Appellate Jurisdiction. (*a*)

Special Appeal No. 515 *of* 1869.

MAHASINGAVASTHA AIYA and another. *Special Appellants.*

A. GOPALIYAN and 21 others..... *Special Respondents.*

Special Appeal No. 582 *of* 1869.

A. GOPALAIYAN and 15 others..... *Special Appellants.*

MAHASINGAVASTHA AIYAR and another. *Special Respondents.*

Approved 27 Mad 41

In a suit by the plaintiffs as Inamdars to compel the defendants, occupiers of plaintiff's land, to accept puttahs under Madras Act VIII of 1865, the defendants objected to the rates of rent claimed by the plaintiffs. There was no contract between the parties as to the rent to be paid, nor was there any assessment made under a survey made previous to the 1st January 1859.

Held, that the proper rent to be paid by the defendants was to be determined according to the rates established or fixed for neighbouring lands, of a similar kind.

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THESE were Special Appeals against the decisions of W.M. Cadell, the Acting Civil Judge of Trichinopoly, in Regular Appeals Nos. 10 and 15 of 1868, modifying the decision of the Acting Head Assistant Collector of Trichinopoly, in Summary Suit No. 3 of 1867.

In No. 515.

The Advocate General, Mayne, and *Srinivasachâriyâr,* for the special appellants, the plaintiffs.

Miller and *Parthasarathy Aiyangar,* for the 1st to 4th, 7th, 8th and 17th respondents, the 1st to 5th and 7th to 16th defendants, and the 6th defendant.

In No. 582.

Miller and *Parthasarathy Aiyangar,* for the special appellants, the defendants.

The Advocate General and *Mayne,* for the special respondents, the plaintiffs.

The facts are set out in the following

JUDGMENTS:—*In S. A. No.* 515 *of* 1869.—This is an appeal arising out of a suit by the plaintiffs, as Inamdars, to compel the acceptance of puttahs under Madras Act VIII of 1865, stating the rent for the garden and nunjah lands held by the defendants at a warum rate. The Acting Head Assistant Collector, before whom the case was originally heard

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decided in accordance with the admissions of the defendants that a warum rent was payable for the land under nunjah cultivation; but that a fixed tirva of Rs. 21-9-4 per cawny was the proper rate of rent for the land under garden cultivation:—his decision on the latter point being founded apparently upon, as he considered, the contract between the parties, proved by the receipt marked (A) and the other similar receipts adduced in evidence by the defendants.

In the cross appeals by the plaintiffs and defendants from that decision, the Civil Court modified it by ordering the fixed tirva to be reduced to Rs. 11, "or what on examination of the rates paid in surrounding villages for the same lands may be found to be the exact tirva on this kind of cultivation," and otherwise confirmed the decision. The ground of the modification appearing from the Court's judgment is that the defendants were not liable to pay more for garden cultivation than the reduced rate assessed by the Government for similar land under the recent survey of the district.

From the order of the Civil Court the plaintiffs have brought the present special appeal, and the substantial objection relied upon by the appellants is that the reduced assessment on garden cultivation, which the Government had thought proper to make, is not binding upon them, and that they are entitled to tirva at the rate adjudged by the Head Assistant Collector, the same having been the rate hitherto paid by the defendants as evidenced by the receipts in evidence.

Section 10 of Madras Act VIII of 1865 requires that the question what puttah ought to be offered and accepted shall be decided in the mode prescribed in Section 11 for determining the rates of rent. That mode consists of a series of rules having operation in consecutive order. First, effect is required to be given to the express or implied contract of the parties; Second, if no contract exists, then it must be ascertained whether an assessment has been made in the fields under a survey made previous to the 1st January 1859, and if so, that assessment is to be accepted as the proper rate of rent; Third, if the case falls within neither of those rules then

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the clearly ascertained general local usage must govern the decision, and should there be no ascertainable local usage, the rent must be fixed "according to the rates established "or paid for neighbouring lands of similar description and "quality."

These imperative rules are declared unqualifiedly to be applicable "in the decision of suits involving disputes re-"garding rates of rent which may be brought before Collec-"tors under Sections 8, 9 and 10." In the present case, therefore, the decision must be governed by them. We can give no effect to the argument of the Advocate General, that hardship will result to the plaintiffs and other private proprietors by their being compelled to submit to whatever reduction may from time to time be made in the rates of rent for the lands of the Government, nor indeed are we prepared to say that any real prejudice is likely to arise, seeing that there is a provision in the section securing to either party the right to claim payment of rent in kind according to the "warum" instead of the rent determined according to the above rates; or if the warum cannot be ascertained, such rent as appears to be just, having reference to any increase in the value of the produce, or the productive power of the land, produced otherwise than by the Agency or at the expense of the ryot.

Applying then the provisions of Section 11, it is clear that the proper rent must be determined according to the rates established or fixed for neighbouring lands of a similar kind. The receipts acted upon by the Original Court do not, it appears, relate to the rent of the lands now in dispute; they are therefore no proof of a contract as to such rent between the parties, and there is nothing in evidence to bring the case within the 2nd clause of the section, or to show the existence of a general local usage as to the rates of rent.

As from the terms of the decree of the Civil Court, it cannot be said that the proper amount of the rent has been adjudged in accordance with the section, it becomes necessary to require a finding on the issue:—

What is the proper rate of rent for the garden lands held by the defendants, according to the rates established or

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paid for closely neighbouring lands of similar description and quality?

In Special Appeal No. 582 *of* 1869.—No ground has been shown for disturbing the decree of the Civil Court as to the rent payable for the nunjah lands. And upon the other question as to the proper rate of rent for the garden lands, the judgment of the Court in the Cross Special Appeal No. 515 of 1869 is decisive and must be followed.

Appellate Jurisdiction. (a)

Special Appeal No. 476 *of* 1869.

C. ATCHAMMA.....*Special Appellant.*
J. SUBBARAYUDU and 3 others.....*Special Respondents.*

The plaintiff sought to recover certain property which she inherited from her father and which had been taken possession of by the defendants during the life-time of plaintiff's mother.

The Lower Courts dismissed the suit on the ground that it was barred by the Law of Limitation, plaintiff having failed to show that her mother was in possession at any time within twelve years before the suit.

Held, on special appeal, that the suit was not barred. Until the death of her mother plaintiff's alleged cause of action did not arise, and her right not being derived from or through her mother, the period of limitation could not be considered as having been running against her from the commencement of the adverse possession in her mother's life-time.

1870. November 1. S. A. No. 476 of 1869.

THIS was a Special Appeal against the decision of H. Morris, the Civil Judge of Rajahmundry, in Regular Appeal No. 391 of 1868, confirming the decree of the Court of the District Munsif of Rajahmundry, in Original Suit No. 215 of 1867.

This suit was brought to recover 11 acres and 71 cents. of Inam lands capable of yielding produce to the value of Rupees 119 per annum, together with 51 fruit trees, valued at Rupees 29 and standing on the lands.

The plaintiff stated that the property belonged to her father Ivaturi Virannah; that she was entitled to inherit the same under the Hindu Law; that from July 1857, when her mother died, the 1st defendant's father Sharubhannah, deceased, and the 2nd defendant's husband Vira Sharabhannah, deceased, and after their death the defendants took possession of the said property.

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