proclamation. As the records stand at present, we are unable to say whether the allegation of the appellant is true or false. If the proclamation was not settled by the Court the sale would be invalid. As the learned District Judge has not taken evidence in support of the allegations in the petition and as the auction purchasers are not represented here, we think the proper course would be to set aside the order of the District Judge and direct him to restore the application of the appellant to file and dispose of it after taking such evidence as may be adduced by him and other parties to the suit. Costs of this appeal will abide the result and be provided for in the order that will be passed by the District Court.

K.R.

PRIVY COUNCIL.

1926, January 21.

RAJA OF RAMNAD (PLAINTIFF)

v.

KAMID ROWTHEN AND OTHERS (DEFENDANTS).*

[ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT MADRAS.]

Estates Land Act (I of 1908, Madras), sec. 12—Tree patta—Right to cut trees—Measure of damages.

Where an agreement is to be construed as one to pay tirva for the enjoyment of the produce of trees (e.g., palmyra trees), by a person not having any right in the land upon which the trees grow, section 12 of the Madras Act I of 1908 does not apply so as to entitle the licensee to cut down the trees. If he cuts down trees illegally he is liable for their full value.

Quaere, whether section 12 applies where the trees are on land held by an occupancy ryot, but they have been treated in his patta and muchilka as a separate entity.

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* *Present*:—LORD DUNEDIN, LORD SHAW, LORD BLANESBURGH and SIR JOHN EDGE.

RAJA OF RAMNAD v. KAMID ROWTHEN.

CONSOLIDATED APPEALS (No. 29 of 1924) from orders of the High Court (February 24, 1920) reversing decrees of the Court of the District Munsif of Manamadura.

The appellant brought suits in the District Munsif's Court claiming from the respective respondents, who held pattas from him, damages in respect of their having cut and removed certain palmyra trees.

The facts, and the terms of section 12 of the Madras Estates Land Act, 1908, which were material to the suits, appear fully from the judgment of the Judicial Committee.

The Munsif decreed the suits, but upon cross-petitions for revision, the High Court (SADASIVA AYYAR and SPENCER, JJ.), after a remand for further findings, dismissed the suits. The views of the learned Judges appear from the judgment here reported.

De Gruyther, K.C., and *Kenworthy Brown* for the appellant.

Narasimham for the respondents.

The JUDGMENT of their Lordships was delivered by

LORD DUNEDIN.

LORD DUNEDIN.—The plaintiff in the present set of cases is the Zamindar of Ramnad, an estate situated in the Presidency of Madras. The defendants are ryots who are tenants of the plaintiff in virtue of certain pattas. The plaintiff complained that the defendants had cut down trees belonging to him. The trees were palmyra trees, which yield a juice which is tapped from the trees, and, as it makes an intoxicating liquor, has a commercial value. The plaintiff raised separate actions against each alleged wrongdoer in the Court of the District Munsif of Manamadura. The pleading in the case was in the highest degree unsatisfactory and was, as will appear hereafter, the real cause of the unsatisfactory

condition of the case on the appeal before this Board. It may be here parenthetically explained that the ordinary position of a ryot is that he is in possession of the land for agricultural uses, but that he is not entitled to cut down trees. But in Madras there is special legislation dealing with the subject, namely, the Madras Estates Land Act, being Act I of 1908. Section 12 of that Act is in the following terms :

"Subject to any rights which by custom or by contract in writing executed by the ryot before the passing of this Act are reserved to the landholder, every occupancy ryot shall have the right to use, enjoy and cut down all trees now in his holding, and in the case of trees which after the passing of this Act may be planted by the ryot or which may naturally grow upon the holding he shall have the right to use, enjoy and cut them down, notwithstanding any contract or custom to the contrary."

In the definition clause, section 3, sub-section 6, "occupancy ryot" is defined :

"'Occupancy ryot' means a ryot having a permanent right of occupancy in his holding."

The sub-section 15 defines "ryot" :

"'Ryot' means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it."

Sub-section 3 defines "holding" :

"'Holding' means a parcel or parcels of land held under a single patta or engagement in a single village."

Now, what the plaintiff ought to have said in each case was in plain terms that the defendants were not persons to whom section 12 applied, because they were lessees of the trees in terms which made them usufructuaries of the trees, but did not give them the trees as a mere appanage of land let to them, and then to have averred that they had wrongfully cut down the trees. Instead of this, what he did was this (the averments in one case may be taken as a sample of the whole as they

RAJA OF RAMNAD v. KAMID ROWTHEN. — LORD DUNEDIN.

are all in terms practically identical). After averring the cutting down of the trees, he said:

"The defendant, who is bound according to the custom of the village and zamin and according to law to pay compensation to plaintiff for the said trees, has not done so."

