Appellate Jurisdiction (a)

Regular Appeal No. 15 *of* 1868.

MAYANDY TE'VAN and 8 others.....*Appellants.*

NA'RA'NAIYAN and 3 others.....*Respondents.*

The puttadárs of a ryotwári village have not such a common interest, as puttadárs, in all their holdings that they can jointly sue for the recovery of them.

If in any case such a right exist, it must be established by evidence.

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THIS was a Regular Appeal from the Decree of E. C. G. Thomas, the Civil Judge of Madura, in Original Suit No. 29 of 1866.

Scharlieb, for the Appellants, the plaintiffs.

The facts are sufficiently set forth in the following

JUDGMENT:—This is a suit originally brought by nine plaintiffs to recover from the defendants all the lands included in the village of Saidaputti excepting 1,000 gulies which the 1st defendant had recovered from the plaintiffs in a former suit. All the defendants in that suit were directed by the Civil Judge to be added as parties in this suit, and the number of plaintiffs was thus increased to sixty-six.

There is no objection of course to this joinder of plaintiffs, if they are suing on account of the infraction of any right common to them all, and if the common right which they allege is established by the evidence. That they do allege a common right is clear; for the plaint states that the Saidaputti village is Pandaravadi, and that the whole of the lands of the village belong exclusively to the plaintiffs and other sudras. It is, however, admitted that they have distinct and separate holdings under puttahs issued by the Collector in the same way as the ryots hold in an ordinary ryotwari village, and it is not easy to understand what is exactly the common right which they claim. We do not understand that it amounts to a claim of absolute joint ownership in all the village lands; for the second ground of appeal states that the suit

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is based on a wrongful dispossession by the defendants, and not on any peculiarity of the plaintiffs' title or of village tenure; but rather, as we gathered from Mr. Scharlieb during his argument on behalf of the appellants, to a claim of a joint and exclusive right of occupancy directly under the Government; and the claim appears to be made specially on behalf of all sudra inhabitants of the village to the exclusion of brahmins. Indeed the right claimed would probably be most accurately described as a common right of the sudras to exclude the brahmins.

But whether the claim be one of joint occupancy or joint ownership, or a joint right to keep out the brahmins, it appears to us that the Civil Judge was right in saying that the evidence adduced was insufficient to establish any such common right. Three witnesses belonging to other villages make a statement to the effect that the village is held in common; but the only facts to which they distinctly depose tend the other way. Each ryot holds his land under a separate puttah, pays the tirva for the land so held, cultivates it himself and enjoys the produce; nor is there any evidence of an arrangement or custom amongst the ryots for any periodical distribution of the lands as was the case in Special Appeals 401 and 409 of 1863, (2, M. H. C. Reports, p. 1.)

The 3rd witness says: "The puttah for a land is issued in the name of the cultivator; it does not belong solely to the cultivator; it is common; if one allows a land to lie waste, another will cultivate in the next year; I don't re-collect specifically whose land was cultivated by another. In the said village aliens cultivate the land with the permission of the ryots of the village. I don't know which particular ryot permitted which particular alien to cultivate." This is a fair specimen of the evidence adduced by the plaintiff, and if on no other account is by its very vagueness disentitled to much consideration. "If one allows land to lie waste another will cultivate it next year." But what other and upon what terms and under what arrangement with the other villagers? In numerous cases it has been held that lands held on the terms of an ordinary

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ryotwari settlement with annual puttahs and left waste by the puttahdar may be legally granted to other ryots by the Revenue authorities (See 1, M. H. C. Reports, pp. 12 and 407), and if the statement of the witness means no more than this, then this village of Saidaputti is not different from any other ordinary ryotwari village; and we are not aware that it has ever been held that the puttahdars of a ryotwari village have such a common interest in all their holdings that they can jointly sue for the recovery of them. In some villages, no doubt, there is a community of interest as was found to be the case with regard to the agraharam village of Neykáraputti, in the Salem Zillah, (3, M. H. C. Reports 59,) and to such instances probably Mr. Montstuart Elphinstone was referring in the passage cited from *Maine's Ancient Law* 263-4 in p. 3 of M. H. C. Reports, volume 2, note (a). So there may be on certain questions a sufficient community of interest to entitle the ryots of a village to sue jointly as was held in a suit brought for the ascertainment of the boundary between two villages; (3, M. H. C. Reports 226,) but in the present case there is no question as to what lands are within the village; the only question is whether the plaintiffs have been wrongfully dispossessed of their holdings by the defendants, and if the holdings under each puttah are distinct, it would manifestly be very inconvenient to try in one suit the rights of the several plaintiffs to perhaps 40 or 50 different holdings, which are described in the plaint, as lying in pieces in different places.

