Apart from that, it appears to me that the Chief Presidency Magistrate was unduly lenient in making the sentences in these two cases run concurrently. There were two distinct house-breakings and it is a mistake to treat such offences leniently. I direct that the sentence in C.C. No. 15013 do come into force on the expiry of the sentence in C.C. No. 15014 of 1928.

B.C.S.

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## PRIVY COUNCIL.*

1929, July 1.

BOMMADEVARA NAGANNA NAIDU (SINCE STRUCK OUT) AND ANOTHER (PLAINTIFFS), APPELLANTS,

*v.*

YELAMANCHILI PITCHAYYA AND OTHERS (DEFENDANTS)—RESPONDENTS.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

*Estates Land Act, Madras (I of 1908), ss. 3 (16), 12—Lease before Act—Reservation of trees—Effect and duration of reservation—Dry pasturage waste—Covenant to pay increased rent on cultivation—Right to inclusion in patta.*

Where land subject to the Madras Estates Land Act, 1908, was leased before the Act to a ryot who executed a contract by which all rights in trees on the land were reserved to the land-holder, the effect of section 12 of the Act is that the reservation continues as to trees on the land at the passing of the Act during the occupancy rendered permanent by the Act, and not merely during the term of the lease, the ryot having the right to use, enjoy and cut down only trees which after the passing of the Act are planted by him or grow naturally.

There is no provision in the Act enabling a land-holder to claim an enhancement of rent or any additional payment for trees, the right to which he has lost by the operation of the Act.

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* *Present*:—Lord BLANESBURGH, Lord TOMLIN and Sir BINOD MITTER.

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Where a lease to a ryot before the Act describes part of the land leased as "dry pasture waste" but provides that if any part of it is cultivated, the rent thereon shall be increased to that provided for "cultivation" land, there is not thereby a reservation of that part as pasturage, and, subject to the exceptions in section 3 (16), it is ryoti land which the ryot is entitled to have included in his patta, even though it has never been cultivated.

*Sreemantha Raja Yarlagada Mallikarjuna Prasada Naidu* v. *Subbiah*, (1919) 39 M.L.J., 277, distinguished.

APPEAL (No. 115 of 1924) from a decree of the High Court (October 28, 1919) varying a decree of the District Court of Kistna at Masulipatam which affirmed a decree of the Court of the Suits Deputy Collector.

The suit was brought by the father of the appellants against defendants now represented by the respondents for a decree directing the defendants to accept a patta tendered to them by the appellants under the Madras Estates Land Act, 1908, and to execute a corresponding muchilika.

The questions arising were (1) as to the effect of section 12 of the Act where a ryot had contracted before the Act that all rights in trees on his holding should belong to the land-holder; (2) whether 297 acres included in a lease before the Act were ryoti land within section 3 (16) and section 6 of the Act.

On the first question, the High Court (SESHAGIRI AYYAR and NAPIER, JJ.), reversing the District Judge, held that the reservation did not operate beyond the term of the lease, and on the second they held, upholding the lower Courts, that the lands were ryoti lands.

The facts and the terms of section 12 of the Act appear from the judgment of the Judicial Committee.

*P. V. Subba Rao* for second appellant.

*Dunne, K.C.*, and *Narasimham* for the respondents.

The JUDGMENT of their Lordships was delivered by

Lord BLANESBURGH.—There are two questions raised by this appeal: they both lie within the narrowest compass; the second of them barely survives to come before the Board, so complete has been judicial agreement upon it in India, while the determination of the first, which now alone is serious, depends upon the construction of a few words in a single section of a statute. Yet the plaint in the suit was issued as long ago as the 18th October 1912, and it is nearly seventeen years thereafter that these short questions reach the Board for final determination, and, in the result will now be settled as they were settled by the Revenue Court in India nearly fifteen years ago. In the course of the proceedings not only has the plaintiff died, but one of his legal representatives, originally appellant, has dropped out, leaving it to the plaintiff's other representative, the second appellant, by himself to bring his case to a hearing. Not the least important of their Lordships' duties in disposing of the appeal has been the task of determining how the costs thrown away as the result of well-nigh interminable proceedings in India should now be borne.

The two appellants are the sons and legal representatives of the original plaintiff, the late Raja of North Vallur. On the 6th June 1901, the Raja granted to one Ramayya Garu, father of the respondents, for a term of ten years, expiring Fasli 1320, a lease of some 1,363 acres of land in the village of Narayanapuram. Prior to this lease in his favour, Ramayya Garu had, as it is now agreed, no occupancy or other rights in the holding, which, but for the passing of the Madras Estates Land Act, 1908, would in ordinary course have reverted to the Zamindar on the expiry of the lease.

