APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Anantakrishna Ayyar.

SREE VENUGOPALA RICE-MILL AND OTHERS (DEFENDANTS 1, 3, 5, ETC.), APPELLANTS,

1929, December 13.

v.

RAJAH OF PITTAPURAM AND OTHERS (PLAINTIFF AND DEFENDANTS 2, 4 and 38), RESPONDENTS.*

Madras Estates Land Act (I of 1908), ss. 3 (11) and (15), 56, 151 and 189—Sale by ryot of a portion of his holding—Agreement by purchaser with zamindar to erect buildings thereon for working a rice-mill, for a higher rent—Tender of patta to purchaser for higher rent—Refusal to accept such patta—Suit by zamindar for specific performance of agreement in a Civil Court—Jurisdiction of Civil Court to entertain suit—Validity of agreement.

A purchaser from a ryot of a portion of the ryoti lands in his holding, agreed with the zamindar that he should be allowed to erect buildings thereon for the purpose of working a rice-mill, on payment of a higher rent than what was originally payable for such lands as agricultural lands. The zamindar, having accepted the proposal, caused the subdivision of the lands from the main holding and registered the same separately in the purchaser's name. On the latter refusing to accept the patta tendered for the higher rent, the zamindar sued the purchaser in a Civil Court for the specific performance of the agreement. On objection being taken to the jurisdiction of the Civil Court to entertain the suit,

Held, that the defendant was not a ryot within the definition in section 3(15) of the Madras Estates Land Act, as he did not hold ryoti lands for the purpose of agriculture; that the amount agreed to be paid by him was not rent; nor was there any question of enhancement of rent; nor was the suit one for enforcement of patta falling under section 56 of the Act, which did not apply to the case, and consequently the Civil Court had jurisdiction to entertain the suit.

* Second Appeal No. 594 of 1926.

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Anantakrishna Ayyar, J.—There is nothing in the Madras Estates Land Act which prevents the landholder and a tenant from entering into a contract with each other that the land should in future be held or used, not for agricultural but building purposes.

SECOND APPEAL against the decree of the Court of the Subordinate Judge of Rajahmundry in Appeal Suit No. 21 of 1925, preferred against the decree of the Court of the Principal District Munsif of Rajahmundry in Original Suit No. 569 of 1923.

The material facts appear from the judgment.

P. Somasundaram for appellants.

Advocate-General (*A. Krishnaswami Ayyar*) for first respondent.

JUDGMENT.

WALLACE, J.

WALLACE, J.—The facts necessary for the disposal of this appeal are: The defendants are the proprietors of a rice-mill. They purchased for the purpose of erecting and working a mill 3·26 acres of S. No. 179 in the suit village which lies within the estate of the Zamindar of Pithapuram, who is the plaintiff. The defendants' vendor was the ryot who held S. No. 189 on patta from the zamindar. When the zamindar's *thanedar* informed the defendants that buildings should not be erected on ryoti land, the defendants petitioned the zamindar and came to an agreement with him that they should be left undisturbed promising to pay him three times the ordinary cist. The zamindar accordingly ordered his officials to subdivide the 3·26 acres from the main holding and have that registered as a separate holding in the names of the defendants, and directed that a draft patta and a muchilika should be prepared. When the muchilika was offered to the defendants, they refused to accept it, on the ground, that the zamindar could not charge them more than the ordinary cist. The

plaintiff has accordingly filed this suit for specific performance of the agreement. Both the lower Courts have decreed the suit and the defendants appeal.

Clearly on the equities they have no case, but they stand on the technical ground that this suit is, in effect, one to enforce a patta and therefore cannot be brought in a Civil Court. The answer to this contention seems to me to be that the defendants are not "ryots" within the definition of that term in the Madras Estates Land Act. They are not persons who ever held or are now holding this ryoti land under the plaintiff for the purpose of agriculture. They never wanted so to hold it. They did not buy the land for that purpose. Their avowed purpose in purchasing the land was for erecting the mill upon it, and their arrangement with the plaintiff was that they should be allowed to retain it for building purposes and they have in fact built upon it. In these circumstances, it seems to me impossible to hold that the defendants are ryots within the definition in the Act. Since they are not ryots, whatever recognition the zamindar has made in the matter of consenting to the subdivision of the land and to its being held under him for rent is not a recognition by him of the defendants as his ryots. It does not advance the case of the defendants that they purchased the land from a ryot. Whether the zamindar chooses to eject that ryot under section 151 because he has impaired the value of his holding for agricultural purposes by sale of 3·26 acres of it to the defendants is a matter entirely between the plaintiff and that ryot and is no concern of the defendants. For a similar reason there is no question here of any enhancement of a ryot's rent. The rent of that ryot who holds patta for the land has not been enhanced, and the rent claimed from the defendants is therefore not an enhancement of the ryot's rent. The

