APPELLATE CIVIL.

Before Sir Vepa Ramesam, Kt., Officiating Chief Justice, and Mr. Justice Venkatasubba Rao.

MEERALLI AMBALAM AND ANOTHER (DEFENDANTS 2 AND 3), APPELLANTS,

1933, September 11.

v.

R. SHANMUGHA RAJESWARA SETHUPATHI *alias* NAGANATHA SETHUPATHI AVARGAL, RAJAH OF RAMNAD, AND ANOTHER (LEGAL REPRESENTATIVE OF PLAINTIFF AND FIRST DEFENDANT), RESPONDENTS.*

Madras Estates Land Act (I of 1908), sec. 3 (16) (a) and sec. 20 —Tank-bed—Land if can be both ryoti and, at same time— Assignment of tank-bed by landholder for cultivation—Effect of, not to convert it into ryoti land—Land within ambit of tank-bed—Abandonment of—Effect—Cultivation or no cultivation—Inference of land not being or being tank-bed from—Propriety of.

Land cannot at the same time be both tank-bed and ryoti. Section 20 of the Madras Estates Land Act reserves the right of the landholder to assign tank-beds for cultivation, but that does not mean that tank-beds by being so assigned become converted into ryoti land.

Though any specified land may be within the ambit of a tank-bed, it may on account of abandonment cease to possess that character; but there must be acts from which abandonment can be inferred. From the mere absence of cultivation it cannot be held that a certain part is tank-bed; similarly from the fact that cultivation is carried on it cannot be inferred that the portion so cultivated is ryoti.

APPEAL against the decree of the Court of the Subordinate Judge of Sivaganga in Appeal Suit No. 50 of 1927 preferred against the decree of the

* Second Appeal No. 1066 of 1931 and Civil Revision Petitions Nos. 282 to 293 of 1931.

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Court of the District Munsif of Paramakudi in Original Suit No. 836 of 1924.

Petitions under sections 115 of Act V of 1908 and 107 of the Government of India Act praying the High Court to revise the orders of the Court of the Subordinate Judge of Sivaganga, dated 21st August 1930 and made respectively in Civil Miscellaneous Appeals Nos. 2 to 4, 7 to 11, and 13 to 16 of 1928 preferred respectively against the orders of the Court of the District Munsif of Paramakudi, dated 11th April 1927 and made in Original Suits Nos. 839, 840, 841, 845, 847, 848, 849, 851, 853, 854, 855 and 930 of 1924.

K. Rajah Ayyar and *V. Ramaswami Ayyar* for appellants.

Sir A. Krishnaswami Ayyar (*Advocate-General*) and *V. Somasundaram Pillai* for respondents.

Cur. adv. vult.

JUDGMENT.

VENKATASUBBA RAO J.

VENKATASUBBA RAO J.—These cases raise the question as to the meaning of the expression "tank-beds" in section 3 (16) (*a*) of the Madras Estates Land Act. The plaintiff, the Zamindar of Ramnad, alleges that the lands in question are in the bed of the tank (known as the Abhiramam tank) and that they are therefore outside the category of "ryoti land" as defined by the Act. Several suits were tried as a batch, and the learned District Munsif upheld the plaintiff's contention only in two of them. Original Suit No. 836 of 1924 is one such and the District Munsif's decision was confirmed by the Subordinate Judge in appeal. Second Appeal No. 1066 of 1931 relates to the plot in Original Suit No. 836 of 1924. From what I

shall state presently, it will appear that the appellants have no case and their second appeal is accordingly dismissed with costs.

In regard to the other plots, the District Munsif has held that they are not in the tank-bed, and his decision has been reversed by the lower appellate Court. The several civil revision petitions before us relate to those plots.

In 1870 a circular was issued in the zamindari, known as the Boylle's Circular, fixing what are known as the "malnihidi" limits of the tank, and it is strongly contended by Mr. Rajah Ayyar for the ryots that the portion so marked off must alone be taken as constituting the bed of the tank. The lands, with which we are concerned in these civil revision petitions, are outside the "malnihidi" or "mulamal" limits. The circular in question was issued with a view to prohibit cultivation within those limits, and conditions were laid down as to how the "malnihidi" limits were to be fixed. I may point out that in the judgments of the lower Courts the words "mulamal" and "malnihidi" are used indifferently to convey the same idea. According to the defendants, a tank-bed consists of four portions: (1) Vettu-thavu, (2) Mulamal or Malnihidi, (3) Kulamkorvai and (4) Eramedu. These words are indecisive in regard to the point we have to decide and the division is arbitrary. "Vettu-thavu" merely means the deepest part and "mulamal" or "malnihidi" connotes no more than that the portion is within certain defined boundaries. By "kulamkorvai" is meant that cultivation is carried on upon that part and "eramedu" is high land. The contention for the defence is that "kulamkorvai" cannot

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be regarded as tank-bed. This argument amounts to nothing more than merely affirming that, because cultivation is carried on in a particular portion, that cannot be regarded as tank-bed. The learned District Munsif observes :

> "If really the whole extent within the FTL is tank-bed and not cultivable and is prohibited, there is no reason why the mulamal should be separately pointed out."

