PRIVY COUNCIL.*

RADHAKRISHNA AYYAR AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

SUNDARASWAMIER (PLAINTIFF), RESPONDENT.

1922, March 14.

[On Appeal from the High Court at Madras.]

Judicial Committee—Practice—Valuation of Appeal—Certificate of High Court—Tender of patta—Previous decree—Construction of patta—Oodu crop—Estates Land Act (Madras Act I of 1908), sec. 52, sub-sec. (3).

Rule 2 of rules contained in the Order in Council of April 10, 1838, whereby the certificate of a Court in India that the value in a dispute in an Appeal to the Privy Council amounts to Rs. 10,000 and upwards shall be conclusive, remained in force until repealed by the Order in Council of February 9, 1920; in some cases before the Board it would appear that the rule of 1838 had been overlooked.

The provision in section 52, sub-section (3) of the Estates Land Act (Madras Act I of 1908), as to the remaining in force of pattas "decreed," is not confined to pattas decreed by any particular Court; it includes a decree of a Revenue Court in proceedings under Madras Act VIII of 1865.

A patta provided that if contrary to its terms the tenant carried away the crop he should pay the specified melvaram paddy in respect of the total yield of paddy calculated at a certain average of crop, the kadappu and kar produce being payable by December 15 and the samba and pisanam by March 15. The tenant planted an oodu crop, that is, a crop sown together, one part of which takes three months and the other part six months to ripen and be reaped.

Held that the tenant having carried away the crop was liable to pay at the specified rate upon each portion of the oodu crop.

APPEAL (No. 112 of 1918) from a judgment and decree of the High Court (November 14, 1916) varying a decree

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

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of the District Judge of Tanjore pronounced on appeal from the Revenue Divisional Officer of Kumbakōnam.

The suit was brought in the Revenue Court under the Madras Estates Land Act (I of 1908), section 77, to recover arrears of rent of certain inam lands. The plaintiff (represented by the present respondent) was Receiver in a partition suit of family property including the inam lands which were an "estate" as defined by that Act. The defendants were occupancy ryots in whom the kudivaram interest in the land vested. The claim was for rent said to have accrued in accordance with a patta tendered in respect of faslis 1318, 1319 and 1320. The defendants had rejected the patta and contended that a less sum, which they paid into Court, was due. The inamdar in proceedings under the Rent Recovery Act (Madras Act VIII of 1865) had obtained decrees in former years enforcing the pattas in the form now tendered. The last of these decrees was made by the Divisional Officer in April 1904. The material terms of the patta appear from the judgment of their Lordships.

The District Judge and the High Court (OLDFIELD and PHILLIPS, JJ.) held that the patta in the terms of that previously decreed was in force under section 52, sub-section (3) of the Estates Land Act (Madras Act I of 1908), but the two Courts had arrived at different results on the construction of the patta.

The present Appeal originally came on for hearing in December 1920, and was then dismissed on the ground that the certificate for leave to appeal was insufficient [See *Radhakrishna Ayyar* v. *Swaminatha Ayyar*(1)]. Subsequently a certificate which had not been included in the record was produced, and by an order made on

(1) (1921) I.L.R., 44 Mad., 293 (P.C.); L.R., 48 I.A., 31.

June 3, 1921, the Appeal was restored to the list upon terms. The terms of the new certificate appear in the judgment.

De Gruyther, K.C., and *Parikh* for respondent.—The Appeal is not competent under sections 109 and 110 of the Code of Civil Procedure, 1908. The amount of rent claimed was under Rs. 4,500 and the value of the subject-matter was clearly under Rs. 10,000. The certificate was wrongly given and the Appeal is not competent: *Banarsi Prasad* v. *Kashi Krishna Narain*(1), *Radha Krishn Das* v. *Rai Krishn Chand*(2).

Sir George Lowndes, K.C., and *Kenworthy Brown* for the appellants.—The subject-matter was Rs. 10,000 and upwards. The valuation of the Appeal does not wholly depend upon the sum claimed: *Gooroopersad Khoond* v. *Juggutchunder*(3). In the present case the decree settled the rent payable annually, so that the capitalized value is to be considered. Further, under Rule 2 of the Order in Council of 1838 the certificate of the High Court is conclusive of the value. That Order was operative until repealed by the Order of 1920, which was made after this Appeal was entered.