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rent payable by the defendants is the matter of a separate contract between them and the zamindar, and it is not "rent" under the provisions of the Estates Land Act. See *Ramachandra Mardaraja Deo* v. *Dukko Padhano*(1). The defendants, then, not being ryots, section 55 of the Estates Land Act, which is the section enabling a suit to be brought to enforce a patta on a ryot, has no application. There is no reason, therefore, for holding that the Civil Court has no jurisdiction to enforce the specific performance of the plaint agreement, which is in essence merely a contract between the landlord and those who have bought out the original occupancy-holders. I, therefore, see no reason to interfere with the decree of the lower Appellate Court and dismiss this appeal with costs.

ANANTAKRISHNA AYYAR, J.

ANANTAKRISHNA AYYAR, J.—I agree. The defendants (Sree Venugopala Rice-mill, Pandalapaka, and the shareholders thereof) are the appellants in this second appeal. Survey No. 179 was jiroyati land under wet cultivation of the extent of 56 acres, paying rent at a particular rate per acre to the plaintiff, the Rajah of Pittapuram. The defendants purchased three acres from the ryot who owned Survey No. 179 and wanted to use the same for non-agricultural purposes by constructing buildings thereon for use as a rice-mill. When the defendants proceeded to erect buildings on the three acres purchased by them in 1916, the plaintiff's officials obstructed the defendants from proceeding with the building on the ground that the defendants were not entitled to use the three acres of land, which were actually under wet cultivation, for building purposes unconnected with the agricultural use of the land. The defendants, thereupon, petitioned the plaintiff for permission to use the land for non-agricultural purposes and for using the same for building

(1) (1915) 31 I.C., 852.

purposes, offering to pay three times the rent that was being paid in respect of the land. The plaintiff agreed to the said offer and directed proper house-site patta and muchilika to be executed by both parties. The buildings having been evidently completed in the meantime, the defendants wanted to back out of the agreement; they declined to do anything further in the matter. The plaintiff filed the original suit in the Court of the District Munsif of Rajahmundry for specific performance of the agreement between the parties. The defendants pleaded coercion, misrepresentation, etc.; and both the lower Courts found against the said contentions of the defendants. The defendants also pleaded that the suit was for enhancement of rent and that the Civil Courts had no jurisdiction to entertain the suit. Both the lower Courts disallowed these contentions also, and decreed the suit in plaintiff's favour. The defendants have preferred the present Second Appeal.

Mr. P. Somasundaram, the learned Advocate who appeared for the appellants, argued that the Civil Courts had no jurisdiction to entertain the suit, that the plaintiff's remedy, if any, was only to take ejectment proceedings under section 151 of the Estates Land Act, if the use of 3 acres out of 56 acres for building purposes be considered to be "materially impairing the value of the holding for agricultural purposes," and further that the suit was really for enhancement of rent. He referred to section 189 of the Estates Land Act and also to section 11 as regards the right of the ryot to use the land "in any manner which does not materially impair the value of the holding or render it unfit for agricultural purposes;" he relied also on section 27 as regards the rate of rent payable by the ryot. He also referred to section 56, under which the landholder should proceed in the Revenue Courts to compel the ryot to accept

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patta and to execute muchilika. He also argued that in spite of buildings being raised on the land, the land remained "cultivable" land, and that the landholder was only entitled to recover the mamool rent payable in respect of the lands, and that, if the landholder wanted "enhancement of rent," he was bound to proceed under the provisions of Chapter III of the Estates Land Act.