The documentary evidence adduced on behalf of the plaintiffs is not entitled to any greater weight. At the most it shows that in early times the ryots of this village were all sudras; and that generally the large majority have been so, but brahmins also appear sometimes in the village accounts. In the Collector's letter, dated —June 1842, it is stated that the brahmins had not resided in the village for a length of time and had never cultivated lands in it, nor had they paid the Government tax; but that for the ten years, from 1832 to 1842, the puttahs had been issued in the names of the ryots as cultivators on behalf of the brahmins, a practice commenced originally with the con-

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sent of the ryots, and not objected to until the brahmins began to demand rent. Upon this statement the Board of Revenue decided that the puttahs should be issued in the names of the cultivating ryots, leaving the brahmins to establish their right to the land in the Civil Courts. And to some extent at least that has been done, for it is admitted that the right of the 1st defendant to 1,000 gulies of land in this village, or nearly one-third of the whole, has been conclusively established as against the present plaintiffs in Suit No. 19 of 1859, and that decree, though not conclusive, except as to the land to which it directly relates, would, upon the question of common right set up by the plaintiffs on behalf of all the villagers, be admissible and cogent evidence to negative the right, for the right, if it exists at all, exists as to all the lands of the village. In the present case, however, we have come to the conclusion that the evidence is insufficient to establish the existence of the right, and we think that no such right can be recognised unless established by evidence.

The reference in Mr. Maine's Ancient Law to Indian village communities as an assemblage of co-proprietors (p. 260) is certainly not intended by the learned author as a statement that in all or in the majority of Indian villages in the present day there subsists amongst the holders of land the legal relation of joint-owners. Indeed in another passage (p. 267) he says "the co-owners of an Indian village, though their property is blended, have their rights distinct, and this separation of rights is complete and continues indefinitely."

The severance of rights he assumes to be complete and permanent in the case of an Indian village, and mentions it as a distinction of Russian villages that "after the expiration of a given but not in all cases the same period separate ownerships are extinguished, the land of the village is thrown into a mass, and then it is re-distributed among the families composing the community according to their number," but this very custom was found to exist in an Indian village in the case already alluded to. (2, M. H. C. Report, p. 1.) These matters, however, are only

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referred to by Mr. Maine in illustration of his argument, or " conjecture" as he terms it " that private property, in the shape in which we know it, was chiefly formed by the gradual disentanglement of the separate rights of individuals from the blended rights of a community," and there is certainly nothing in the language used which would warrant us in presuming that in any particular village the present holders of land under separate puttahs are joint owners or have any such common interest in the land that the dispossession of any one gives a cause of action to all. We must therefore confirm the decision of the Civil Judge, but, as the defendants did not appear, without costs.

Appeal dismissed.

Appellate Jurisdiction (a)

Regular Appeal No. 21 *of* 1868.

SYED AMIN SAHIB.. ....*Appellant.*

IBRAM SAHIB and 5 others.....*Respondents.*

A suit by an Officer of a mosque, temple, or religious establishment for dismissal from his office is not a suit for misfeasance within the meaning of Section 14, Act XX of 1863.

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THIS was a Regular Appeal against the decision of O. B. Irvine, the Acting Civil Judge of Chittoor, in Original Suit No. 37 of 1866.

G. E. Branson and *Waddell,* for the Appellant, the plaintiff.

Rama Row, for the 1st, 2nd, and 3rd Respondents, the defendants.

The facts sufficiently appear from the following

JUDGMENT :—This is a suit to obtain restoration to the office of khatil of a mosque from which the plaintiff had been, as he alleged, wrongfully dismissed by the defendants who are the committee having the superintendence of the mosque under Act XX of 1863, and to recover damages for such dismissal.

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