PRIVY COUNCIL.

1918.
October 29,
December 3.

YERLAGADDA MALLIKARJUNA PRASAD NAYUDU, (PLAINTIFF)*

v.

SOMAYA AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature at Madras.]

Estates Land Act (Madras Act I of 1908), ss. 3 and 6, sub-section (1), and explanation added by amending Act (Madras Act IV of 1909), sec. 3, and sec. 185, proviso—Conversion of ryoti into private land—Holder in unauthorized possession.

The respondents held certain lands under a muchilika, dated 28th July 1907, given by them to the appellant by which they agreed to hold the lands, described as Kamatam or private lands, until 30th April 1908 for the purpose of cultivation, the document expressly providing that it should itself operate as a surrender of the lands at the end of that term. The respondents however held over after the expiration of the lease, not only without the consent of the appellant, but contrary to his wishes and intention, and contrary also to the terms of the muchilika, and were so holding the lands on and after 1st July 1908 when the Madras Estates Land Act (Madras Act I of 1908) came into force. In a suit by the appellant to eject the respondents and recover possession of the lands which he claimed as his private lands within the meaning of Madras Act I of 1908, the defence was that they were ryoti lands in which the respondents had occupancy rights under section 6, sub-section (1), of the Act and the explanation thereto added by the amending Act (Madras Act IV of 1909). There were concurrent findings of fact by the Courts below that the lands were ryoti, and that the appellant had not proved that they were his private lands within the proviso of section 185 of the Act of 1908.

Held that, assuming that the respondents had not any permanent rights of occupancy in the lands in suit before the coming into force of Madras Act I of 1908, they obtained such permanent rights of occupancy by the operation of section 6, sub-section (1), as amended by section 3 of Madras Act IV of 1909, and the suit was rightly dismissed by the Courts in India.

Govinda Parama Guruvu v. *Bethasi Dandasi Pathi*, (1910) 20 M.L.J., 528, approved.

Kanakayya v. *Janardhana Pathi*, (1913) I.L.R., 38 Mad., 439, referred to.

APPEAL No. 104 of 1916 from a judgment and decree (26th November 1914) of the High Court at Madras, which affirmed

* *Present*:—Lord BUCKMASTER, Lord DUNEDIN, Sir JOHN EDGE and Sir LAWRENCE JENKINS.

on appeal a judgment and decree (22nd November 1912) of the Subordinate Judge of Masulipatam.

The question for determination in this appeal is whether the lands in suit are 'Kamatam' or private lands of the appellant, the zamindar, or are 'seri' or 'ryoti' lands in which the respondents have permanent occupancy rights.

The lands in question, in area 22 or 23 acres, are situate in village Ayyanki in the Kistna district within the appellant's zamindari. The case of the appellant is that they have always been 'private' lands and that in any case they have been treated and specifically leased as such for many years past.

By a muchilka or counterpart of a lease, dated 8th July 1907, the lands in suit, described as 'Kamatam' or private lands, were let by the appellant to the respondents Nos. 1 and 2 for cultivation purposes to the end of April 1908, the document expressly providing that it should itself operate as a surrender of the lands at the end of the term. The respondents gave up possession to the appellant at the end of April 1908, but in August following they trespassed on the lands, and began cultivating them again and continued to do so until April 1909, when the appellant again obtained possession, and cultivated the lands by his own servants and hired labour. The respondents thereupon took criminal proceedings against the appellant which resulted in the attachment by the magistrate of the lands under section 145 of the Criminal Procedure Code, whereupon the appellant, on 30th April 1910, instituted the present suit against the respondents.

The facts are sufficiently stated in the judgment of the Judicial Committee; and the judgments of the High Court (Sir JOHN WALLIS, C.J., and SESHAGIRI AYYAR, J.) will be found reported in I.L.R., 29 Mad., 341.

On this appeal, which was heard *ex parte*, *De Gruyther*, K. C., and *Kenworthy Brown* for the appellant contended that on the documentary evidence in the case it should have been held that the lands in suit had always been private lands and were never held as ryoti lands, and that if the respondents were in possession of them at all on 1st July 1908 it was either as trespassers, or as tenants of private land; they never obtained occupancy rights under section 6, sub-section (1), of the Madras

