THE

INDIAN LAW REPORTS

(MADRAS SERIES).

APPELLATE CIVIL—FULL BENCH.

Before Sir William Ayling, Kt., Officiating Chief Justice, Mr. Justice Kumaraswami Sastri and Mr. Justice Odgers.

1921, September 6 and 15.

UNDE RAJAHA RAJE RAJAH VELUGOTI SREE GOVINDAKRISHNA YACHENDRULAVARU BAHADUR, RAJAH OF VENKATAGIRI (PETITIONER), PLAINTIFF,

v.

THATIKOLA SUBBIAH (RESPONDENT), DEFENDANT.*

Survey and Boundaries Act (Madras Act IV of 1897), sec. 20 (3) —"Tenant"—Whether grantee of a rent-free inam in a zamindari included.

The grantee of a rent-free inam in a zamindari is not a tenant within the meaning of section 20, clause (3), of the Madras Survey and Boundaries Act (IV of 1897).

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the decree of W. CHAKRAPANI NAYUDU, District Munsif of Kanigiri, in Small Cause Suit No. 1051 of 1919.

The plaintiff is the Raja of Venkatagiri and the defendant owns an inam in the village of Basavupuram within the zamindari. This inam is a personal inam free of any rent. Recently, the village of Basavupuram, including defendant's lands was surveyed at plaintiff's

* Civil Revision Petition No. 517 of 1920.

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request. The plaintiff sued for the recovery of sums of money for road and railway-cess, and for survey charges in respect of the inam. The defendant did not really contest the payment of the road and railway-cess but contested the claim for survey charges on the grounds that he was not a tenant of the plaintiff and the latter was not therefore entitled to recover them, and also that the Civil Court had no jurisdiction to try the suit. The District Munsif held that he had no jurisdiction, and expressed the opinion that the defendant would not be liable in any event. The plaintiff filed a Civil Revision Petition which came on for hearing before SPENCER and RAMESAM, JJ., who made the following:

ORDER OF REFERENCE TO A FULL BENCH.

SPENCER, J.—The plaintiff is the Raja of Venkatagiri who sues to recover road and railway-cess and survey charges from an inamdar having an inam within his estate.

The District Munsif has given him a decree for the road and railway-cess and dismissed the suit in respect of the other item on the ground that it is cognizable by a Revenue Court only.

The Madras Survey and Boundaries Act (IV of 1897) provides for the recovery of a proportionate part of the cost of the surveys of estates from the occupants of the lands surveyed

Section 20, clause (3) declares

"The amount so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if it were an arrear of rent due by a tenant to his landlord."

In interpreting the meaning of this clause the District Munsif has committed two errors. First, he states that this clause has the effect of creating the relationship of landholder and ryot between the zamindar or proprietor and the person from whom the amount is

recoverable. Secondly, he observes that arrears of rent due by a tenant to his landlord are clearly recoverable only by a Revenue Court.

The first statement imports the very technical significance of the word "ryot" as defined in the Madras Estates Land Act into the word "tenant" as used in the Survey and Boundaries Act and implies that the two words are synonymous.

A tenant ordinarily means a person who holds land under a landlord. But a ryot is a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying rent. "Rent" and "ryoti land" have each a special meaning which is defined in section 3, clauses (11) and (16), of the Madras Estates Land Act.

The Munsif's second statement overlooks section 19 of that Act and ignores the fact that quit-rent, house-rent and many other forms of rent are recoverable in ordinary Civil Courts.

The respondent's vakil has attempted to support the District Munsif's judgment on other grounds.

He argues first that as the word "ryot" does not occur in section 77 (i) of the Madras Estates Land Act or in the last portion of section 3, clause (11) (*a*), which includes under the definition of rent "money recoverable under any enactment for the time being in force as if it were rent," therefore it was intended to include such money from whomsoever it might be recoverable. I have no doubt that the words "by a ryot" in the beginning of clause (11) (*a*) governs the whole clause. If this was not the intention of the framers, I should expect to find in this clause something of the nature of a description of the class of persons from whom money payable as rent under other enactments is recoverable.