To this the defendant (again taking one case as a sample) replied first, by denying that the trees had been cut and, second, by denying the custom alleged. It is thus evident that, so far, the real question as to whether the Act of 1908 applied had not been properly raised. It is true that it had been alleged that the patta was a tree patta. But that allegation had not been pressed home by the appropriate plea, that the result was that the Act did not apply. On the contrary a custom of payment had been set up, which exactly fits the exception mentioned in the opening words of section 12. The parties then went to trial in the Court of the District Munsif of Manamadura. He delivered a judgment. In this judgment he found as a fact that the trees had been cut. He then found in law that, as a tirva or rent was paid for the trees, the trees belonged to the Zamindar and that, therefore, at common law, apart from custom, if the tenants cut the trees, they must pay damages. He then went on to deal with the averment of custom as if it had been an averment of custom, not as to right of payment, which it obviously was, but as to scale of payment, which it obviously was not. He then found that there was no universal custom proved as to scale, and thus it being left to himself to determine the figure of damages, he determined them as 25 years' purchase of the annual rent value of a tree. He did not in his judgment make any mention of the Act of 1908. He granted decrees in all cases for a sum representing the 25 years' purchase of the rental value of the trees cut.

From this judgment an appeal in the form appropriate to such a case from the Munsif's Court, i.e., civil revision petition, was preferred to the High Court of Madras. This was disposed of by MOORE, J. He, in his judgment, after stating the claim, says this :

"These Civil Revision Petitions arise out of a number of small cause suits which were brought by the petitioner the Raja of Ramnad to recover from his tenants the value of palmyra trees on their holdings which had been wrongfully cut and appropriated by the tenants. The value of the trees was claimed at the rate of Rs. 3 per tree in one village and Rs. 6 per tree in the other two villages. In C.R.P. No. 1252 of 1918, the petitioner is the defendant in one of the small cause suits. It was alleged in the plaint that the defendants, who were bound according to the custom of the village and zamin and according to law to pay compensation to the plaintiff for the trees cut, had not done so. The defendants denied having cut the trees and the custom alleged in the plaint and claimed the ownership of the trees. They further contended that the value claimed was excessive. The District Munsif found that the alleged cutting was true and that the value claimed was proper for the trees, viz., Rs. 3 and Rs. 6, and that the holding consisted of trees which were assessed to *tirva*. On the third point, viz., 'Whether the alleged usage was true and what relief was plaintiff entitled to?' the District Munsif held that the proper amount of compensation would 'ordinarily' be the capitalized value of the annual *tirva*, or twenty-five times the annual *tirva*. The findings on the first two points being in plaintiff's favour, the only question for decision in these petitions is whether the method of calculating compensation adopted by the lower Court is correct."

He then mentions the contention of the defendants under section 12 of the Act, but he says no more about it. In other words, he seems to stick to his view that the only question left was the valuation question. He criticises unfavourably the Munsif's view of the 25 years' purchase of the rental value of the trees as the proper measure of damages, a result which, he says, he cannot extract from the proof as to custom, and he then remits

RAJA OF RAMNAD v. KAMID ROWTHEN.

LORD DUNEDIN.

the case to the inferior Court for findings on the following points:

"1. Whether there is a valid custom entitling the landholder to claim compensation for palmyra trees cut by the defendants, without the permission of the landholder? 2. If so, what is the compensation payable by the defendants?"

The case then went back to the lower Court. This time there was a different Munsif. He pronounced a very clear judgment. He said:

"I have to give findings on the following two issues:—

I. Whether there is a valid custom entitling the landholder to claim compensation for palmyra trees cut by the defendants without the permission of the landholder?

II. If so, what is the compensation payable to the defendants?

2. Issue No. I:

I have heard Mr. T. C. Srinivasa Ayyangar, pleader for the plaintiff, the Raja, at great length. I have approached the question in the light of the observations contained in the judgment of the High Court. I would find the issue in the negative.

Issue No. II requires no finding in view of my finding on issue No. I."

He also takes no notice of the Act, but assumes that he had been told that the Zamindar's only right to compensation rests on a custom to receive it.

On the return to the High Court of the findings, the Zamindar presented a note of objections. In these objections he, for the first time, raised definitely the true case as to the application of the Act:

"4. The District Munsif erred in throwing the onus of proof on the plaintiff.