There is a fallacy underlying this statement. The higher portion of a tank-bed may be fit for cultivation in a manner the lower portion is not and the zamindar with a view to increase his income may well permit cultivation on the land on the higher level. The learned District Munsif himself says :

> "Paragraph 388 of Ellis' Irrigation Manual lays down that the effective storage capacity of a tank is limited by the FTL but the area submerged by the tank water-spread is dependent upon the MWL, which is always higher than the FTL."

Then he goes on to point out that "malnihidi" limits are lower than the FTL, and the only ground for his conclusion is that, because cultivation is permitted in what is known as "kulamkorvai", therefore that part must be regarded as being outside the tank-bed. He does not go so far as to suggest that the "malnihidi" limits are conterminous with the bed of the tank. Between the "malnihidi" and the suit lands, there is a portion where *babool* trees abound, and the District Munsif recognises that this part at any rate must be treated as being within the tank-bed and the reason he gives for this conclusion is that, had this been ryoti land, there would necessarily have been cultivation in that region. In either case the District Munsif applies a wrong test ; merely

on the ground of absence of cultivation, he is prepared to hold that a certain part is tank-bed and similarly from the fact that cultivation is carried on, he wishes to infer that the portion so cultivated is ryoti.

In *Thames Conservators* v. *Smeed, Dean & Co.*(1) the bed of a river is thus described :

"The bed of the river is that portion of its soil which is alternatively covered and left bare, as there may be an increase or diminution in the supply of water, and which is adequate to contain it at its average and mean stage during the entire year, without reference to extraordinary freshets of the winter or spring, or the extreme droughts of the summer or autumn."

There is of course a fundamental difference between a tank-bed and a river-bed, but the passage is useful to this extent, namely, that what happens in abnormal or extraordinary times must clearly be excluded. But that is not Mr. Rajah Ayyar's contention. He admits that the suit lands are submerged in normal times after rainfall every year and that cultivation has necessarily to be stopped during those periods. The lower appellate Court's conclusion that the suit lands are tank-bed must, therefore, be affirmed.

It is next urged that land, without ceasing to be tank-bed, may yet be ryoti. The definition of "ryoti land" excludes in terms tank-beds [section 3 (16)]. To quote only the material portion of the section:

"'Ryoti land' means cultivable land in an estate other than private land, but does not include tank-beds."

A certain land is either ryoti or tank-bed and, unless it ceases to possess the character of a tank-bed, it cannot be ryoti. Mr. Rajah Ayyar contends

(1) (1897) 2 Q.B.D. 334.

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that, because cultivation has been permitted, therefore the land becomes ryoti and relies upon the last clause of section 20 of the Estates Land Act. Whatever rights may have been conferred on the occupants (we are not deciding that point), it is impossible to hold that the land has become ryoti under the Act. This very Bench has held in Second Appeals 1288 to 1292 of 1929 that, though any specified land may be within the ambit of a tank-bed, it may on account of abandonment cease to possess that character; but there must be acts from which abandonment can be inferred. The defendants themselves admit that cultivation is carried on subject to the condition that the lands are liable to be submerged. That very statement implies that abandonment on the part of the zamindar cannot be inferred—even granting that a landholder without the concurrence of his ryots can convert a tank-bed into ryoti land. These lands began to be cultivated just about 25 or 30 years previous to the filing of the suits, and the lower Courts point out that, when the zamindari was in the possession of certain lessees, some persons taking advantage of that fact occupied the lands and began cultivation. Subsequently it is alleged that either the lessees or the zamindar recognised the occupants as tenants and issued pattas. What the effect of such conduct may be, is not a point that now concerns us. The order of remand made by the lower Court has left open that question and the suits have been directed to be tried on the other issues framed in the case. What is relevant to the present matter is that no abandonment has been proved. The contention that a certain land may at the same time be both

tank-bed and ryoti cannot possibly be accepted. All that section 20 says is, that lands "set apart for the common use of the villagers", such as threshing-floors, shall not be assigned for any other purpose except under certain conditions. The section then goes on to provide :

"Nothing in this section shall apply to the tank-beds in any estate or affect the rights of the landholder over them."

This reserves the right of the landholder to assign tank-beds for cultivation, but that does not mean that tank-beds by being so assigned become converted into ryoti land. Tank-beds having been excluded from "ryoti land" by the definition of that term, it was considered necessary to confer certain powers in respect of tank-beds in express terms. The provision in question cannot therefore have the effect contended for. If authority be needed for this position *Bolusawmy* v. *Venkatadri Appa Rao*(1) decides this point.

In the result, the civil revision petitions are dismissed with costs. The Advocate's fee in each civil revision petition is fixed at Rs. 10.

RAMESAM OFFG. C.J.—I agree.

A.S.V.

(1) (1917) 47 I.C. 594.