The next argument is that, as section 164, clause (3), of the Estates Land Act declares that when a survey

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is made and a record-of-rights is prepared under Chapter XI the survey shall be made under the Madras Survey and Boundaries Act, therefore the expenses are recoverable under the first named Act. The answer is that the preparation of a record-of-rights is something very different from a survey. Section 180 provides only for the recovery of the expenses of preparing a record-of-rights as if they were arrears of land revenue. It says nothing about the mode of recovering the cost of survey, which consequently is governed by the provisions of Chapter IV of the Survey and Boundaries Act.

The last argument is that as this inam is held free of any rent to be paid to the proprietor, therefore the inamdar is not liable to contribute any part of the costs of the survey.

For the purposes of this argument it is necessary to hold that a person who occupies land under a landholder free of all rent is not a "tenant."

In this connexion, it is noticeable that in the definition of "tenant" under the Local Boards Act (Madras Act V of 1884) all persons who occupy land under a landholder, whether they pay rent or not, are comprised—*vide* section 3, clause (xxvii), of Madras Act V of 1884. Also, in the Bengal Survey Act of 1875 it is specially provided in section 17 that rent-free lands are to be deemed to form a part of the tenure within the local boundaries of which they lie, although there is no such provision in the Madras Act. It is also worthy of notice that the Rent Recovery Act (VIII of 1865), which was the Act which governed the relation of landholders and tenants in this Presidency at the time when the Madras Survey and Boundaries Act was enacted in 1897, defined the term "tenant" as including all persons who were bound to pay rent to a landholder. But this definition was expressly qualified by the reservation that it was for the purpose of that Act only.

I am of opinion that the word "tenant" in the Madras Survey and Boundaries Act has a wider significance resembling the definition in the Local Boards Act, and that it includes all occupants of land in a zamindari estate upon which peshkash is paid to the Government. I need only refer to the derivation of the word from the Latin *tenere* "to hold" and to the definitions in the dictionaries of Wharton and Webster of "tenant," "tenancy," "tenure" and "tenement." In *Lakshminarasimham Pantulu* v. *Sree Sree Ramachandra Maradaraja Deo*(1) an intermediate landholder is spoken of as a tenure-holder, and a tenure-holder is a tenant in the widest sense of the word. Section 20 of the Act does not say that survey charges are to be collected by proprietors along with the rent, but it provides that they are recoverable as *if they were arrears of rent.* Thus it is no answer to the landlord's demand upon a tenant in his estate to pay an amount to which the law gives the semblance of rent to urge that he is not liable to pay rent in any other form.

In this view I think that the Munsif was wrong in declining to adjudicate on the claim for survey charges, and as there was no dispute in the trial Court as to the correctness of the amount claimed, that the plaintiff should be given a decree for the amount claimed by him under both heads and for costs thereon.

As my learned brother differs from me on the last point of law and as there is a conflict between the *Narayanasami Reddi* v. *Osuru Reddi*(2) and *In re Karri Venkanna Patrudu*(3) upon the question whether the opinion of the senior Judge should prevail when the Judges composing a Bench hearing Civil Revision Petitions in the exercise of powers conferred by

(1) (1914) I.L.R., 37 Mad., 319. (2) (1902) I.L.R., 25 Mad., 548.
(3) (1915) 18 M.L.T., 591.

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section 115 of the Civil Procedure Code and 25 of Act IX of 1887 differ on a question of law, we refer under rule 2 (1) of the Appellate Side Rules, the question "whether the word tenant in section 20, clause (3), of Madras Act IV of 1897 includes the grantees of a rent-free inam in a zamindari?" for determination by a Full Bench.

RAMESAM, J.—This is a Revision Petition by the plaintiff against an order of the District Munsif of Kanigiri in a suit to recover road-cess, railway-cess, and survey charges from the defendant who owns an inam within the plaintiff's zamindari. The District Munsif gave a decree for the cesses but, holding that he had no jurisdiction over the claim relating to the survey charges, dismissed the plaintiff's suit. He also expressed an opinion, without recording it as a finding binding on the parties, that the plaintiff is not entitled to recover the survey charges.