De Gruyther, K.C., in reply.—The Rules in the Order in Council of 1838 were made under, and as to Appeals under, 3 and 4 Will. 4, C. 41; they do not apply to Appeals which now are made under and subject to the Code of Civil Procedure. In *Radha Kunwar* v. *Reoti Singh*(4), the Board held that a certificate of valuation was wrongly made and refused to hear the Appeal.

Their Lordships desired to hear the Appeal, the question of competency being reserved.

Sir George Lowndes, K.C., and *Kenworthy Brown* for the appellants.—The appellants are not bound by the previous

(1) (1900) I.L.R., 23 All., 227 (P.C.); L.R., 28 I.A., 11
(2) (1901) I.L.R., 23 All., 415 (P.C.); L.R., 28 I.A., 182.
(3) (1860) 8 M I.A., 136.
(4) (1916) I.L.R., 38 All., 488 (P.C.); L.R., 43 I.A., 187.

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patta under section 53, sub-section (3) of the Madras Estates Land Act, 1908. That sub-section does not refer to pattas decreed, as these were, under Madras Act VIII of 1865. The Act of 1908 entirely altered the relation of landlord and tenant in Madras. The Act of 1865 by section 11 made the rent depend upon agreement, express or implied. The Act of 1908 introduced other considerations, its keynote being sections 27, 28 and 29; section 74 too was new. "Decreed" in section 52 means decreed as fair and equitable, having regard to the provisions of the Act. Here, the tenants had by agreement for many years paid at a lower rent than that now claimed. If the patta is binding the rent now claimed was a penalty and as such was not recoverable under section 77 of the Act of 1865. [Reference was made to *Rajah of Pittapuram* v. *Jonnalagadda Venkatasubba Rao*(1), *Parthasarathi Appa Row* v. *Chevandra Venkata Narasayya*(2).]

De Gruyther, K.C., and *Parikh* for the respondent.—Both Courts rightly held that "decreed" in section 52, sub-section (3), includes a decree of the Revenue Court under the Act of 1865. There is no reason why the plain terms of the sub-section should be limited. Pattas and muchilkas under the Act of 1865 do not give rise to a contract, but are evidence of the terms of a pre-existing tenancy: *Shanmuga Mudaly* v. *Balnati Kuppu Chetty*(3). The question is whether the patta tendered properly represents the terms of the holding. With regard to this class of tenant the Act of 1908 made no material difference. What was claimed was not a penalty but the rent payable in the circumstances. [On the construction of the patta reference was made to Wilson's Glossary q.v. "samba," "kadappu."]

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(1) (1915) M.W.N., 813.
(2) (1916) I.L.R., 33 Mad., 177 (P.C.); L.R., 37 I.A., 110.
(3) (1902) I.L.R., 25 Mad., 613 (F.B.), 621.

Sir George Lowndes, K.C., replied.

The JUDGMENT of their Lordships was delivered by

Lord SHAW.—This is an Appeal against a decree of the High Court of Judicature at Madras, dated 14th November 1916. It varied a decree of the District Judge of Tanjore, dated 18th January 1915. The suit between the parties was brought in the Revenue Court of Kumbakōnam under the Estates Land Act (Madras Act I of 1908), section 77. The claim of the plaintiff was for rent said to have accrued and to be due by the defendants in respect of their holdings, in accordance with the terms of a patta which will be afterwards noted. No further reference is required to the various stages of the litigation.

A preliminary question, however, is raised as to whether the Appeal is competent. It is pointed out by the respondent, who makes the objection, that the rent sued for amounted to Rs. 4,560, being rent for three years in arrear. The respondent accordingly contends that it sufficiently appears that the amount or value of the subject-matter of the suit is not Rs. 10,000, as required by sections 109 and 110 of the Code of Civil Procedure, 1908; and upon the case reaching this Board their Lordships, on 3rd December 1920, held that the certificate *quoad* value was at least ambiguous, and that such certificates "ought to be given in such a form that it is impossible to mistake their meaning on their face."

The only order then before the Board was in these terms:

"It is hereby certified that as regards the value of the subject-matter and the nature of the question involved, the case fulfils the requirements of sections 109 and 110 of the Code of Civil Procedure, and that the case is a fit one for appeal to His Majesty in Council."

And upon that the previous judgment of the Board proceeded. It now appears, however, that the above was

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not the only order, and that the parties had failed to bring up the order embracing the actual certificate and granted on the same day.

