King took priority over other debts, with the possible exception of those due to

(1) (1898) I.L.R., 21 Mad., 116 at p. 119 (F.B.). (2) (1884) I.L.R., 7 Mad., 258.
(3) (1887) I.L.R., 10 Mad., 115. (4) (1890) I.L.R., 13 Mad., 319.
(5) (1892) I.L.R., 15 Mad., 161. (6) (1868) 5 Bom., H.C.R., 23.

SUBBAROYA GOUNDAN v. RANGANADA MUDALIAR.

SESHAGIRI AYYAR, J.

Brahmans. This view was accepted in some of the early Bengal Regulations: see *Judah* v. *Secretary of State for India*(1). At the time of the permanent settlement, it was recognized in Madras—*vide* section 6 of Regulation XXVII of 1802. In the Revenue Recovery Act of 1864, there is an express provision to that effect. I am satisfied that the jodi payable by inamdars is within the purview of that Act.

Mr. Ramachandra Ayyar strongly relied on some of the decisions of this Court which have held that a claim for *kattubadi* or *jodi* is cognizable by the Court of Small Causes. They are all cases in which the payments were due to the zamindar as part of his income. The term *jodi* or quit-rent is applied indiscriminately to what is recoverable by a proprietor from his under-tenure holders as well as to payments due to Government by way of assessment. None of the cases, so far as I have examined them, related to the jodi payable to Government. Further these decisions proceed on the construction of the terms *landholder* and *tenant* in Act VIII of 1865. Even under the old Act, the decisions were not uniform: see *Alubi* v. *Kunhi Bi*(2) and *Vizianagaram Maharajah* v. *Sitaramarazu*(3) (the case in the footnote). It is true that a larger number of cases have taken a different view—*Vizianagaram Maharajah* v. *Sitaramarazu*(3) *Mullapudi Balakrishnayya* v. *Venkatanarasimha Appa Rao*(4), *Gajapati Rajah* v. *Suryanarayana*(5), *Lingam Krishna Bhupati Devu* v. *Vikrama Devu*(6), *Appa Rao* v. *Sobhanadri Rao*(7). Mr. Justice SUBRAHMANYA AYYAR has explained in *Lakshminarayana Pantulu* v. *Venkatrayanam*(8) the reason for this change. Although on the principle of *stare decisis*, it is undesirable to upset this course of decisions, I am not prepared to extend them to cases in which the *jodi* is payable to Government.

The next point for consideration is whether the plaintiff can stand in the shoes of the Government and claim a first charge. If the right to collect the *jodi* was assigned to him as such, I would be prepared to hold that he has a first charge. I

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(1) (1886) I.L.R., 12 Calc., 445 at p. 452.
(2) (1887) I.L.R., 10 Mad., 115.
(3) 19 Mad., 100 at p. 103.
(4) (1896) I.L.R., 19 Mad., 329.
(5) (1899) I.L.R., 22 Mad., 11.
(6) (1890) 10 Mad., L.J., 256.
(7) (1901) I.L.R., 24 Mad., 158.
(8) (1898) I.L.R., 21 Mad., 116 (F.B.).

SUBBAROYA GOUNDAN v. RANGANADA MUDALIAR.

SESHAGIRI AYYAR, J.

accept Mr. Srinivasa Ayyangar's contention that an assignee of Government revenue is entitled to the security which the Government had although he may not have all the statutory remedies which the assignor had. The principle of section 141 of the Indian Contract Act is applicable to such assignments. NORTH, J., in *In re Lord Churchill Manisty* v. *Churchill*(1) says that the priority which the Crown has enures for the benefit of the surety. This is the view taken in *Suryanna* v. *Durgi*(2) and *Krishnasami* v. *Venkatarama*(3). In *Kasturi Gopala Ayyangar* v. *Anantaram Thivari*(4), the learned Judges say that if the tax-payer was in a position to be proceeded against by the Government, the assessment will be a charge. I understand that decision to lay down that so long as the distinctive character of Government assessment remains, whoever may be the person that collects it, he will have a first charge. If it lays down that under no circumstances can an assessment which is collected by an assignee create a charge, I respectfully dissent from that view.

The difficulty in this case arises in finding out whether the *jodi as such* was assigned to the plaintiff's predecessor-in-title The sanad is not produced. We are not in a position to say whether in the permanent settlement a distinction was made between the right to collect the *jodi* and the right to collect rents from tenants. It cannot be said that the *jodi* was not included in the assets on which the peshkash was fixed. One circumstance on which Mr. Ramachandra Ayyar laid stress has influenced my finding on the point. From Exhibits G and H, it appears that the Government decided to claim the entire *jodi* as the *mittadar* had been given waste lands in other villages to which he was not entitled. It was argued by the learned vakil for the appellant that the income from these waste lands was taken into account in including the whole of the *jodi* in the *peshkash*. I think there is force in the argument. If this is the correct view, the Government did not assign the *jodi as such* and therefore the *mittadar* cannot claim a first charge. This state of affairs can only be rectified by Government

I agree in the order proposed by my Lord.

K.R.

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(1) (1888) 39 Ch.D., 174. (2) (1884) I.L.R., 7 Mad., 258.
(3) (1890) I.L.R., 13 Mad., 319. (4) (1903) I.L.R., 26 Mad., 730.