It is common ground that the inam is a personal inam held free of any payment to the zamindar. Neither the petitioner nor the respondent is able to state the nature of the respondent's inam, i.e., whether it is an enfranchised inam or an inam included in the assets of the plaintiff's zamindari at the time of the permanent settlement. But, having regard to the fact that the plaintiff obtained a decree for road-cess and railway-cess —even though the inam is held free of rent—I think it must be an inam included in the zamindari. On this footing the case has been argued on both sides and I accordingly deal with it.

The plaint does not mention the specific ground on which the plaintiff claims to recover the survey charges. In the Court below, it was based on section 20 of Madras Act IV of 1897. Before us not only has this ground been reiterated but also the plaintiff relied on section 70 of the Contract Act. The latter contention

has not been raised in the Court below or even in the grounds of the petition. I am also of opinion that it is unsustainable. Considering the claim as based on section 20 of the Survey and Boundaries Act, the District Munsif held that the Estates Land Act bars the suit. Section 189 of the latter Act bars the jurisdiction of the Civil Courts if a suit or application lies under it in a Revenue Court for recovering the amount. Mr. Raghava Rao for the respondent contends that a suit lies under section 77 (i) of the Act (see item 8 of schedule A to the Act) to recover rent, which, as defined in section 3 (11) (*a*) includes "money recoverable under any enactment as if it was rent." Under section 20 of the Survey and Boundaries Act, the survey charges are recoverable from the tenant concerned, as if it was rent.

But, in this case, it cannot be said that the defendant is a tenant. Even assuming that the grantee, under an absolute grant, of an inam included in a zamindari is an intermediate landholder within the meaning of section 73 of the Local Boards Act (Madras Act V of 1884) as to which I feel some doubt, it is difficult to describe him as a tenant. The land having become his own, he does not hold it of or under the zamindar. It is significant that there is no section in the Madras Survey and Boundaries Act similar to section 17 of the Bengal Act of 1875.

In my opinion, therefore, the survey charges are not recoverable from the defendant as if it was rent within the meaning of section 3 (11) (*a*) of the Estates Land Act—apart from the consideration that the latter part of sub-clause (*a*), section 3 (11), should be construed *ejusdum generis* with the former part and covers only monies recoverable *from a ryot*, which certainly the defendant is not.

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The suit therefore lies in a Civil ourt. The reasoning involved in the above conclusion incidentally disposes of the merits of the plaintiff's claim, i.e., he is not entitled to recover. On this latter ground, the Revision Petition should be dismissed with costs.

My learned brother and myself differ in our opinion. There is a conflict between *Narayanasami Reddi* v. *Osuru Reddi*(1) and *In re Karri Venkanna Patrudu*(2) as to whether the section 98 of the Civil Procedure Code or clause 36 of the Letters Patent should apply. Under these circumstances, I agree to refer the question of law (as stated by my learned brother) to a Full Bench under rule 2 (1) of the Appellate Side Rules of Practice.

ON THIS REFERENCE—

B. C. Seshachala Ayyar for *A. Krishnaswami Ayyar* for petitioner.—The claim is for half the cost of the survey stones. Section 20 (1) speaks of apportionment "among the lands." It does not speak of persons. The incidence is the land. Reference was made to the definition of "tenant" in Stroud's Dictionary, Bengal Tenancy Act, and section 3, Madras Local Boards Act.

T. M. Ramaswami Ayyar for *Ch. Raghava Rao*.—The only Act to which we can turn is the Rent Recovery Act, section 1. In section 20, Survey and Boundaries Act, the word "tenant" is used in two places. In the latter it means one who is liable to pay rent. Statutes imposing pecuniary liability ought to be construed strictly.

AYLING, OFFG. C.J.

AYLING, OFFG. C.J.—The question referred to us is: "Whether the word "tenant" in section 20, clause 3 of Madras Act IV of 1897, includes the grantees of a rent-free inam in a zamindari."

(1) (1902) I.L.R., 25 Mad., 548. (2) (1915) 18 M.L.T., 591.

Clause (3) referred to runs thus :

"The amount so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if it were an arrear of rent due by a tenant to his landlord."

It will be seen that the clause contains the word "tenants" and "tenant." The reference speaks of "tenant"; but I feel no doubt that the word of which our interpretation is desired is the word "tenants" preceding the word "concerned."

