VIDYA VABUTHI v. BALUSAMI AYYAR. —— MR. AMEER ALI.

For the foregoing reasons their Lordships are of opinion that neither article 134 nor article 144 applies to this case: that the plaintiffs have acquired no title under either of those articles; that the judgment and decree of the High Court of Madras must therefore be reversed, and the order of the Subordinate Judge dismissing the suit restored with costs here and of the appellate Court.

Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellant: *T. L. Wilson & Co.*

Solicitor for respondents: *H. S. L. Polak.*

A.M.T.

PRIVY COUNCIL.*

1921, July 11.

SURISETTI BUTCHAYYA AND ANOTHER

v.

RAJA PARTHASARATHY APPA RAO AND ANOTHER (AND CONNECTED APPEAL).

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

Estates Land Act (Madras Act I of 1908), sec. 6—Permanent right of occupancy —Subletting—"Ijaradars and farmers of rent"—Middlemen.

The appellants were lessees of certain lanka lands under a lease made before the Madras Estates Land Act, 1908, came into operation. The lease by its terms contemplated the cultivation of the land by ryots, and did not prohibit subletting; it provided for the termination of the tenancy in 1910. The appellants sublet the lands to tenants who occupied and cultivated them.

Held that the appellants had not a permanent right of occupancy under section 6, sub-section (1) of the Act, being merely middlemen.

If the "ijaradars and farmers of rent" referred to in section 6, sub-section (6), are ryots at all they are non-occupying ryots, and cannot be converted into ryots with a permanent right of occupancy.

[*Judgment of the High Court affirmed.*]

CONSOLIDATED APPEAL (No. 58 of 1919) from a judgment and two decrees (April 14, 1916) of the High Court, affirming two

---

* *Present*:—Lord ATKINSON, Lord PHILLIMORE and Sir JOHN EDGE.

decrees of the District Judge of Kistna at Masulipatam (April 25, 1913) affirming decrees of the Deputy Collector, Ellore, made in summary suits.

The appellants sued for the issue of pattas for certain lanka lands under section 55 of the Madras Estates Land Act, 1908. They held the lands under leases, the provisions of which appear from the judgment of the Judicial Committee, made shortly before July 1, 1908, when the Act above named came into operation. The leases by their terms ended in 1910. The defendants by their written statements pleaded, inter alia, that the plaintiffs were not ryots and were not ryots in possession within the meaning of section 6, sub-section (1) of the Act; that they were mere ijaradars or farmers of rent within sub-section (6); and that the lanka lands were specifically let as "ijara" lands to prevent the acquisition of any right of occupancy.

The District Judge, affirming the Deputy Collector, dismissed the suits. He was of opinion that the plaintiffs held the lands on July 1, 1908, as "ijaradars" (whom he distinguished from "farmers of rent"), and were not holding as occupancy ryoti tenants, and that therefore they had acquired no occupancy rights.

The High Court affirmed the decrees. NAPIER, J., who delivered the judgment stated that it was admitted that the plaintiffs did not cultivate the lands themselves, but sub-leased them to cultivating tenants. The learned Judge thought that it was unnecessary to decide whether the plaintiffs were ijaradars. He preferred to decide the case on the construction of section 6, sub-section (1), read with the interpretation section (section 3) and other sections, together with a consideration of the broad policy of the Act. The learned Judge came to the conclusion that a lessee of the character of the plaintiffs was not a ryot within the meaning of the Act.

Narasimham for the appellants.—The appellants were entitled to pattas under section 55 of the Act. The effect of the interpretation clause (section 3) is that everyone holding ryoti land is a ryot for the purposes of the Act. The appellants come under section 6, sub-section (1) and not under section 6, sub-section (6). The definition of ryot imposes the condition that the land is held "for the purpose of cultivation"; it does not provide that the tenant must cultivate the land himself. Section

BUTCHAYYA v. APPA RAO.

187 applies to leases made before and after the Act, so that a tenant cannot contract himself out of the provisions of the Act. It was not suggested that anybody other than the appellants had an occupancy right. The judgment of the High Court proceeded upon a mistaken view that the lease was an ijara lease. [Reference was made to *Ramaswami* v. *Baskarasami*(1).]