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Act I of 1908, and the explanation thereto, which only refer to persons in authorized possession, and therefore not to the respondents who were holding over contrary to the expressed wishes of the appellant, and the terms of their lease. In sections 45 and 183 of the Act where unauthorized possession is intended to be referred to, the word used is 'occupation.' A trespasser cannot be described as being in occupation of the land as 'his holding'; and it could not have been the intention of the legislature to give permanent occupancy rights to persons who were not legally in occupation. In the case of *Kanakayya* v. *Janardhana Padhi*(1), decided by a Full Bench of the High Court, the person in possession was held to be in possession of ryoti land, and had therefore no previous right of occupancy; so the question for decision here did not arise and was not decided in that case. Reference was also made to *Govinda Parama Guruvu* v. *Bothasi Dandasi Padhi*(2) and *Sivapada Mudali* v. *Pitty Thyagaraja Chetty*(3). But in the present case the evidence showed that the land had been from 1884, if not earlier, decribed as 'Kamatam' and let so described, which is made a test of the character of the land by section 185 of the Act. The proviso to that section must be construed as such and not as an exception to the substantive enactment—*Maha Prasad* v. *Ramani Mohan Singh*(4).

The JUDGMENT of their Lordships was delivered by

Sir JOHN EDGE, J.

Sir JOHN EDGE.—This is an appeal from a decree, dated the 26th November 1914, of the High Court at Madras, which affirmed a decree, dated the 22nd November 1912, of the Subordinate Judge of Masulipatam, by which the suit had been dismissed.

The plaintiff is a zamindar, and he brought his suit on the 3rd of April 1910, for a declaration that certain lands within his zamindari in the village of Ayyanki, in the Kistna district, of which the defendants were in possession, were his private lands within the meaning of the Madras Estates Land Act, 1908 (Madras Act I of 1908), in which the defendants had no right of occupancy, for the ejectment of the defendants from those lands, and for mesne profits. The defendants resisted the suit

(1) (1913) I.L.R., 36 Mad., 439. (2) (1910) 20 M.L.J., 528.
(3) (1914) 27 M.L.J., 465.
(4) (1914) I.L.R., 42 Calc., 116; L.R., 41 I.A., 167 (206).

on the ground that the lands in question were ryoti lands within the meaning of the Act, and that they had in them rights of occupancy and were not liable to be ejected by the Civil Court.

As defined by Madras Act I of 1908, private land means :

"The domain or home-farm land of a land-holder by whatever designation known such as *kambuttam*, *khas*, *sir* or *pannai*."

Ryot as defined by that Act means :

"A person who holds for the purpose of agriculture ryoti land in an estate on condition of paying the land-holder the rent which is legally due upon it."

Ryoti land as defined by that Act means :

"Cultivable land in an estate other than private land, but does not include (*a*) tank-beds, (*b*) thrashing floors, cattle-stands, village sites, and other lands situated in any village which are set apart for the common use of the villagers, (*c*) lands granted on service tenure either free of rent or on favourable rates of rent if granted before the passing of this Act or free of rent if granted after that date, so long as the service tenure subsists."

The lands in question do not satisfy the conditions mentioned in (*a*), (*b*) or (*c*), and are therefore not excluded from the statutory definition of *ryoti* land. They were cultivable lands in the estate of the plaintiff, and had been held by the defendants for the purpose of agriculture under a *muchilka*, which will be presently referred to, and were not old waste lands.

It was enacted by Madras Act I of 1908 as follows :—

"6. (1) Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a land-holder to possession of ryoti land not being old waste situated in the estate of such land-holder shall have a permanent right of occupancy in his holding; but nothing contained in this sub-section shall affect any permanent right of occupancy that may have been acquired in land which was old waste before the commencement of this Act. . . ."

To sub-section (i) of section 6 was added by Madras Act IV of 1909 the following explanation :—

"*Explanation.*—For the purpose of this sub-section, the expression 'every ryot now in possession' shall include every person who, having held land as a ryot, continues in possession of such land at the commencement of this Act."

Section 185 of Madras Act I of 1908 is as follows :—

"185. When in any suit or proceeding it becomes necessary to determine whether any land is the land-holder's private land, regard shall be had to local custom and to the question whether the land

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was before the first day of July 1898 specifically let as private land to any other evidence that may be produced, but the land shall be presumed not to be private land until the contrary is shown. Provided that all land which is proved to have been cultivated as private land by the land-holder himself, by his own servants or by hired labour with his own or hired stock for twelve years immediately before the commencement of this Act shall be deemed to be the land-holder's private land."

Madras Act I of 1908 received the assent of the Governor of Madras on the 25th March 1908, and the assent of the Governor-General on the 28th June 1908.

The plaintiff endeavoured to prove that by custom the lands in question were his private lands. He failed to prove any such custom. In a *muchilka* of the 28th July 1907, which the defendants or some of them gave to the plaintiff, and under which they agreed to hold the lands as his tenants until the 30th April 1908, the lands were described as "your *Diwanam Kamatam* (private) lands." Clause 8 of that *muchilka* is as follows:—

"8. As we have no manner of right and title to the said lands, neither we nor our heirs shall raise any objection to your leasing out the lands according to your pleasure at the expiration of the term, that is, after 30th April 1908, without the need for a fresh relinquishment from us or any notice from your Sircar at the close of the period of this *khat* (*muchilka*), considering this itself as a relinquishment and as a notice."

