

APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and
Mr. Justice Patanjali Sastri.*

SRIMATH KACHI CHINNA NALLAPPA KALAKKA
THOLA UDAYAR AVARGAL, ZAMINDAR OF
UDAYARPALAYAM (COUNTER-PETITIONER), PETITIONER,

1939,
March 28.

v.

SUDAI UDAYAN AND TEN OTHERS (PETITIONERS),
RESPONDENTS.*

*Madras Estates Land Act (I of 1908), sec. 40 as amended in
1934—Right to apply under—Ryot paying rent at rates
varying with the crop—Rent paid in cash—Case of.*

A ryot who pays rent at rates varying with the crop is entitled to apply under section 40 (as amended) of the Madras Estates Land Act of 1908 for an order commuting the rent to a definite money rent whether he pays the rent in cash or in kind. The words "whether in cash or in kind" in the section ought not to be read as meaning sometimes in cash and sometimes in kind.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of the Court of the Collector of Trichinopoly, dated 24th June 1937 and made in Miscellaneous Petition No. 2 of 1936 preferred against the order of the Court of the Revenue Divisional Officer, Ariyalur, dated 14th November 1936 and made in Miscellaneous Petition No. 1 of 1936.

B. Sitarama Rao for *A. Srirangachari* for petitioner.

K. Bhashyam and *T. R. Srinivasan* for respondents 1 to 7, 9 and 11.

Other respondents were not represented.

* Civil Revision Petition No. 1193 of 1937.

ZAMINDAR OF
UDAYAR-
PALAYAM
v.
SUDAI
UDAYAN.
LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—The petitioner is the proprietor of the Udayarpalayam zamindari. The respondents are the ryots of the village of Kaduvatankurichi which forms part of the zamindari. They applied under section 40 of the Madras Estates Land Act, 1908, to the Deputy Collector, Ariyalur, for an order commuting the rent payable to the petitioner to a definite money rent. The respondents have for many years paid rent in cash but the amount has varied according to the nature of the crops raised. The petitioner contended that the application did not lie as section 40 only had in view cases where rents were paid partly in kind. The Deputy Collector held that the application did not come within the section and accordingly dismissed it. An appeal followed to the Collector, who disagreed with the Deputy Collector and reversed his decision. The petitioner has now applied to this Court to reinstate the order of the Deputy Collector under the powers of revision conferred upon it by section 115 of the Code of Civil Procedure.

Section 40 (1) of the Madras Estates Land Act reads as follows :

“Where for any land in his holding a ryot pays rent in kind or on the estimated value of a portion of the crop, or at rates varying with the crop, whether in cash or in kind, or partly in one of these ways and partly in another, or partly in one or more of these ways and partly in cash, either the ryot or the landholder may apply to the Collector to have the rent on the holding commuted to a definite money rent.”

There are here five different categories, namely, (i) where a ryot pays rent in kind ; (ii) where he pays rent on the estimated value of a portion of the crop ; (iii) where he pays rent at rates varying with the crop, whether in cash or in kind ; (iv) where he pays rent partly in one of these ways and partly in another ;

and (v) where he pays partly in one or more of these ways and partly in cash. If the case falls within any of these categories the ryot may apply to the Collector for an order commuting the rent to a definite money rent.

ZAMINDAR OF
UDAYAR-
PALAYAM
v.
SUDAI
UDAYAN.
LEACH C.J.

In reversing the order of the Deputy Collector and in allowing the respondents' petition the Collector was of the opinion that the case fell within the third category. It is said that he was wrong because the words "whether in cash or in kind" should be read as meaning sometimes in cash and sometimes in kind. To do so would clearly be reading into the section words which are not there and words which would alter the effect of the section. The section clearly says that a ryot who pays rent at rates varying with the crop shall have the right of applying for an order whether he pays the rent in cash or in kind. Instead of the amount varying from year to year or from crop to crop the rent should be fixed at a definite sum per annum.

On behalf of the petitioner Mr. Sitarama Rao has drawn our attention to the section as it stood before its amendment in 1934. Before the amendment the section was construed in the way he would have it construed now, but the amended section is differently worded and we can only construe it in accordance with the words used. It may not have been the intention of the Legislature to permit ryots in the position of the respondents to apply under this section. The marginal note reads: "Commutation by suit of rent payable in kind." The marginal note lends some support to Mr. Sitarama Rao's argument, but the argument cannot be accepted. The intention of the Legislature can, so far as the Court is concerned, be gathered only from the words used in the section when the words are free from ambiguity. They are

ZAMINDAR OF
UDAYAR-
PALAYAM

free from ambiguity in this case and we consider that the Collector read them correctly.

v.
SUDAI
UDAYAN.

The petition consequently fails and will be dismissed with costs. We fix the Advocate's fee at Rs. 100.

A.S.V.

APPELLATE CIVIL.

*Before Sir Lionel Leach, Chief Justice, and
Mr. Justice Patanjali Sastri.*

A. P. M. SYED IBRAHIM SAHIB AND BROTHER
(APPELLANT), APPELLANT,

v.

V. S. GURULINGA AIYAR (RESPONDENT),
RESPONDENT.*

*Indian Partnership Act (IX of 1932), ss. 69 (2) and 74—
Former section, if prevails over latter—Suit by firm to
enforce rights which accrued before commencement of Act—
Maintainability—Firm not registered.*

Section 69 (2) of the Indian Partnership Act of 1932, which requires a firm to be registered before instituting a suit to enforce rights, does not prevail over section 74 of that Act, which saves rights and remedies which existed before the Act came into force. Therefore a suit filed by a firm to enforce rights which accrued before the commencement of the Act can be maintained in spite of the non-registration of the firm.

The majority decision in *Girdharilal Son & Co. v. Kappini Gowder*(1) followed.

APPEAL under Clause 15 of the Letters Patent against the judgment of STODART J., dated 1st March 1937 and passed in Second Appeal No. 138 of 1936 preferred

* Letters Patent Appeal No. 74 of 1937.

(1) (1938) 48 L.W. 81.