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bound to accept and apply the construction of the law as therein laid down. There were no doubt special circumstances in that case which do not exist here; but the decision as to the construction of the Regulation was distinct that a permanent lease of a portion of a zemindary is not within the terms of the Section. The Court was not aware of the decision when judgment was given in the case of *Subbarayalu Naik v. Rama Reddy*, nor until the general question as to the construction of the same Section arose, which was ultimately decided in the case reported in 3, *Madras High Court Reports*, 5. We must now consider the decision of this Court as overruled and hold on the authority of the decision of the highest Court of appeal that the permanent lease made to the defendant is not invalidated by Section 8 of Regulation XXV of 1802.

There will be a decree reversing the decrees of both the Lower Courts and dismissing the suit, and ordering restoration of the village to the defendant.

The parties should, we think, bear their own costs throughout.

Appellate Jurisdiction (a.)

Special Appeal No. 512 of 1868.

MUTTUSAMY MUDALY..... *Special Appellant.*

SADAGOPA GRAMANY..... *Special Respondent.*

Under Madras Act VIII of 1865 a landlord may compel a tenant to accept a puttah for palmyra trees.

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THIS was a Special Appeal against the decision of W. S. Whiteside, the Acting Civil Judge of Chingleput, in Regular Appeal No. 120 of 1867, confirming the decision of the Acting Sub-Collector of the Madras District in Original Suit No. 70 of 1867.

It was stated in the plaint that the defendant refused to execute a muchilka and receive either a tirva or a varæ puttah for Fusly 1276 for 52 palmyra trees which are in the defendant's possession, and chargeable with an annual rent of rupees 3-4-0.

(a) Present : Scotland, C. J. and Collett, J.

The defendant, in his written statement, alleged that the puttah tendered, being for trees, was not valid under any of the Sections of the Act.

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The Acting Sub-Collector dismissed the plaint for the following reasons:—

In this case the acceptance of a puttah for certain palmyra trees is attempted to be enforced.

It appears that puttahs and muchilkas have never been tendered or exchanged on any previous occasion whatever.

In the absence, therefore, of any special agreement as to rent for the palmyra trees in question, the first objection in the defendant's answer is fatal to the plaint, for it nowhere appears in the Act that puttahs for anything except land are contemplated. In Section 4 (which provides for the contents of the puttah, &c.) the words "the local description and extent of the land," and so in other Sections, preclude any wider interpretation of "rent," than rent for land.

Upon appeal, the Civil Judge held that the Act was solely directed towards the recovery of rent of land and did not provide for the recovery of such claims as the rent of topes and trees, and that the Sub-Collector therefore was right in rejecting the plaintiff's case.

The plaintiff preferred a special appeal to the High Court against the decree of the Civil Judge for the following reasons:—

As contrary to law in that,—

1st.—The Courts below were wrong in holding that a landholder could not issue puttahs to his tenants for the topes and trees which they hold under him according to the provisions of the Madras Rent Recovery Act VIII of 1865.

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2nd.—Such persons come under the description of landholder and tenant in Section 1 of the said Act, and there is no reason why puttahs and muchilkas should not be exchanged between them, as between the landholder and the other tenants holding lands from him.

Srinivasa Chariyar, for the special appellant, the plaintiffs. •

Parthasarathy Aiyangar, for the special respondent, the defendant.

The Court delivered the following

JUDGMENT:— In this case both the Lower Courts have decided against the plaintiff's right to compel the acceptance of a puttah on the ground that under Madras Act VIII of 1865 there cannot be a puttah for anything except land, and that therefore acceptance of the puttah for palmyra trees in this case could not be enforced. We think this view is incorrect. There can be no objection to a puttah for rent, ascertained by the number of trees growing on land described in the puttah. We have not been able to ascertain in this case whether there is land adjoining to and forming part of the ground in which the trees grow for which the defendant pays separate rent. But if so, such land and its rent should be included in the same puttah, and the rent for the land and for the trees distinguished or lumped together as rent for land describing it as one piece of land. But if not the puttah may be for the rent of the trees describing the land on which they stand. We must direct the Civil Court to decide which is the proper form of puttah in accordance with this judgment and such puttah when tendered the defendant must be ordered to accept.

The parties will bear their own costs in this and both the Lower Courts,