On behalf of the respondent, the learned Advocate-General argued that the three acres in question were purchased by the defendants under Exhibits II and II-*a* from the original ryots who owned 56 acres in Survey No. 179, and under section 145 it was open to the landholder to subdivide the original holding and recognize the three acres as a separate holding; that the effect of Exhibits A and B (the application by the defendants and the order by the plaintiff) was to recognize the transfer and to treat the three acres as a separate holding; that no question of the applicability of section 151 of the Estates Land Act arose since the three acres in question should be deemed to be a separate holding after Exhibits A and B, and that the questions whether use of 3 out of 56 acres of wet land for building purposes was reasonable or not, and whether the same materially impaired the value of the holding for agricultural purposes or rendered it substantially unfit for such purposes, did not arise for consideration in this case. He contended that this was a case of the whole of the three acres of wet land included in a holding being built upon, in which case it could not be doubted that such user was not permissible on the part of the ryot, and the landholder could have sued to eject the defendants under section 151 of the Act. The landholder had valuable rights in the land to prevent the use of wet land for building purposes by the defendants; while the defendants also were greatly

benefited by being allowed to use these lands for building purposes. In the circumstances, both parties agreed that the land should not in future be held for agricultural purposes, and they agreed to convert the same into building sites and to have buildings erected thereon. He contended that there was nothing in the Estates Land Act which prevented the parties from agreeing to do so. The amount to be paid in future in respect of such land would not be "rent" within the definition of section 3 (11) of the Act, which defines "rent" as "whatever is lawfully payable in money or in kind or in both to a landholder for the use or occupation of land in his estate for the purpose of agriculture;"—so that, if the land is not held for purposes of agriculture, the payments could not be said to be "rent" within the meaning of the Estates Land Act. He similarly contended that the defendants could not be said to be "ryots" within the definition of section 3 (15), since they did not hold the land for the purpose of agriculture on condition of paying to the landholder the rent which is legally due upon it. The amount to be paid by the defendants is not "rent," and the defendants themselves are not "ryots," after the plaintiff and the defendants agreed that the land should not be used for agricultural purposes but should be used for putting up buildings. He also argued that no provisions of the Estates Land Act prevented the parties from entering into such a contract or from fixing the amount payable by the one party to the other.

We think that the contentions raised by the appellants are not sustainable. We take the result of Exhibits A and B to be that the plaintiff recognized the defendants' purchase, and also agreed to treat the three acres in question as a separate holding. When both the parties agreed to utilize the land for building purposes,

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and not for agricultural purposes, the amount payable by the tenant under the contract could not be called "rent" within the meaning of the Estates Land Act; nor could the defendants be said to be "ryots" within the meaning of the Act. It is only a suit to enforce acceptance of patta by a "ryot" that has to be instituted in Revenue Courts under section 56. For the same reason section 189 also does not apply. The amount not being "rent" within the definition of the Act, no question of "presumption as regards the rate of rent" arises under section 27; nor does any question of "enhancement of rent" arise within the meaning of Chapter III of the Act. We think that it was open to the parties to enter into the contract evidenced by Exhibits A and B. Valuable consideration moved from the landholder to the defendants, and we do not think that the legal objections raised on their behalf by their learned Advocate before us are tenable. The scheme of the Estates Land Act seems to be to protect persons who hold lands "for the purpose of agriculture." When the lands are not held for agricultural purposes, our attention has not been drawn to any provision of the Act which prevents parties from entering into any contract which it would otherwise be open to them to enter into. In *Meera Kasim Rowther* v. *Foulkes*(1), the Court held that a custom or contract entitling a ryot of agricultural land to erect buildings thereon is not opposed to the provisions of the Madras Estates Land Act, and can be enforced against the landlord, though such erections may impair the value of the holding for agricultural purposes. At page 434, the learned Judges, SUNDARA AYYAR and SADASIVA AYYAR, JJ., observed that

"Section 11 does not deprive the ryot of the benefit of a contract or usage which would entitle him to use it in a manner

(1) (1912) I.L.R., 37 Mad., 432.

which might impair the value of the land for agricultural purposes. . . . . It would, no doubt, probably have the effect, in case of relinquishment of the land by him, of depriving the landlord of the benefit of letting it out again for agricultural purposes. There is, however, nothing in the Act which renders such a contract or custom unenforceable against the landholder."

