

APPELLATE JURISDICTION (a)

Special Appeal No. 663 of 1861.

ENAMANDARAM VENKAYYA *Appellant.*
 VENKATANARAYANA REDDI and others..... *Respondents.*

Regulation V of 1822 is inapplicable to land held under a mirásidár or any ordinary proprietor. It applies only to land subject to a permanent assessment, and held from Government by a Zemindár under a permanent sanad or by a temporary occupant.

THIS was a special appeal from the decree of E. Story, The Civil Judge of Nellur, in Appeal Suit No. 70 of 1861, reversing in part the decree of the District Munsif of Gudar. The original suit was brought by the plaintiff, who was a mirásidár, to eject the defendants, his tenants at will,

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from certain wet land, sowable with $4\frac{4}{10}$ tums of seed, and from three kuntás of dry land, belonging to the plaintiff's one and odd svástyams of 26 svástyams of the Málguzári agra-háram village of Mambattu, and to recover one putti, 18 tums and $11\frac{1}{2}$ muntas of sambhavu paddy as the owner's share, and the produce of the wet land for Raudri (1860-1861), or its value, and rupees 5-8-6, being tuttu, or fee on the cultivator's share in the produce, as well as nine rupees, the value of manure put by the plaintiff on the lands in suit. The third defendant pleaded that the land had been given "under a permanent kaul to his forefathers seventy years ago." The other defendants allowed the suit to go by default. The District Munsif decreed for the plaintiff; but on appeal the Civil Judge reversed his decree so far as regarded the ejecting the defendants, holding that Regulation V, section VIII, clause 1 applied. That clause enacts that "the lands of under-farmers or ryots shall not be granted to other persons by proprietors or farmers under the provisions of Section X, Regulation XXX of 1802, until such proprietors or farmers shall have made application to the collector and obtained his leave for that purpose."

Branson for the appellant, the plaintiff. The defendants are mere tenants at will, and the plaintiff is entitled to oust them without having applied to the collector.

(a) Present Strange and Frere, J J.

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Tirumalachariyar for the respondents.

The Court delivered the following

JUDGMENT.—This suit was brought by the plaintiff, a mirásidár, to eject the defendants, his tenants, and to recover arrears of produce.

The District Munsif decreed for the plaintiff.

The Civil Judge awarded the plaintiff the produce, but refused to eject the defendants, considering that the plaintiff was bound to deal with them pursuant to Regulation V of 1822.

Both courts concurred in disbelieving the third defendant's plea of permanent lease.

We consider Regulation V of 1822 inapplicable to land held under a mirásidár or any ordinary proprietor. That Regulation, among other things, is designed to give better effect to the provisions of Regulations XXVIII and XXX of 1802, and these enactments relate to "proprietors of land and farmers of land of a particular order. The "proprietors" spoken of, as appear by section 3 of Regulation XXV of 1802 and elsewhere, are "Zemindárs" holding land from Government under a permanent assessment, and by a permanent sanad. The "farmers of land," as shewn by section 2 of Regulation XXVIII of 1802 and elsewhere, are those "holding farms immediately from Government;" that is, having a temporary occupancy of lands subject like those of the Zemindár to a fixed assessment. The mirásidárs, being ordinary proprietors not thus holding from or under the Government, and having lands not permanently assessed to the revenue, are a different class, for whom special provision has not been made by Regulation V of 1822, or other Regulations to which we have referred.

Under these circumstances, we amend the decree of the Civil Judge by awarding possession of the land in issue to the plaintiff as decreed by the District Munsif.

The costs in appeal and special appeal are to be paid by the third defendant.

Appeal allowed.