It is admitted by both parties that there did exist in the proceedings an order of 21st September 1917 in the following terms :

"We hold that the subject-matter is of a value greater than Rs. 10,000, with reference to *Gooroopersad Khoond* v. *Juggutchunder*(1), and that a substantial question of law is involved. We therefore certify that the case is a fit one for appeal to His Majesty in Council with reference to sections 109 and 110 of the Civil Procedure Code."

In their Lordships' opinion, this certificate is sufficiently clear, and is not open to the objections under which the former certificate under argument before the Board stood condemned.

The point, however, which still remains, is whether that certificate must be accepted by the Board as conclusive, the actual sum in figures which is sued for being what it is, and so much smaller than Rs. 10,000.

The ruling provision as to certificates of value was No. 2 of the schedule to the Order in Council of 10th April 1838. It is to the following effect :

"That in all cases in which any of such Courts shall admit an appeal to Her Majesty, her heirs and successors in Council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of 10,000 Company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed."

It is admitted that at the date of the Appeal this Order was in operation, and it accordingly governs the case ; and, so far as the Board is concerned, it concludes the question of competency *quoad* value. In some of the

(1) (1860) 8 M.I.A., 166.

cases which have occurred, it would rather appear as if the provisions of this Order had been left out of view.

On a date subsequent to the filing of this Appeal, namely, 9th February 1920, the Order was repealed by an Order in Council, passed by His Majesty on the date mentioned. While, however, in cases subsequent to that date, the value of the subject-matter of the Appeal is not concluded by the certificate of the Court below, their Lordships desire to make these two observations:—In the first place, the sum of money actually at stake may not represent the true value. The proceeding may, in many cases, such as a suit for an instalment of rent or under a contract, raise the entire question of the contract relations between the parties and that question may, settled one way or the other, affect a much greater value, and its determination may govern rights and liabilities of a value beyond the limit [*Banarsi Prasad* v. *Kashi Krishna Narain*(1)]. The Courts below may accordingly with propriety, as was done in this case, make the necessary certificate. In the second place, whether they did so or not, while their Lordships would, of course, be free, if greater value in the sense mentioned were established, to proceed with the Appeal, yet they will always naturally and very greatly defer, on a subject of this nature, to the certificate given by the High Court.

The objection to the competency of the Appeal is accordingly repelled.

Their Lordships proceed to the merits of the Appeal.

The original plaintiff in the suit was a Receiver appointed by the Court and the plaintiff-respondent is his successor and represents the proprietors of an inam village called Kadiramangalam. It is matter of admission that the appellants are occupancy ryots of certain

(1) (1900) I.L.R., 23 All., 227 (P.C.); L.R., 28 I.A., 11.

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of the village lands, having the permanency of tenure and the other rights attaching to that position under the law of Madras. Their Lordships desire to make it clear that nothing that has passed between these litigants during the long course of years, in which the law has been so frequently invoked, constitutes a derogation from the status, privileges, rights and obligations of parties under the Madras Land Act. The provisions, for instance, of Chapter 5 of the Act as to the payment of arrears of rent and the appraisement and division of produce, as also those of Chapter 4, dealing with pattas and muchilkas, can be appealed to and are plainly applicable.

In particular, it should be noted that Chapter 4 of the Act, as is specially provided for by section 50, applies to all ryots with a permanent right of occupancy, and by section 52 accordingly pattas and muchilkas may be exchanged for periods of one or more revenue years; but no landholder shall be bound to tender, and no ryot to accept, a patta for a period of more than one revenue year. It appeared to be maintained for the appellants that payments made during the course of twenty years should form the lines and limits of the ryots' obligations for all time. Setting aside the manifest contradiction by this of the actual relations of these parties, the Board has, in view of the argument, thought it right to express its opinion that the statutory rights and obligations of parties have not been thus impinged upon. Past practice may, of course, have its weight as one of the elements which are considered in fixing under the Act what are the fair and equitable conditions of a particular patta [*Parthasarathi Appa Rao* v. *Chevendra Venkata Narasayya*(1)].

(1) (1910) I.L.R., 33 Mad., 177 (P.C.); L.R., 37 I.A., 110.