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Of the acres comprised in it, some 843 were entered as being in cultivation and 520 as being dry pasture waste. The annual rental for the whole was fixed at Rs. 1,784–13–0, representing, so far as the "cultivation" lands were concerned, a rent of Re. 0–14–2 per acre, and for the "dry pasture waste" a rent of 8 annas per acre. The lease, however, contained a provision, much relied upon by the appellant in support of his second ground of appeal, that if the lessee raised dry cultivation on the dry pasture waste he had to pay cist upon the land so cultivated at the higher rate of Re. 0–14–2 per acre as well as expenses.

The main, if not the only real, question now at issue between the parties is as to their respective rights in what the District Judge, at one stage of the case, described as an immense belt upon the holding of paying trees—comprising at least 8,000 palmyras and date palms fit for tapping, yielding a substantial revenue, and estimated by a succeeding District Judge to be of a capital value of roughly Rs. 34,000. By the lease the Raja or Zamindar reserved to himself full rights in regard to all these trees. The lessee was "not in the least to be entitled to them"; as the cist of all the trees standing on the lands was not included in the rent reserved, the lessee was not to raise any objection whatever to the Zamindar dealing with the same. And, as a matter of fact, these trees during the term continued to be let by the Zamindar to other persons for tapping at rents yielding for him a substantial revenue. It was not contested before the Board that in these circumstances, the possession of and all rights over the trees remained during the pendency of the lease in the Zamindar, and that no payment whatever in respect of them was included in the cist thereby reserved.

In that state of things and while the lease was still current, the Madras Estates Land Act, 1908, became law. This suit is concerned with the changes by the passing of that Act effected in the relations of the Zamindar as lessor on the one hand, and the respondents, who by the death of their father had then become entitled to the lease, on the other, in respect of the subsequent property rights, first, in the trees—the important question—and next in the "dry pasture waste," now at all events a subordinate matter.

It will be convenient to call attention at once to the provisions of the statute relevant to the consideration of these two questions.

In the Act which came into force on 1st July 1908, an estate means amongst other things any permanently settled estate or temporarily settled zamindari (section 3 (2) (*a*)); that is to say, it extends to the estate or zamindari of the Raja of North Vallur. "Holding" (section 3 (3)) means a parcel or parcels of land held under a single *patta* or engagement in a single village. In other words, the lands included in the lease of 1901 are by that term aptly described. *Ryoti* land means cultivable land in an estate other than private land, but does not include, *inter alia*, tank-beds (section 3 (16)). *Ryot* means a person who holds for the purpose of agriculture *ryoti* land in an estate on condition of paying to the land-holder the rent which is legally due upon it (section 3 (15)). With these terms so defined, section 6 provides that, subject to the provisions of the Act, every *ryot* then in possession of *ryoti* land situate in the estate of a land-holder shall have a permanent right of occupancy in his holding, while section 9 enacts that no land-holder shall as such be entitled to eject a *ryot* from his holding otherwise than in accordance with the

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provisions of the Act. Section 12, upon which much turns, is textually as follows:—

"Subject to any rights which by custom or by contract in writing executed by any *ryot* before the passing of this Act are reserved to the land-holder, 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."

Section 24 provides that the rent of a *ryot* shall not be enhanced except as provided by the Act. Section 28: that in all proceedings under the Act the rent or rate of rent for the time being lawfully payable by a *ryot* shall be presumed to be fair and equitable until the contrary is proved. Section 30 enables a landlord to institute proceedings for enhancement of rent before the Collector on certain stated grounds and no others. By section 50 (2), every *ryot* is entitled to call upon his land-holder to grant him a *patta* for any current revenue year, and every land-holder is entitled to call upon his *ryot* to give him a *muchalka* in exchange. The proper contents of the *patta* and *muchalka* are detailed in section 51, and after provision made by section 54 for the tender of a *patta* by the land-holder, section 56 provides—and it is under this section that the present suit was instituted—that when a *ryot* for one month fails to accept the *patta* tendered to him and to give a *muchalka* in exchange, the land-holder may sue before the Collector to enforce acceptance of such patta.

As their Lordships have already observed, the lease of the 6th June 1901 was still current when the Estates Land Act came into force. The effect of the statute, as will have been seen, was at once to give to the respondents a permanent right of occupancy in their holding so far as that consisted of *ryoti* land, and at once to supersede

many of the provisions of the lease then current. Notwithstanding this, however, the parties until the expiry of the term apparently allowed their relations towards each other to be regulated by the lease, and it was not until after Fasli 1320, that the Raja tendered to the respondents for the year 1912 a *patta* in respect of such part of the original holding as he conceived himself bound to include in it. On the refusal of the respondents to accept the *patta* tendered and to execute a proper *muchalka*, this suit was, under section 56 of the Act, brought by the Raja to enforce his statutory rights in these matters.