In *Ramachandra Mardaraja Deo* v. *Dukko Padhano*(1), ABDUR RAHIM and SPENCER, JJ., held that money due for occupation of land let for the purpose of building houses is not "rent" within the meaning of section 3 of the Madras Estates Land Act, and that a suit to recover the same is cognizable by the Civil and not by the Revenue Court. The reasoning of the learned Judges in that case supports the view we take.

In our view there is nothing in the Estates Land Act to which our attention was drawn which would prevent the parties from entering into a contract with each other that the land should in future be held or used not for agricultural purposes but for building purposes. The consideration for the landlord agreeing to the same may be either a lump payment made to him or annual payments. Such annual payments are not "rent" within the meaning of the Estates Land Act, and a suit for specific performance of such a contract between the parties is not a "suit to enforce acceptance of pattah" within the meaning of section 56 of the Estates Land Act. Such a suit is maintainable in the ordinary Civil Courts, and the objection as to jurisdiction accordingly fails. There is no question of "enhancement of rent" within the meaning of Chapter III of the Estates Land Act in the present suit, as contended for by the appellants.

We may state that we put the learned Advocate for the appellants the question as to what procedure should

(1) (1915) 31 I.C., 852.

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be followed by the landholder and the ryot in case both of them wanted to have such land held and used in future for building purposes, and, having regard to the benefit that would accrue to both the parties, the one agreed to make increased annual payments to the other. The learned Advocate, with his usual candour, answered that the Estates Land Act stood in the way and that such a contract would be invalid under the Act. We naturally were unwilling to accept such a result unless there be anything specific in the Estates Land Act which would necessitate the same. Our attention was not drawn to any such provision by the learned Advocate, and we are not ourselves aware of any.

It has been held that the amounts payable to landholders in respect of grazing fees, and the like, are not "rent" within the meaning of the Act, since the same are not paid for the use or occupation of land for the purpose of agriculture. In Bengal, it has been held that lands held for building, mining, or quarrying purposes are not lands held for agricultural purposes, and are not governed by the provisions of the Bengal Tenancy Act. See *Um Rao Bibi* v. *Mahomed Rojabi*(1), and *Raniganj Coal Association Limited* v. *Judoonath Ghose*(2). Sections 7 and 186 of the Estates Land Act refer to mining rights, and in cases, where the ryot has any right in the minerals, the Court is directed to award compensation for such right when the landholder acquires the land under section 186 for the opening and working of mines. Surely the landholder and the ryot, in cases where the ryot has a right in the minerals, could agree, as between themselves, as to the amount to be payable by the one to the other, in cases where minerals are to be worked. They are not bound to go to Court even if they could

(1) (1899) I.L.R., 27 Calc., 205. (2) (1892) I.L.R., 19 Calc., 489.

agree. This also indicates that it is open to the landholder and the ryot to enter into contracts relating to the user of land for other than agricultural purposes. The result of accepting the appellant's contention would be to make it impossible for the landholder and the ryot to agree to put up buildings unconnected with agricultural purposes on ryoti lands, wet or dry. In many districts, ryoti lands—mostly dry—are often purchased by persons for building houses thereon after paying money to the landholder and to the ryot in possession. In the view presented by the appellants, the title of such purchasers of ryoti land from both the landholder and the ryot, who build houses on such land, would be illusory since the landholder could eject them under section 151 of the Estates Land Act, if—as is alleged—the contract be invalid in law.

It is clear that unless we are driven to such a conclusion, we should avoid such a result; and we have not been referred to any provision of law which compels us to come to such a conclusion.

The general principle "once ryoti, always ryoti" is not violated in such cases, since the incidents of ryoti land would at once attach to such lands, should they subsequently, for any reason, again be held for agricultural purposes.

Chapter XIV of the Estates Land Act relating to restrictions on contracts between landholders and ryots does not in any way invalidate such a contract as the one before the Court.

There is no merit in the appellant's contentions, nor, in our view, any law in their favour.

For the above reasons, I am of opinion that the second appeal fails, and I would dismiss it with costs.

K.R.