Under the Madras Estates Act I of 1908, the inamdar, on 28th October 1908, tendered a patta for fasli 1318 to the tenants and demanded from them a muchilka, but the tenants refused to accept the patta, or to execute a muchilka. Pattas, in identical terms having been also offered and refused, and no muchilkas having been executed for the two following years, faslis 1319 and 1320, the suit was instituted on 15th December 1911. It resulted in a decree for Rs. 4,367-7-3.

It may be stated that it was admitted that there had been numerous suits and numerous decrees in which the rights of the inamdar had been determined in accordance with pattas substantially, if not entirely, in the same terms as those tendered in the present suit. The plaint correctly states: "Pattas were tendered for the undermentioned occupancy right lands in the enjoyment of the defendants for faslis 1318, 1319 and 1320, duly according to custom and in conformity with the previous judgments, by the first defendant in Original Suit No. 61 of 1904, who was managing during the said faslis."

In 1902, the inamdar had sued and on the 19th April, 1904, the Divisional Officer pronounced judgment in the plaintiff's favour, and he expressed himself thus:

"I consider that the dispute between the parties relating to the suit fasli is identical with those decided in the previous faslis in the judgments referred to above, and that no special pleas or circumstances are urged with reference to the suit fasli for any fresh adjudication."

Their Lordships pause to say that they may repeat in terms this dictum which was pronounced eighteen years ago. It is a truly deplorable circumstance that judicial time should have been occupied and the substance of parties wasted by litigation over a further period of eighteen years, for settling practically the same point. The careful provisions made by legislation for the steady protection from year to year of the rights of occupancy

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ryots on the one hand, and inamdars and other landlords on the other, have been put on one side and fruitless and repeated litigations have been indulged in.

But in the judgment referred to, the Divisional Officer proceeds:

"I therefore find that the previous judgments are *res judicata* in these suits as they have gone fully into the question of custom relating to the different stipulations in the patta."

However natural it may have been to treat the position thus, their Lordships cannot sustain on legal grounds the plea of *res judicata* here suggested. In the language of the High Court:

"The answer is that the general doctrine of *res judicata* is not in question, but the application of the special rule stated in section 52 (3), Estates Land Act, under which muchilkas decreed for any revenue year remain in force until the beginning of the year, for which fresh ones are exchanged or decreed, and that there is no reason for restricting the scope of the general reference to muchilkas decreed to those decreed by any particular description of Court."

With this view the Board is in full agreement.

The inamdar having again tendered pattas in terms of section 54 and the other relative sections, and the tenants having, notwithstanding previous decrees, again refused to accept the terms or to grant muchilkas, and the terms of the pattas having been entirely approved by the Collector, the present suit had to be brought. The pattas tendered are in terms of previous pattas upon which judgment and decree was passed. It stands to reason, and it is in accordance with sections 27 and 28, that the old rent thus decreed shall continue, until reduced or enhanced by special applications under the Statute. No such applications have been made. All that remains in the case is the correct interpretation of the pattas.

The argument presented to the Board involved the construction of the two clauses, 1 and 8. These clauses are as follows:

"1. Out of the 32 *pangus* in the aforesaid village, the lands comprised in the $\frac{5}{8}$ pangu which is in your enjoyment, viz., *Ayan* nanja of the extent of 2 Velis 3 Mahs 4 Kulis and 13 cents and *padugai punja* nanja of the extent of 5 Mahs 38 Kulis and 59 cents, in all, nanja of the extent of 2 Velis 8 Mahs 43 Kulis and 8 cents, you shall cultivate at the proper seasons fertilizing them in all ways; harvest the crops that are grown, after the same have been estimated by our agents in the presence of (our) agents and others and under their orders and supervision, leaving the stubbles as is the practice with the Government *Amani* lands; stock in heaps on the threshing-floor the residue of the total yield of paddy that is left after paying the reapers' wages at the rate of $\frac{1}{4}$ marakkal per kalam and the *Thalayari Suvandiram* paddy payable at the threshing-floor at the rate of 1 marakkal per 15 kalams; and after the harvesting has been completed, you shall apportion in heaps our *Melvaram* due at the rate of 60 kalams for 100 kalams of paddy in the case of *Ayan* nanja and at the rate of 57 kalams for 100 kalams in the case of *Padugai punja* nanja under the Sudder Court decree in Suit No. 68 of 1847 and in acknowledgment of our having received the Melvaram paddy obtain a receipt from our agents."