5. The District Munsif erred in assuming that the Estates Land Act had any application to the present case."

The case was then resumed by the High Court with the returned findings and the objections thereto. They, in all the cases, set aside the decree of the lower Court and dismissed the suits. They granted the respondents their costs in the High Court; in one case they directed

that there should be no costs in the lower Court, but in all the other cases they were silent as to the costs in the lower Court. The opinion of the learned Judge who delivered the leading judgment begins with the statement that "the counter-petitioners are the tenants of land on which trees were and are standing." He then goes on to say:

"The remaining questions for consideration are:

(1) Whether the District Munsif was right in allowing as damages not the value of the trees cut, but only 25 times the *tirva* payable and

(2) Whether plaintiff (petitioner) is legally entitled to claim damages at all, in other words, whether the tenants have got absolute right to deal with the trees in any manner without being liable for any damages for so dealing. So far as the first question is concerned, I might at once say that if the tenants are legally liable for damages, they ought to have been made to pay the market value of the trees and not 25 times the *tirva*. But, on the second point, I am of opinion that the defendants are not liable for any damages at all."

After dealing with an argument which seems to have been presented that the right to cut down trees does not include the right to appropriate them, which he negatives, he then comes to the true question of the case. This portion of his judgment must be quoted in full and is as follows:

"Lastly it was argued that the defendants are not ryots holding lands for agricultural purposes, but that they are merely persons who have been allowed to enjoy the produce of the trees on payment of some remuneration to the landholder which remuneration does not fall within the definition of rent in the Estates Land Act, and that therefore section 12 has no application at all. The muchilkas, Exhibit E series, executed by the tenants do not, in my opinion, support this contention. They are all ordinary muchilkas of the kind usually executed by ryots holding land under the Zamindar. The only special feature of these muchilkas is that the fixed rent payable by the ryot who holds the land, calculated on the area of the land, which is described as *Regai* punja, is increased by an amount varying

RAJA OF RAMNAD v. KAMID ROWTHEN

LORD DUNEDIN.

with the number and size of the trees in the holding. Under the definition in clause 1 of section 3 of the Act, agriculture includes horticulture, and the fact that the rent for the land varies with the number of trees standing thereon does not make the ryot a mere licensee enjoying the produce of the trees under the landlord. He is the occupancy ryot of the land itself with the trees thereon, though paying varying rents according to the number of trees existing on the land. (We were told in the course of the argument that the assessment was varied once in six years, according to the number of trees at the time of the periodical settlement.) Reliance was, however, placed on the decision in *Murugappa Chettiar* v. *Ramanathan Chettiar*(1) for the contention that these were not muchilkas for the land held by an occupancy ryot, but that these are agreements for payment of vari or tax payable in respect of the trees held on tree pattas. We have not before us the muchilka executed in that case and if, on a consideration of the terms of that muchilka, it was held that it was an agreement by a licensee to pay *tirva* for enjoying the produce of trees without any *kudiwaram* right in him in the land on which the trees stood, I accept (if I may say so with respect) the correctness of that decision. But, as I said, I am satisfied in this case that the land itself on which the trees stand is held on patta, though the rent payable for that land varied with the number of trees standing on it, owing to a certain amount (varying according to the number of trees) being added to the invariable rent based on the extent of the land. Therefore, the Estates Land Act does apply to the relationship of landlord and tenant in this case."

SPENCER, J., concurs and says as follows:

"The suggestion that section 12 of the Madras Estates Land Act does not apply in this case was put forward on the assumption that the pattas in the suits were purely tree pattas and not pattas for land. But a reference to the muchilkas on the record shows that this is not the case. I agree with my learned brother both on the general question as to the effect of section 12 of the Madras Estates Land Act, and as to the order to be passed in particular cases."

It is therefore quite clear that the case has been decided upon the ground that the ryots were holders

(1) (1914) 1 L.W., 881.

of land on which trees stood, that they had cut trees standing on their own holdings, and that they had the right so to cut them in respect of section 12 of the Madras Act. It is clear also that, had the tenants' right to the trees not depended on the fact that the trees stood on their holdings, but had depended on a separate lease of the trees as trees, whether the trees stood on their holdings or on the holdings of other persons, the learned Judges would have come to the opposite conclusion and would have held that the damages for illegal cutting were to be measured by the value of the trees so cut and, lastly, it is clear that the reason that they held that the trees in question were held as part of the land holdings and not in respect of a separate title was not in respect of any local knowledge as evidenced by proof led, but because they determined the fact as a matter of construction of the leases in question of which the muchilkas or tenants' counterpart were produced. Their Lordships are in entire concurrence with the learned Judges as to the result in law if the trees are held on what may be called separate title. In such a case section 12 of the Madras Act does not apply, and they think that the case cited, *Murugappa Chettiar* v. *Ramanathan Chettiar*(1) was rightly decided. They think also that the result that follows was rightly affirmed by the learned Judges, i.e., that the full value of the trees which had been illegally cut must be paid for.