On general principles I should much like to adopt SPENCER, J.'s interpretation. There is no reason why the holder of a rent-free inam should not contribute equally with his neighbour, a ryot paying rent, to the cost of the survey, which is for the benefit of both. And section 10, which governs the case of Government land and speaks of the registered holder, would apparently affect the inamdar equally with the ryot. But we have to interpret the section as it stands ; and I am reluctantly forced to the other view.

It is not of much use referring to other Acts in which the term "tenant" is defined : we have not been referred to any Act in which the word "tenant" is used without special definition and in which it has been held to cover a person who is not liable to pay rent. Nor do I feel justified in placing much reliance on English definitions. What seems to me an insuperable obstacle to the acceptance of the broad interpretation favoured by SPENCER, J., is the occurrence of the word "tenant" near the end of the clause. Here, it clearly means a person who holds land subject to the payment of rent ; and I find it impossible to hold that the legislature used the word "tenant" (or "tenants") in two different senses in the same clause and in such close juxtaposition.

No doubt the charges have to be apportioned, under clause (1) of the section among all the lands surveyed ;

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but it does not follow that a share is recoverable in each case; and it is only clause (3) which makes it recoverable under the Act.

AYLING, OFFG. C.J.

As the learned vakil for respondent points out, a provision of law for the recovery of money has to be strictly construed. I must answer the question in the negative, merely adding that it is worth consideration whether the Act should not be amended in this respect.

KUMARASWAMI, SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree. The word "tenant" ordinarily means a person who holds lands or buildings of another in consideration of a premium paid or rent either in money, kind or service. So far as I am aware, this is the sense in which the term is used in both the Local and Imperial Acts. Wherever a different or extended meaning is intended, the legislature has taken care to define the word "tenant" so as to make it capable of including persons who in the popular sense would not be called tenants or who hold lands absolutely. For example, in the Local Boards Act (Madras Act V of 1884) "tenant" is defined as including

> "all persons who whether personally or by an agent occupy land under a landholder or an intermediate landholder and whether or not they pay rent to such landholder or intermediate landholder, as the case may be."

This is so far as I am aware, the only Madras Act where the word "tenant" is used in a wide sense so as to include persons not paying rent. In the Transfer of Property Act, the Rent Recovery Act and the Estates Land Act, tenancy implies the holding of land on payment of rent or premium.

I do not think it can be said that a grantee of a rent-free inam is a tenant of the zamindar. He is the owner for all practical purposes, and it will be doing violence to the plain meaning of the word "tenant" to say that he is a tenant of the owner of the estate.

I do not think that the English law as to land tenures affords much help in construing the word "tenant" in Indian enactments. Even an absolute owner of land is spoken of as a tenant in fee simple. It would, I think, lead to many anomalies, if we were to hold that every grantee of land in India is a tenant, and it is clear that the legislature in dealing with landlords and tenants did not ordinarily depart from the ordinary and popular meaning of the word "tenant."

It has been argued that the survey of the estate by the zamindar under the provisions of the Survey and Boundaries Act benefited the inamdar just as much as the tenants and there is no reason for making the tenant liable to bear a share of the expense and not the inamdar. This is a good reason for the legislature making the inamdar liable by a definition similar to that in the Local Boards Act of 1884, which was before the legislature when it passed the Survey and Boundaries Act in 1897, or for a provision similar to the Bengal Survey Act of 1875 where rent-free lands are to be deemed to form part of the tenure within the local boundaries of which they are included. It is a rule of construction that ordinary terms and expressions are to be construed as they are understood in common language and that the obvious and popular meaning of the language should as a general rule be followed, and that statutes imposing a burden ought to be strictly construed. I do not think it is a sufficient reason to give the word "tenant" an extended sense simply because a person would otherwise escape a liability, especially when the legislature has in other enactments passed prior to the Surveys Act taken care to make such persons liable by using apt words. It is a question for the legislature whether the Act should not be amended.

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Turning to the section itself, clauses (1) and (2) provide for the apportionment among the lands, which have been surveyed, the whole or any specified portion of the cost of such survey and clause (3) enacts that

"the amount so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if it were an arrear of rent due by a tenant to his landlord."

