

APPELLATE JURISDICTION (a)

*Special Appeal No. 37 of 1862.*NALLATAMBI PATTAR.....*Appellant.*CHINNADEYVANÁYAGAM PILLAI.....*Respondent.*

Lands forming part of the endowment of a temple were demised by the Collector at a svámibhogam rent of four annas per kottai, the lessee paying the Government tirvai. The lessee entered, improved, and paid his rent for several years :—*Held*, reversing the decree of the Principal Sadr Amin, that the smallness of the rent shewed that the lessee was merely a tenant at will, and that the hakdar of the endowment, having regained possession, might oust him at his pleasure.

Reg. V of 1822 sec. 8 refers only to zamindárs and otherproprietors of estates permanently settled under the Regulations of 1802.

THIS was a special appeal from the decree of Kristna-svámí Ayyá, the Principal Sadr Amin of Tinnevely, in Appeal Suit No. 506 of 1861, reversing the decision of Danakodi Mudaliyár, the District Munsif of Nellaiyambalam, in Original Suit No. 530 of 1861.

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Sadagopacharlu for the appellant, the defendant.

The plaintiff did not appear.

The facts sufficiently appear from the following.

JUDGMENT :—This was a suit for the recovery of lands from which the plaintiff alleged that he had been forcibly ousted in the year 1860 by the defendant, who is the hakdar or proprietor of a temple-endowment at Melpálaiyam in the district of Tinnevely. The plaintiff's statement is, that in the year 1855, when the endowment was under the temporary charge and management of the collector, the plaintiff obtained a pattá from that officer, authorizing him to cultivate the lands in question, on payment of a svámibhogam rent of four annas per kottai, in addition to the Government tirvai or tax ; that he undertook the cultivation on these terms, and effected improvements on the land at a considerable expense ; but that the defendant, on resuming possession of the endowment, wrongfully ousted him from possession.

(a) Present Strange and Frere, J J.

1862. The answer of the defendant is to the effect that the
 December 11. plaintiff held under no permanent title, and that the defend-
 S. A. No. 37 ant was fully justified in taking possession.
 of 1862.

The District Munsif, who tried the case in the first instance, observed that the grant from the Collector, under which the plaintiff originally took possession, conveyed no permanent title, and accordingly dismissed the claim with costs. He was further of opinion that the plaintiff had wholly failed to prove the forcible usurpation alleged in the plaint. On appeal the Principal Sadr Amin reversed this decision, and gave judgment for the plaintiff. This officer concurred with the District Munsif in holding that the lease by the Collector to the plaintiff in 1855 was a mere temporary arrangement, and could not be construed as conveying to the plaintiff any right of permanent tenancy at the low rate of rent therein specified. The Principal Sadr Amin, however, declared the plaintiff to be entitled to possession of the lands on condition of paying to the defendant, his landlord, a svámibhogam rent of $3\frac{1}{2}$ kottais of paddy annually for each kottai of land, being the highest rate imposed on similar lands in the village, of Melpálaiyam.

The Principal Sadr Amin further observed that the defendant, if hereafter desirous of ousting the plaintiff, should proceed against him in the manner indicated in the Regulations of 1802, and in section 8 of Regulation V of 1822.

The defendant preferred a special appeal against this decree.

We concur in the opinion of the Principal Sadr Amin as respects the nature of the lease by the Collector in 1855. It was manifestly of a temporary character only, and could not bind the defendant, on regaining possession of the village, to adhere to the very favourable terms on which the lands were then provisionally granted to the plaintiff. The plaintiff was thus a mere tenant at will, liable to ejection at any time at the pleasure of his landlord, the defendant.

The Principal Sadr Amin seems to have considered that in taking steps to eject the plaintiff, the defendant was bound to follow the course indicated in section 8 of Regulation V of 1822, by applying to the revenue authorities. We cannot concur in this view, nor are we of opinion that the defendant had even the option of taking such a step, for he cannot be held to be a proprietor of land within the meaning of that section, which has reference only to zamindárs or other proprietors of estates permanently settled under the Regulations of 1802.

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In the present case it is expressly found by the lower Courts that no forcible ouster has been proved. The plaintiff seems rather to have retired peaceably at the instance of the defendant, his landlord; who, as before declared, is legally entitled to possession.

We therefore reverse the decree of the Principal Sadr Amin and confirm that of the District Munsif. The costs incurred by the defendant in the appeal and special appeal suits will be paid by the plaintiff.

Appeal allowed.