Sir George Lowndes, K.C., and *Parikh* for the respondents, who were called on only to refer to recent decisions of the Board dealing with "ryots," referred to *Debendra Nath Das* v. *Bibudhendra Mansingh Bhramarbar*(2), *Jagaveera Rama Ettapa* v. *Arumugam*(3) and *Yerlagadda Mallikarjuna Prasad Nayudu* v. *Somaya*(4).

De Gruyther, K.C., and *Kenworthy Brown* for the respondents in the connected appeal.

The JUDGMENT of their Lordships was delivered by

LORD ATKINSON.

Lord ATKINSON.—This is a consolidated Appeal against two decrees, both dated the 14th April 1916, of the High Court of Judicature at Madras, affirming two decrees, both dated the 30th March 1914, of the Court of the District Judge of Kistna at Masulipatam, which affirmed two decrees, both dated the 25th April 1913, of the Court of the Suits Deputy Collector, Kistna district, Ellore, made in Summary Suits Nos. 376 and 377 of 1912.

Though the parties in each of these suits, as well as the property affected, are different, the questions raised for decision in both Appeals are practically identical, so that the decision made in one disposes of the other.

In the first suit the first defendant who had been appointed Receiver by the Court in a suit dealing with the estate of the Zamindar upon which the lanka lands, the subject of the suit, are situated, by a lease bearing date the 31st March 1908, demised to the two plaintiffs, the appellants in this Appeal, and to the deceased husband of the second of the two defendants, the respondents in the Appeal, a considerable tract of lanka land,

(1) (1879) I.L.R., 2 Mad., 67 (P.C.).
(2) (1918) I.L.R., 45 Calc., 805 (P.C.); L.R., 45 I.A., 67.
(3) (1918) L.R., 45 I.A., 195.
(4) (1919) I.L.R., 42 Mad., 400 (P.C.); L.R., 46 I.A., 44.

over 100 acres in extent, for a term of three years from the 31st March 1908, reserving thereout a cist or rent of Rs. 2,420 per annum.

Some of the provisions of this lease demand consideration. It contains a recital that, in an auction held by the lessors, on whose behalf, of course, the Receiver acted, the lease had been made. The practice prevailing on this estate in reference to such lands as were demised was proved to be this: that when a lease was about to expire, or had but recently expired, an auction was held. Those who desired to become lessees of the land previously demised, bid at this auction, and the new lease was granted to the highest bidder, whether he was the old lessee or another. There was thus no custom of continuity of occupation. The outgoing lessee had no privilege or advantage. It is further recited that as the lessees had executed a muchilka in favour of the lessors agreeing to cultivate the said lanka lands under the conditions set forth in the lease, the lessors had "written and given their patta." One of these conditions was that as regards planting seeds, turfs, grass, etc., and enlarging the extent of land, the lessees were to regard all the orders the lessors had issued or might issue. Another condition was that the lessees were to continue to cultivate only 110 acres and 85 cents. A third, that if the Government should, during the lease, take any of the demised lands for conservance works or any other purpose, the lessees would get a remission for that land of only the average cist that might accrue with reference to the ijara cist. That in the event of the Government taking lands with crops upon them the lessees might receive compensation from the Government for loss of profits, but would not be given any compensation out of the estate funds for such crops. A fourth condition, that if within the term silts should be formed and loss be caused by erosion, the lessees must bear the loss and pay the whole cist, etc., every year, and that they were not to apply for remission on any ground whatever. Again, the lessees were to bind themselves to all the steps the lessors might take against them under the Madras Rent Recovery Act, VIII of 1865, in regard to the collection of arrears. These are distress, sale or eviction. Another condition was that the lessees were not to transfer their ijara rights to others without the lessors' consent,

BUTCHAYYA v. APPA RAO. — LORD ATKINSON.

and again, another, that neither the lessees nor the ryot who cultivates it, nor the merchant who purchases it, nor anybody else, shall take the tobacco and other produce raised on the ijara lanka to other places than the ijara lanka.

It is clear from this provision that the parties contemplated the cultivation of the land and the raising of crops upon it by ryots. No clause prohibiting subletting is to be found in the lease.

It is further stipulated that at the conclusion of the term the lanka lands leased are to be dealt with acccording to the pleasure of the estate authorities without obtaining any release from the lessees, and that at the conclusion of the term, though it ends by the 30th June, fasli 1319, the lessees are to give up the lanka land without leaving on it any produce whatever belonging to them by the end of May of that fasli for the convenient transaction of business. Provisions so elaborate as these are scarcely such as one would expect to find in the contract of tenancy of an ordinary ryot.