But their Lordships are quite unable to concur with the reasons of the judgment on the further point. From the reference made to the Exhibit E series of the muchilkas it would seem as if the learned Judges had exclusively directed their attention to a case where there is both land and trees which are included in the lease.

(1) (1914) 1 L.W., 881.

RAJA OF RAMNAD v. KAMID ROWTHEN.

LORD DUNEDIN.

In one case at least, by a comparison and reference, perhaps it is possible to infer that some at least of the trees are on the land let, but that is not the case with all. Moreover there are a large number of muchilkas which deal with trees and trees alone. How can it be possible to deduce from this, as a matter of construction, that these trees are on a land holding of the person to whom the tree right is granted? How can it be told that he holds any land at all? It is matter of common knowledge—and the case already mentioned is an instance—that, in view of the known use of the palmyra tree, leases of what are only the usufruct of the trees as such are granted. Many of the muchilkas produced point to such a lease. But in the judgment they have all been compelled to suffer the fate of the muchilka, which is above mentioned. If the judgment stands, it would be very far reaching and, in granting leave to appeal to the King in Council, the learned Judges seem fully to appreciate that fact. In their Lordships' view, the facts on which the case depends have not been properly found one way or the other.

There are just three situations in which palmyra trees may be held:

(1) They may simply be growing on land which is held by a ryot, though no mention of trees be made in any lease.

(2) They may be growing on land held by a ryot, but they may be let as a separate entity in his lease.

(3) They may be let to a person on whose land they do not grow.

Assuming trees to be cut without the leave of the landholder, the position in law as regards 1 and 3 seems simple.

As regards (1) section 12 of the Act of 1908 applies and the landholder has no claim.

As regards (3) section 12 of the Act of 1908 does not apply and the landholder has a claim for the full value of the trees so cut.

As regards (2) their Lordships will not express an opinion because, as yet, there is no determination of the question, so far as they know, by the Courts in India, and they would wish such a determination before coming themselves to a conclusion.

But as regards the cases in this appeal, there are no materials for ascertaining positively in regard to the 30 separate cases, in which of the three categories each case falls. They cannot be taken in a block. Each case stands on its own facts. Their Lordships have, therefore, come to the conclusion that these cases must go back to the Courts in India to determine on evidence of fact in each particular case into which category it falls and, in accordance with that determination, to pronounce or refuse decrees in each particular case. As regards costs, for the reasons stated in this judgment, their Lordships consider that the confusion into which the cases have fallen is largely due to the inadequate pleading of the plaintiff. At the same time the defendants ought not to have denied the cutting—a fact which has been determined against them. Their Lordships, therefore, think that the case should be remitted as aforesaid, that the respondents should have the costs of the appeal before this Board, and in each of the Courts below, except the costs of the original inquiry before the first Munsif; that, in that inquiry in the case of all defendants who denied cutting of trees, there should be no costs to either party; and that the costs of the future progress of the case should be determined by the Courts

RAJA OF RAMNAD v. KAMID ROWTHEN.

LORD DUNEDIN.

in India. They will humbly advise His Majesty to issue an order in accordance with these views.

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

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

A.M.T.

PRIVY COUNCIL.*

1906, January 28.

HAJEE SHAKOOR GANI, SINCE DECEASED (DEFENDANT)

v.

T. S. SABAPATHI PILLAI (PLAINTIFF).

[ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT MADRAS.]

Indian Tariff Act (VIII of 1894), sec. 10, amended by Act IV of 1916—Sale of imported sugar—Subsequent decrease of tariff value—"Duty of customs."

The notification under Act IV of 1916, section 3, sub-section (2) of a decrease in the "tariff value" of an article is not a decrease in the "duty of customs" within the meaning of section 10 of Act VIII of 1894 so as to entitle the buyer under that section to a reduction of an equivalent part from the price which he has contracted to pay. *Probhudas* v. *Ganidada*, (1925) I.L.R., 52 Calc., 644 (P.C.); 52 I.A., 196, followed.

Judgment of the High Court (I.L.R., 47 Mad., 222) reversed.

APPEAL (No. 118 of 1924) from a decree of the High Court in its Appellate Jurisdiction (September 12, 1923) affirming a decree of that Court in its Original Jurisdiction (August 14, 1923). Between December 14 and 19, 1922, the respondent under five written contracts bought from the appellant, since deceased, a large

* *Present*: VISCOUNT DUNEDIN, MR AMEER ALI and SIR ARTHUR CHANNELL.