The refusal of the respondents to accept the tendered *patta* was due to the fact that in their view its terms were, mainly in two respects, improper.

First, there were included in it the provisions of the lease already referred to, whereby the trees on the holding were reserved to the land-holder, and the respondents objected that, by virtue of section 12 of the Act, the *patta* should have left with them the right to use, cut down and enjoy all trees in their holding.

Secondly, there were excluded from the *patta* the 520 acres of dry pasture waste which had been included in the lease. The respondents claimed that this acreage should remain part of their holding as being in fact cultivable and therefore *ryoti* land within the meaning of the Act.

It will be convenient to deal in their order with these two objections to the *patta*, showing incidentally how each of them fared in the Courts in India.

First, as to the trees, the Deputy Collector in his judgment of the 17th August 1914 in the Revenue Court, expressed the opinion that, as the Zamindar had reserved his right to them by written contract, he was entitled, under section 12 of the Act, to continue

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to reserve the right by the suit *patta*, limited, however, to the trees which existed before the Act and not extending to any which might have been planted by the respondents or might naturally have grown upon the holding since its passing. The learned District Judge, on appeal on this point by the respondents, took the same view, and by decree of the 22nd December 1916, dismissed their appeal from the Collector's judgment.

On further appeal, however, to the High Court at Madras, the learned Judges there took a different view, which they expressed in a judgment of the 22nd April 1918. Under section 12 of the Estates Land Act, the tenant, they said, was, subject to custom or written contract, entitled to the trees on payment of rent to the land-holder, and in this case the reservation of the trees in the lease held good, but, in their opinion, only for the period of the lease. The reservation was no longer subsisting at the time of the tender of the *patta*, and it ought not accordingly to have been retained therein. Other reasons given by one of the learned Judges in support of the same conclusion have not been relied on before the Board, and need not be further alluded to.

In the result the learned Judges of the High Court thinking that the trees must be included in the holding, but that it was allowable under the Act to charge the respondents with a cist in respect thereof, directed an enquiry to ascertain the proper amount of such cist, and after prolonged and elaborate proceedings to that end, to which for the moment their Lordships do not further allude, the High Court, in a final judgment on the 28th October 1919, fixed the amount payable by the respondents in this behalf at a single payment of 5 annas in respect of each tree, and in other respects gave effect

to their judgment of the 22nd April 1913. And of all of this the appellant now complains.

The question turns, it will be seen, upon the meaning to be attached to the introductory words of section 12 of the Act: "Subject to any rights which by custom or by contract in writing executed by any *ryot* before the passing of this Act are reserved to the land-holder," and it may be conceded that, as a matter of first impression, the view of these words taken by the High Court is attractive enough. There is, on the face of them, no obvious reason why the reservation should extend beyond the duration of the contract by which it is made. But this first impression disappears on a closer examination of the clause. The section is certainly dealing with a possession terminable when the Act came into force and converted into a permanent right of occupancy by section 6. It is contemplating that as an incident of the terminable possession, rights with respect to the trees on the holding might have been reserved to the land-holder either by custom or by contract. It provides that where the reservation is by custom, it, so far as existing trees are concerned, is to remain effective throughout the whole of the occupancy, by the Act made permanent. So much, it was conceded in argument, was the effect of the section. But if reservation by custom was so long operative, why, so far as the section is concerned, should the result be different when the reservation had been made by contract? A reservation by custom is in this connexion surely no more than this, that in places where the custom obtains such reservation is conventional without being expressly made, in contra-distinction to places where no such custom exists—as, for example, in the zamindari of North Vallur, in which case the reservation, if it is to be operative, must be expressed as part of the contract.

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But in each case the reservation, when not qualified, will be operative for precisely the same period of time and no longer—that is to say, until, on the expiry of right to possession by the tenant, the holding reverts to the Zamindar. Accordingly, as might from this point of view be expected, the section makes no distinction in the result between a reservation made by custom and one made by contract, and in their Lordships' judgment, the true conclusion is, that where the reservation, however constituted, is conterminous with the previously limited possession, it remains, except with regard to trees subsequently planted by the *ryots* or naturally grown upon the holding, operative throughout the occupancy made permanent by the Act.

It would appear that the learned Judges of the High Court came to the conclusion they did in this matter in the belief that it was open to them under the Act to charge the respondents with a suitable payment in respect of the trees which for the first time by virtue of the Act became theirs. At a later stage, however, the learned Judges themselves were less confident of the correctness of this view, which is, as it seems to the Board, mistaken. Their Lordships can find no provision in the Act enabling the land-holder to claim an enhancement of rent or any additional payment for his lost trees. Accordingly, if the view of this section taken by the High Court were correct, its effect in the present case must be altogether to deprive the land-holder, without any kind of compensation provided, of property of great value, and its effect would be similar in many other cases. A construction of the section leading to such a result is not lightly to be entertained, and, in their Lordships' judgment, is not here called for. On this question, therefore, the Deputy

Collector, supported by the learned District Judge, reached, in the view of the Board, the true conclusion.