The appellants contend that by the provisions of certain clauses of the Madras Estates Land Act of 1908, this contract of tenancy is entirely superseded; that they are relieved from the obligations imposed on them by many of the covenants of their lease; that their tenure is changed, their occupancy continued, and their rent made subject to revision. If that be so, as they contend it is, then the burden rests upon them of clearly establishing that those clauses apply to their case. The obligation of proving the negative proposition, that these clauses do not apply to their case, does not rest upon the lessors.

On the 30th December 1909, a notice was, on behalf of the lessors, served upon the lessees informing them that as the term of three years ijara of the lanka lands which they held from the lessors would expire by this fasli 1319, and as they were bound to quit the lands at the end of May 1910, according to the contract of their registered muchilka, they were required to remove by that date their things, etc., that were on the said lanka lands and to vacate the same.

To this notice the lessees, on the 18th April 1910, sent a reply, to the effect that they were cultivating the lands as ryots when the Madras Estates Land Act, 1908, came into force; that

they thereby acquired under section 6 of that statute permanent occupancy rights in the said lanka lands and would not vacate them; and, further, that they possessed the right to obtain patta of the said lands; and that if patta should not be granted to them they would take legal proceedings. Accordingly, the appellants, in pursuance of this intimation of their intention, instituted on the 14th March 1911, against the respondents, the suit out of which this Appeal has arisen, praying the Court to determine what was a fair and equitable rent for the holding so leased to them, and, further, to make a decree directing the respondents to grant to them a patta in the form prescribed of their said lands on proper terms and to pay their costs.

In the judgment of NAPIER, J., who delivered the judgment of the High Court of Madras, the following passage is to be found:

"It is admitted that the lessees did not cultivate the lands themselves, but sub-leased them to cultivating tenants."

From the judgment of the Deputy Collector it clearly appears that it was proved before him by the witnesses examined on behalf both of the appellants and the respondents that the appellants had sublet, at all events, a considerable portion of the demised lands to sub-tenants who cultivated them personally, paying rent therefor. In the judgment of the Judge of the District Court is to be found the following passage:

"Much stress has been laid upon the fact that there were no tenants on the lands when leased to the plaintiffs. I do not see that this alters the case in the least, if the lands were leased to them under ijara tenure as I have held they were. It is in evidence that the plaintiffs did not cultivate the lands at all themselves, but let them out to cultivating tenants. Even if they had cultivated some of the lands themselves, I do not think it would have altered the position, as the ijara tenure was clearly understood between the parties when it was entered upon."

The above-mentioned extract from the judgment of NAPIER, J., cannot, in their Lordships' view, be treated as merely a restatement in wider language of the conclusion at which the District Judge had arrived. It may well be that before the High Court the advocate who appeared for the present appellants, feeling it hopeless, owing to the evidence that had been given and to the judicial opinions which had been pronounced,

BUTCHAYYA v. APPA RAO. — LORD ATKINSON.

to contest the point further, made the admission set forth by NAPIER, J. The passage from Mr. Justice NAPIER's judgment should, in their Lordships' view, be taken in its ordinary meaning, from which it follows that the appellants dealt with the lands demised as middlemen, subletting them to tenants who held their holdings subject to a rent payable to their immediate landlords, occupied them and cultivated them. The lessees claim to have a rent fixed for all the land demised to them by their leases, and to have a patta granted to them of all these lands. Their Lordships have not to determine, if Mr. Justice NAPIER's statement be accepted according to its ordinary meaning, whether, if the appellants had only sublet to occupying and cultivating sub-tenants a substantial portion of their lands, they would be altogether disentitled to the relief they seek, or would only be entitled to that relief in relation to the portion of the demised lands which they had not sublet, especially as this question was not raised or argued before their Lordships on the hearing of this Appeal. A decision on either of them is not called for in this Appeal, and their Lordships must not be taken to have formed, much less to have expressed, any opinion upon them.

