APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Wallace.

1926, September 2.

VELLAYAPPA CHETTY AND 3 OTHERS— (SECOND DEFENDANT'S LEGAL REPRESENTATIVES), APPELLANTS

v.

SUBRAMANIAM CHETTIAR AND 4 OTHERS— (PLAINTIFFS 1 AND 2 AND DEFENDANTS 1, 3 AND 4), RESPONDENTS.*

Madras Estates Land Act (I of 1908), sec. 3 (4) (a) and (f)—Wells dug at very small cost and planting coconut gardens, not improvements.

Wells constructed by digging small pits in sandy soil at a very small cost, in which underground and surface water naturally collects are not "improvements" within section 3, clause (4) (*a*) of the Act. Coconuts are not "fruits" and planting coconut gardens is not planting "fruit gardens" within section 3 (4) (*f*) of the Act and hence it is not an improvement within the section.

Second Appeal No. 571 of 1916 explained and dissented from.

SECOND APPEAL against the decree of the District Court of Rāmnād in Appeal Suit No. 975 of 1920 preferred against the decree of the Court of the Special Deputy Collector of Rāmnād at Manamadura in Summary Suit No. 2580 of 1918.

Section 3 (4) of the Madras Estates Land Act is as follows:—

"Improvement" means with reference to a ryot's holding any work which materially adds to the value of the holding, which is suitable to the holding and consistent with the character thereof, and which if not executed on the holding, is either executed directly for its benefit or after execution is made directly beneficial to it and subject to the foregoing provisions, includes—

(*a*) the construction of tanks, wells, water channels, and other works for the storage, supply, or distribution of water for agricultural purposes;

* * * * *.

* Second Appeal No. 433 of 1924, etc.

(*f*) the planting of fruit trees and fruit gardens.

M. Patanjali Sastri with *C. Rama Rao Saheb* for appellants.

B. Sitarama Rao with *V. Ramaswami Ayyar* for respondents.

JUDGMENT.

DEVADOSS, J. DEVADOSS, J.—In this batch of Second Appeals the appellants are the ryots. The landholder brought suits under section 77 of Act I of 1908, The Madras Estates Land Act, for arrears of rent for certain faslis. The appellants contended that the rent claimed in respect of coconut plantations was more than the rent they were bound to pay and that they were liable to pay only at the punja rate. Both the lower Courts found against the contentions of the appellants. Two points are raised in these appeals. The first is, that the coconut plantations in respect of which the alleged higher rent is claimed are an improvement within the meaning of section 3, clause (4) of the Act and the second is that the coconut plantations come within clause (6) of the same sub-section. Both the Courts have found that the wells were dug at the cost of a few annas, and the digging of such wells was not an improvement within the meaning of section 3 (4). The evidence is that two coolies working till noon could dig a well. The soil is sandy and the water is almost within a foot or two from the surface. When coconut seedlings are planted, small pits are dug which are euphemistically known as wells and water is baled out from these wells. The coconut seedlings require water for about five or six years after plantation. The appellant's contention is that the sinking of these wells is an improvement within

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section 3, clause (4) of the Act. Clause (4) is in these terms :

"Improvement means with reference to the ryot's holding any work which materially adds to the value of the holding, . . . "

The question is whether these wells have materially added to the value of the holding. The water of each pit is said to be sufficient to water 60 or 70 plants and twigs of tamarind trees and cotton stocks are placed round the wells so as to prevent the earth or the sand from falling in. The real test of the improvement is the rise in value of the holding by reason of the improvement. Could it be said that by having a few pits here and there in a field, the cost of digging which is not more than eight annas, the value of the holding would be enhanced ? It is impossible to hold that these pits would in any way enhance the value of the holding. The soil itself being sandy it is fit for coconut plantation. It is not by digging wells alone that the appellants have been able to grow coconut plantations. The case would be different if the wells are dug and crops which would not thrive but for the water of the well have been raised. Wells are something more than mere pits which could be dug by a cooly within one hour or two hours or as it is done in some places by removing the sand with the feet. It cannot be said that small pits one or two feet deep for the purpose of baling water would enhance the value of the holding. Reliance is placed by Mr. Patanjali Sastri on the observation of a bench of this Court in Second Appeal No. 571 of 1916. The learned Judges observe :

"We can see no reason to restrict the meaning of 'improvement' to a permanent improvement, for temporary improvements can materially enhance the value of the holding for the period during which they are in existence."

On looking into the papers in that case it appears that the District Judge found that there was no improvement as the wells were sunk at a trifling cost. In paragraph 3 he says:

"His claim has been rightly disallowed even though it may be that the wells in question being temporary pits sunk at a trifling cost are not 'improvements' within the meaning of the term as defined in the Act section 3 (4) since they do not materially add to the value of the holding."

The learned Judges observe:

"As regards the charge for Vanpayir the Judge finds in Second Appeal No. 169 of 1917 that the temporary wells by aid of which crops were grown are improvements within the meaning of section 13 (3) of the Estates Land Act. We accept this finding and would apply it also in the other cases in which no such finding is given, for we can see no reason to restrict the meaning of improvement to a permanent improvement, for temporary improvements can materially enhance the value of the holding for the period during which they are in existence."

It is difficult to understand how they considered the finding of the District Judge as one of improvement when he definitely found that they were not improvements as they did not materially enhance the value of the holding. In this case it cannot be said that these wells have in any way added to the value of the lands in the possession of the appellants.