At the trial of the suit there was a conflict of evidence as to whether the lands were the private lands of the plaintiff or were ryoti lands, and the evidence which was produced was fully and carefully considered by the trial Judge, who found that the plaintiff had failed to prove that the lands had been cultivated and dealt with as private lands by the plaintiff and his predecessors in title. The trial Judge found that the lands were ryoti lands, and by his decree dismissed the suit.

From that decree dismissing the suit, the plaintiff appealed to the High Court at Madras. The appeal was heard by the Chief Justice and Mr. Justice SESHAGIRI AYYAR, who agreed with the finding on the evidence of the trial Judge. The learned Chief Justice in his judgment said:

"The Subordinate Judge has found, and I agree with him, that the suit lands were never cultivated by the zamindar as part of his

home-farm lands, and it seems to me that his treatment of them as kambattam was merely colourable for the purpose of defeating the occupancy rights of the tenants. In some parts of India lands of this kind are known as *sir* lands, and this is one of the terms mentioned in the definition. In *Budley* v. *Bukhtoo*(1) it was held that *sir* land is land which a zamindar has cultivated himself and intends to retain as resumable for cultivation by himself even when from time to time he demises it for a season. I think that this test may well be applied here, and that, as the plaintiff has failed to satisfy it, the appeal fails and must be dismissed with costs."

That test is obviously suggested by section 185 of the Act, and was rightly applied by the Chief Justice. Mr. Justice SESHAGIRI AYYAR in his judgment stated that

"I see no reason to differ from the conclusion at which the lower Court has arrived."

The High Court by its decree affirmed the decree of the Subordinate Judge and dismissed the appeal. From that decree of the High Court the plaintiff has brought this appeal.

The concurrent findings of fact as to the lands being ryoti lands must be accepted as binding on the appellant. But it is contended that, after the 30th April 1908 when their term expired, the defendants were trespassers on the lands, and continued to be and were trespassers when Madras Act I of 1908 was passed and came into force, and that the explanation to sub-section (i) of section 6 of Madras Act I of 1908, which was added by Madras Act IV of 1909, does not apply to a person whose continued possession of ryoti land is that of a trespasser, and applies only when the person continuing in possession does so with the consent of the land-holder, which as a fact was not the case here. As a fact, the defendants continued in possession of the *ryoti* lands in suit after the 30th April 1908 not only without the consent of the plaintiff, but contrary to his wishes and expressed intentions, and contrary to the terms of clause 8 of the *muchilka* of the 28th July 1907. The appellant's contention as to the effect of the explanation to sub-section (i) of section 6 is, in the opinion of their Lordships, unsound and untenable. The defendants had held the lands from the 28th July 1907 until the 30th April 1908 for the purpose of agriculture on condition of paying to the plaintiff, the land-holder, the rent legally

(1) (1869) 3 N.W.P., 203.

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due upon the lands. The lands were *ryoti* lands, as has been found by each Court below, and the defendants were, in fact, continuing in possession of the land at the commencement of Madras Act I of 1908, although such continuing in possession was without the consent and was contrary to the wishes of the plaintiff. The construction of sub-section (i) of section 6 of Madras Act I of 1908 as amended by section 3 of Madras Act IV of 1909 is too plain for argument. Assuming that the defendants had not any permanent right of occupancy in the lands in question before the commencement of Madras Act I of 1908, they obtained a permanent right of occupancy in the holding by the operation of section 6, sub-section (i), as amended by section 3 of Madras Act IV of 1909, and the suit was rightly dismissed by the Civil Court.

The effect of section 6, sub-section (i), of Madras Act I of 1908, as amended by section 3 of Madras Act IV of 1909, came before the High Court of Madras in *Govinda Parama Guruvu* v. *Bothasi Dandasi Padhi*(1) in 1910. In that case the landlord had before the 1st July 1908 obtained a decree for possession of ryoti land against the occupiers who were in possession on the 1st July 1908, and BENSON and SANKARAN NAIR, JJ., rightly held that

"It is immaterial that a decree for possession had been already passed. We must, therefore, hold that the defendants are ryots with a permanent right of occupancy."

See also *Kanakayya* v. *Janardhana Padhi*(2).

This appeal fails. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. As the respondents have not appeared there will be no order as to the costs of this appeal.

Appeal dismissed.

Solicitor for the appellant: *Douglas Grant.*

J.V.W.

(1) (1910) 20 M.L.J., 528. (2) (1913) I.L.R., 36 Mad., 439.