It appears to their Lordships to be plain, from the provision of the first seven chapters of this Statute of 1908, if not indeed from the whole of it, that the object of the Act was to improve the condition and confer new rights and privileges, especially upon the occupying cultivators of ryoti land such as these lands admittedly were. It would be quite opposed to its policy to confer on middlemen who sublet to occupying and cultivating tenants, rights and privileges at all resembling those conferred on occupying cultivators, and, indeed, would result in depriving the latter class of the benefits intended to be conferred upon them. It could hardly be suggested that it was the object of the Statute to bring about such a result as this, that the middleman could compel his landlord to grant him a patta at a rent to be fixed by a Court, and the middleman's occupying and cultivating sub-tenants should in their turn be able to compel their immediate landlord, the middleman, to grant to them pattas of their holdings at rents to be similarly fixed, and this, though the middleman was an absentee who never even visited his estate.

By section 50 of the Act, sub-section (1), the class of persons is described to whom the provisions of Chapter 4 are to apply. By sub-section (2) of that section, it is provided that a person of that class shall be entitled to have granted to him a patta for any current revenue. Turning back to sub-section (1), to find the description of the class to whom the right is given, it is to be composed of ryots with a permanent right of occupancy, and also ryots holding old waste lands under a landlord otherwise than under a lease in writing.

It is obvious, the lessees in this case are not members of this latter section of the class. It is equally clear that they are not members of the first section of the class. They are not ryots with a permanent right of occupancy. It is to be observed the word is "occupancy," not "possession." An owner may, in one sense, be in possession of his estate by the receipt of rent from the tenants of that estate, but not occupancy.

Section 51 prescribed what the patta is to contain, and by sub-section (2) of that section it is enacted that any stipulation in restraint of cultivation or of harvesting by a ryot, or the giving up possession of his land by an occupying ryot at any specified time, is to be void and of no effect, a provision which in itself seems to suggest that the ryot, to be entitled to have a patta granted to him, has to be a cultivator of his holding.

Section 6, sub-section (1), defines the persons who are to be entitled to acquire the permanent right of occupancy in holdings. This definition qualifies the first section of the class mentioned in section 50 which is entitled to apply for a patta. They are those who were ryots, at the passing of the Act, and then in possession, or thereafter admitted by a landowner to possession of ryoti land not being waste land situate on the landlord's estate. It is this permanent right of occupancy which entitles the ryot to apply for the patta. Section 46 prescribes the mode by which a non-occupying ryot may acquire a permanent right of occupancy of his land, but cases falling within section 6, sub-sections (4) and (5), are expressly excluded.

In the view of their Lordships the words "ijaradar and farmer of rent" occurring in this sub-section are not synonymous. They denote two classes of persons. They are not defined in the definition clause. If ijaradars and farmers of

BUTCHAYYA v. APPA RAO. — LORD ATKINSON.

rent are ryots at all they are, as appears from section 46, non-occupying ryots, and cannot be converted into ryots with a permanent right of occupancy.

For these several reasons their Lordships are of opinion that the appellants do not belong to the class of persons entitled to the kind of relief they seek to obtain, that the judgments appealed from were right and should be affirmed, and this appeal be dismissed; and they will humbly advise His Majesty accordingly. The appellants must in both appeals pay the respondents' separate costs.

Solicitor for appellants: *H. S. L. Polak.*

Solicitors for respondents: *E. Dalgado*; *Douglas Grant.*

A.M.T.

PRIVY COUNCIL.*

1921, July 15.

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT),

v.

RAJA OF VENKATAGIRI (PLAINTIFF)

AND CONNECTED APPEALS

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

Madras Regulation XXV of 1802, *ss.* 3 *and* 4—*Zamindar—Permanent Settlement—Sanad—Construction of Sanad—Right of Government to resume inam lands.*

A sanad issued by the Government on August 24, 1802 to a zamindar in the Presidency of Madras (Arcot) stated that in consideration of the relief which the zamindar's finances would derive from the relinquishment of his military services, and of the Government charging itself with the duty of protecting his territories, "the British Government has fixed your annual contribution, including equivalent for military service and the established peshkush for every year, at the sum of star pagodas 1,11,058, which said amount shall never be liable to changes under any circumstances." Clause (5) reserved to the Government the revenue derived from salt and saltpetre, and certain other subjects, without making any mention of lakhiraj or inam lands.

---

* *Present*:—Viscount CAVE, Lord SHAW and Mr. AMEER ALI.