It is next contended that coconut trees are fruit trees within the meaning of clause (*f*) of section 3 (4). The clause is "planting of fruit trees and fruit gardens." What are "fruit" trees is not easy to define. The ordinary meaning of a fruit tree is a tree cultivated for its fruit. The question is, is the coconut palm a fruit tree? No doubt the coconut is used for various purposes. But can it be called a fruit tree as is meant in clause (*f*)? A fruit tree is a tree the fruit of which is edible as such; every tree which bears fruit cannot be called a fruit tree. It is well known that in several parts of the

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country coconut palms are grown not for the sake of the fruit but for tapping them for toddy and so is the palmyra palm in the southern districts of this Presidency. Where the tree is not grown for its fruit to be used as such it would not be right to hold that that tree is a fruit tree. With some hesitation we hold that the coconut palm is not a fruit tree within the meaning of clause (*f*) of sub-section (4) of section 3.

In this view it is unnecessary to consider at length the contention of Mr. Sitarama Rao for the respondents that the assessment or the rent of the land in this estate is on the basis of the crops and there is no such thing as punja rate. We are unable to accept this contention. Lands are classified as nanja and punja and there are certain well-known crops which are punja crops and the mere fact that some crops are charged at a certain rate would not be sufficient to uphold the contention that there is no such thing as punja rate. The patta produced in this case and the oral evidence go to show that there is a well-recognized rate as punja rate. Even punja is classified in this estate as *thirva-pathu* punja and *varapathu* punja. It is unnecessary to discuss this question any further. The defendants not having made out that the rent demanded is higher than the rent which they have to pay for the coconut plantations they are not entitled to any relief. In the result the Second Appeals fail and they are dismissed with costs.

WALLACE, J.

WALLACE, J.—I agree and only wish to add my own reasons on the two chief points.

As regards the question whether the pits dug are an improvement, it has to be noted that an "improvement" means something which "materially adds to the value of the holding." Now this is a point on which we cannot speculate. It ought to be a matter of evidence,

and I can find no evidence thereon. The sort of evidence one would expect would be evidence of persons who consider that the market value of the holding has gone up appreciably in consequence of the making of these pits, and who would therefore be prepared to pay appreciably more for the holding after the pits were made than before they were made. But of this sort of evidence there is none. I agree therefore with my learned brother that we cannot find these pits are an improvement within the meaning of section 3 (4) (*a*) of the Madras Estates Land Act.

The next point is whether the planting of coconuts is a planting of fruit trees and fruit gardens within the meaning of section 3 (4) (*f*). "Fruit" of course is a most elastic term and can be applied to include berries (even coffee berries) or nuts, crab-apples or tomatoes, beans, or peppercorns, pumpkins, or plantains, and even grains and pulses. Nothing can be gathered from the "dictionary" meaning of the word as to its meaning in this definition, and we have to try and gather otherwise what the legislature meant. I think that it must at least have meant some exceptional or unusual crop, a change from the usual routine of crops, the planting of something more valuable than usual and therefore a kind of crop which is not in the ordinary sense a crop usually cultivated as a crop. Now I cannot regard coconuts as such a crop. Over large tracts of country in this Presidency it is the normal crop; in parts, the only crop suited to the soil. I do not imagine that the legislature intended that the planting of a normal crop should be styled an improvement. That it is regarded as a normal crop in the locality from which the suits arise is clear from the pattas filed, which show that areas deliberately grown with coconuts are charged per area, although isolated trees probably growing on bunds, etc.,

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are charged per tree. This at least is the explanation of the "patta" sentences given by the respondent, and I am not prepared to say that it is wrong. I therefore agree with my learned brother that, as at present advised, we cannot say that the planting of coconuts on the suit lands is an improvement within the meaning of section 3 (4) (*f*).

N.R.

APPELLATE CIVIL.

Before Mr. Justice Odgers and Mr. Justice Wallace.

1926, March 9.

In re PUNYA NAHAKO AND THREE OTHERS (DEFENDANTS—RESPONDENTS IN S.A. No. 641 OF 1921), PETITIONERS.*

Madras Court Fees Act (V of 1922)—Review—Change in the Court Fees Act before date of review—Subject matter of review and court-fee thereon—Arts. 4 and 5 of Schedule I of the Court Fees Act (VII of 1870).

A petition for review of an original or appellate decree must be valued on the reliefs prayed for in the petition as if the petitioner were then filing a plaint or memorandum of appeal for those reliefs. (1872) 7 M.H.C.R., Appendix, page 1 and *In re Manohar G. Tambekar*, (1880) I.L.R., 4 Bom., 26, followed; *Nandilal Agrani* v. *Jogendra Chandra Dutta*, (1923) 28 C.W.N., 403, not followed.

If between the date of the plaint or the appeal and the date of filing the petition for review, there has been a change in the Court Fees Act increasing the fee payable *ad valorem*, the petitioner must pay at the increased rate.

A defendant who wishes to file a review of a decree in a second appeal filed by the plaintiff, which allowed in favour of the plaintiff a suit for land and three years' mesne profits prior to date of suit, must pay court-fee not only on the same but also on mesne profits between the date of the plaint and the date of filing the second appeal. *Brahmayya* v. *Lakshminarasimham*,

* Civil Miscellaneous Petition No. 140 of 1925.