The object was to enable the landlord to take advantage of the remedies open to him for the recovery of rent and the clause contemplates cases where rent is payable by the party liable. The word "tenant" in the latter portion of the sentence means "a person who pays rent to the landlord" and there is no reason to give the word "tenant" occurring a few words before a different meaning.

I would answer this question referred to us in the negative.

ODGERS, J.

ODGERS, J.—I agree. The question referred to us is whether the word "tenant" in section 20 (3) of Madras Act IV of 1897 includes the grantee of a rent-free inam in a zamindari. The reference is the result of a difference of opinion between SPENCER and RAMESAM, JJ. The clause runs thus:

"The amount so apportioned shall be recoverable by the proprietor from the tenants concerned in the same manner as if it were an arrear of rent due by a tenant to his landlord."

SPENCER, J., held that the word "tenant" in the clause in question had a wider meaning than "lessee" and corresponds to an occupier under any title on the analogy of the use of the word in English Law in combinations such as "tenant in fee," "tenant for life," "tenant for years," "joint tenant," etc. The learned Judge draws attention to the definition of "tenant" in the Local Boards Act, section 3 (xxvii), Madras Act V

of 1884, where it includes all persons who occupy land under a landholder or an intermediate landholder, and whether or not they pay rent to such landholder or intermediate landholder. Reference may also be made to sections 64 (ii) and 73 (third clause) of the same Act. It is, however, to be noted that section 3 begins thus:

"In this Act unless there is something repugnant to the subject or context;"

the definition is therefore confined to the Act. In the Bengal Survey Act (V of 1875), section 17, it is enacted that

"all lands held without payment of rent, not being entered on the Collector's Register of revenue—free tenures of the district—shall, for the purposes of this Act, be deemed to form a part of the tenure within the local boundaries of which they may be included."

This does not define "tenant" and restricts the above definition to the purposes of the Act. It does not appear to me that any positive inference can be drawn from the provisions of other Acts on distinct subjects. No instance occurs to me and none was quoted at the Bar of the use in Indian enactments of the word "tenant" in the English real property sense—a sense derived from the history of the development of tenure in the feudal law which gradually displaced the old allodial holdings. In this case, there is admittedly no relationship of landlord and tenant and it was not argued that the inamdar holds of or from the proprietor in any manner.

For the appellant, reliance was placed on the fact that the first two clauses of section 20 of Act IV of 1897 throw the incidence of the cost on the lands and not on the individual who is to pay and who is only referred to in the third clause. There seems no reason either in law or equity why a holder of a free inam should not for the purposes of the Act be exactly in the same position as a tenant paying rent, but we can only interpret the language of the

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ODGERS, J.

legislature as we find it. On the other hand the use of the words "tenants" and "a tenant" within a line of each other in the same clause is pointed to as suggesting the improbability of the same word being used in two different meanings. It is possible of course to say that the latter use of the word is only illustrative of the manner in which the charge is to be recovered from the individual concerned; if so, the collocation is, to say the least, unfortunate, and in the absence of authority as to the use of the word "tenant" in Indian enactments in the English law sense, I must reluctantly hold that the word "tenants" is confined to those who pay rent to the proprietor. I would therefore answer the reference in the negative.

M.H.H.

APPELLATE CRIMINAL.

Before Mr. Justice Spencer and Mr. Justice Kumaraswami Sastri.

1921, September 14, 16 and 19.

KOCHUNNI ELAYA NAIR (PETITIONER).*

Martial Law—Offence committed within area—Arrest outside area—Legality of arrest—Summary Court appointed under Ordinance—Jurisdiction outside such area—Power of High Court to issue a writ of Habeas corpus—*Section 16, Ordinance No. II of* 1921.

The provisions of the Code of Criminal Procedure are not abrogated or suspended by the introduction of Martial Law and a police officer outside the Martial Law area has authority to arrest without warrant an offender who has committed a cognizable offence within such area.

Per KUMARASWAMI SASTRI, J.—A summary Court appointed under the Martial Law Ordinance cannot try offences committed outside the Martial Law area or hold Court outside such area. The High Court has power, apart from section 491, Criminal Procedure Code, to issue a writ of *Habeas corpus*; and the

* Criminal Miscellaneous Petition No. 409, etc., of 1921.