"8. Even if the aforesaid nanja lands be not cultivated at the proper seasons, even if they be cultivated negligently, if they be allowed to lie fallow without being cultivated, even if damage of crops be caused by failure to harvest the crops at the right time, even if the yield be carried away, either without acting in accordance with the conditions specified in paragraph 1 herein, or without division of varam, and even if nanja land be filled up (and raised in level) and punja cultivation made thereon, you shall pay at the rate specified in paragraph 1 herein our melvaram paddy in respect of the total yield of paddy calculated at an average of 170 kalams and 4 marakkals per veli of nanja, the kadappu and kar produce being payable within the 15th of December, and the samba and pisanam produce by the 15th March."

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What had happened in the present case was that during the fasli years in question, the tenants in contravention of the terms of these pattas had carried away the yield, without any of the proceedings with regard to the apportionment, in heaps, of the melvaram due to the landlord, having taken place.

The obligations under clause 1 having thus not been complied with, clause 8 came into operation, which applied to various contingencies, including the following: "If the yield be carried away . . . without acting in accordance with the conditions specified in paragraph 1." In that contingency "you shall pay at the rate specified in paragraph 1 herein our melvaram paddy in respect of the total yield of paddy calculated at an average of 170 kalams and 4 marakkals per veli of nanja, the kadappu and kar produce being payable within 15th December, and the samba and pisanam produce by 15th March."

The question is: In this stipulation, what is the meaning of the expression "the total yield of paddy"; and in particular what is the application of the stipulation to the case of an oodu crop, that is, a crop sown together, one part of which takes only three months to ripen and be reaped, and another part of which takes eight months to ripen and be reaped? Is the return as to "the total yield of paddy" satisfied by payment of 170 kalams for the total yield of one of the portions? The appellants maintain that it is.

It is well to have clearly in view what is the practice with regard to such a paddy crop. It is thus described in Mr. Hemingway's work on Tanjore in the *Madras District Gazetteer*, p. 93:

"It has become usual in a good many places to mix a *kuruvai* and a *samba* crop on what is called the *udu* or *ottadan* system of cultivation. The species of samba used is the *oitadai* paddy, an eight months' crop from which the name of the system is

derived. The amount of *kuruvai* used in this combination exceeds the *samba* largely, sometimes by as much as five to one. *Ottadai* is generally sown in the first-crop season. The more quickly matured variety is harvested first, and the ryot thereby secures a return for his labour both at the *kuruvai* and the samba harvests. The two kinds of grain are mixed in the seed beds and the seedlings are planted indiscriminately."

The appellant's counsel forcibly maintain that the payment of 170 kalams was a penal provision, and that, therefore, that provision ought to be most strictly construed.

It must not be forgotten that even in regard to penal provisions with a strict construction, no construction is open to a Court of Law which is in violation of what that Court considers to be the true meaning of the provision. That is a sound general principle.

But the Board, having considered the argument upon the clause, are of opinion that the rent of 170 kalams was not a penal rent, but was a substituted rent. The true rent, had the tenants complied with their obligations, would have been a percentage of the yield: but were the harvest to be bodily carried away, it was necessary to provide for such a case, and this was done by clause 8 which imposed no penalty as such, but simply set forth a figure which, upon the whole, might be reckoned a reasonable pactional substitute for the actual percentage, which, owing to the tenants' conduct, had been rendered unascertainable.

Is, however, the stipulation applicable to the whole harvest of a mixed crop reaped at separate times, or is it applicable only to the first harvesting? "You shall pay," says clause 8, "at the rate specified in paragraph 1 in respect of the total yield of paddy calculated at an average of 170 kalams": but then it is added that the early rice (kadappu kar) produce is payable in December

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and the samba, which is the late harvest produce, is payable in March. Putting that alongside of the subsequent obligation which was, under clause 1, "to stock in heaps on the threshing-floor the residue of the *total yield of paddy*" (the same phrase as is used in clause 8), their Lordships have no doubt that the substituted rent applied to the yield of each portion of the crop, exactly as the setting aside on the threshing-floor was applicable to each portion. They are of opinion that the High Court has come to a correct conclusion upon this topic.

Their Lordships desire to add that a question of straw, insignificant in amount, was not argued, the very proper arrangement of both parties at the Bar being that that would stand or fall with the judgment of the Court below.

Their Lordships will humbly advise His Majesty that the Appeal be refused with costs.

Solicitor for appellants: *Douglas Grant.*

Solicitors for respondent: *Chapman-Walker and Shephard.*