The respondents' second objection to the *patta* was the exclusion therefrom of the 520 acres, and this objection can be dealt with more briefly. Upon the evidence taken before him, the Deputy Collector on the 17th August 1914, found that of the 520 acres in question, some 222 acres were tank-bed land, and that their exclusion from the *patta* was, in consequence, justified under the Act. He held, however, in a most careful judgment, that the remaining 297 acres should be included as being "cultivable" land, although it had never in fact been cultivated, and this view of the Deputy Collector, although, so far as it was against them, it has been contested by both parties throughout the Courts in India, has been upheld in all of them. Before the Board, the respondents no longer contended that the tank-bed land should be included in the *patta*, but the appellant, relying for his contention upon the case of *Sreemantha Raja Yarlagada Mallikarjuna Prasada Naidu* v. *Subbiah*(1), still urged that the remaining 297 acres were given only for pasturage and not for cultivation, that, like the tank-bed lands, they should remain excluded from the *patta*, the provision of the lease already referred to, which raised the rent per acre to Re. 0-14-2 on the extent cultivated, being meant to serve as a penal rent against the land being improperly used for cultivation purposes. Their Lordships cannot accept this argument. They prefer the explanation of the provision referred to, given by the Deputy Collector, which they give in his own words:—

"The reason why an alternative rate, *i.e.*, a lower rate, was conceded in case of non-cultivation was apparently due to the facts that the land was waste before, that it would take

(1) (1919) 39 M.L.J., 277

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some years before it could be reclaimed and brought under cultivation, and that it would be a hardship on the lessee if he were not allowed to pay a favourable rate till then. He was not, therefore, required to pay the full rate immediately."

In their Lordships' judgment accordingly this portion of the appellant's appeal entirely fails, and in the result the suit *patta* as it was adjusted by the Deputy Collector on the 17th August 1914 was rightly adjusted, and the subsequent attempts on both sides to have its terms varied have been misconceived.

In that state of things a very serious question arises as to the costs of these attempts. Their Lordships have considered this question very carefully, inquiring how far these costs have been occasioned by mistaken views contended for by one side or by the other. For the costs thrown away by the prolonged inquiries to ascertain the proper sum to be paid in respect of what may be called the suit trees, the respondents are mainly, if not entirely, responsible. For the costs thrown away in ascertaining what may again be described as the appealable value of the trees, they were in the view of the Board, entirely responsible. The increase again in the costs throughout by the appellants' mistaken contention as to the cultivatable lands has been relatively slight. In the result their Lordships have reached the conclusion that, no interference being made with the order as to costs in the decree of the Revenue Court of the 17th August 1914 or in that of the District Court of the 22nd December 1916 the justice of the case will be met if the respondents pay three-fourths of the subsequent costs incurred by those representing the original plaintiff or his estate, whether in the High Court, in the District Court, or on this appeal.

In the result accordingly their Lordships will humbly advise His Majesty that this appeal be allowed; that the order of the High Court of the 28th of October

1919 except in so far as it affirms the decree of the District Court of 22nd December 1916 be discharged, and that the last-mentioned decree be restored.

The respondents must pay the costs already specified.

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

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

A.M.T.

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## APPELLATE CIVIL—FULL BENCH.

*Before Sir Murray Coutts Trotter, Kt., Chief Justice, Mr. Justice Ramesam, Mr. Justice Odgers, Mr. Justice Venkatasubba Rao and Mr. Justice Mackay.*

1928, October 12.

P. M. A. VELLIAPPA CHETTIAR AND ANOTHER (PLAINTIFFS), APPELLANTS,

*v.*

SAHA GOVINDA DASS AND FOUR OTHERS (DEFENDANTS), RESPONDENTS.*

*Letters Patent (Madras), cl. (12)—Contract in Madras for sale of land situate outside Madras—Parties resident in Madras—Suit by purchaser for specific performance—If "suit for land", and not cognizable by High Court on Original Side.*

A suit by a purchaser of lands situate outside Madras for specific performance of a contract to sell, made in Madras, by parties resident therein, is not a suit for land within the meaning of clause (12) of the Letters Patent (Madras), and such a suit is cognizable by the High Court in its Ordinary Original Civil Jurisdiction.

*Ramdhone Shaw* v. *Nobumoney Dossee*, (1865) 1 Bourke, 218.

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*Original Side Appeal No. 95 of 1926.