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record being before us, we think that it is our duty to proceed under Section 35, and we shall accordingly make an order setting aside the decision passed on Appeal by the Civil Court.

As is usual under this Section, we shall make no order as to costs.

Appellate Jurisdiction. (*a*)

Special Appeal No. 546 *of* 1868.

(*Civil Miscellaneous Petition No.* 154 *of* 1869.)

KOTTASAWMY, by his grandmother and guardian MUTTALANATCHIYARA *alias* VEERALUCHMI NATCHIYAR. } *Special Appellant* (*Plaintiff's heir.*)

SANDAMA NAIK, *Special Respondent* (*2nd Defendant.*)

In a suit before the Collector under Madras Act VIII of 1865 brought by a Zemindar to compel his tenants, the defendants, to accept a puttah at enhanced rates of assessment on the ground that he had at his own expense repaired a tank and rendered the land formerly cultivated as dry land capable of being cultivated as wet land.

Held, that the plaintiff could not maintain the suit inasmuch as he had not obtained the sanction of the Collector to raise the rent, and such a condition was a condition precedent to such a suit.

Semble: That the right of the plaintiff to recover was dependent on the further condition that an additional revenue was levied on him consequent upon the improvement made.

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THIS was a Special Appeal against the decree of the Civil Court of Madura in Regular Appeal, No. 112 of 1868, modifying the decision of the Acting Head Assistant Collector of Madura, in Original Suit No. 1095 of 1867.

The Original Suit was brought to compel defendant to accept a puttah and execute a muchilika.

Defendant stated that the rates specified in the puttah are in excess of the rates hitherto paid and are otherwise excessive.

The Acting Head Assistant Collector decreed for plaintiff.

The defendant appealed to the Civil Court.

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

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The judgment of the Civil Judge was as follows :—

In this case, the Collector has allowed the rents to be raised, because plaintiff has "repaired a tank at considerable expense." This may be done under Section 2 of Act VIII of 1865, but only in cases in which additional revenue is levied in consequence from the land-holder.

It is admitted here, however, that no such revenue has been levied, and the Acting Head Assistant Collector was consequently not authorised to sanction the raising of rents. There is also no evidence whatever of repairs having been made to the tank either by plaintiff or anybody else, or that, by such works being executed, additional value has been imparted to the land.

I reverse the decree of the Lower Court in so far as it directs that defendant accept a puttah and execute a muchilika at rates in excess of those formerly paid by him. Plaintiff will pay defendant's costs throughout and bear his own.

The plaintiff specially appealed to the High Court from the decree of the Civil Court on the following grounds :—

I. The Civil Judge had misconstrued the Section quoted by him.

II. He was mistaken in saying there is no evidence of any improvement made by plaintiff or anybody else.

Issues were sent to the Civil Court, and it was found that improvement had been made at the expense of the land-holder, and that the value of the lands had been thereby increased.

Sunjiva Row, for the special appellant.

Johnstone, for the special respondent.

The Court delivered the following

JUDGMEMT :—In this case a Zemindar sued before the Collector, under Madras Act VIII of 1865, to compel his tenants, the defendants, to accept a puttah at enhanced rates of assessment on the ground that he had at his own expense repaired a tank and rendered the land formerly cultivated as punjah or dry land capable of being cultivated as nunjah or wet land. The finding upon the issues sent down by this Court shows that the improvement has been executed at the

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expense of the land-holder, and that thereby additional value has been imparted to the lands. The question whether the land-holder has now in consequence a right to raise the rent upon the lands, depends upon the right construction of the first branch of the proviso to Clause 4, Section 11 of Madras Act VIII of 1865(*a*). Assuming that the improvement in the present case is one of those contemplated by the proviso, and it seems to be a strong instance of such, the right of the plaintiff to raise the rent would seem to depend upon two conditions, first that he has obtained the sanction of the Collector to raise the rent; and secondly, that an additional revenue is levied from him consequent upon the improvement made. As to the first condition, there can, we think be no doubt that it is a condition precedent to a suit to compel acceptance of a puttah at an enhanced rent. It was urged that practically the Collector has given his sanction by deciding in favour of the plaintiff. But the object of the suit is to compel acceptance of the puttah, and it is obvious that until the sanction of the Collector is first obtained, the right to enforce acceptance of such a puttah does not exist, and the subsequent judgment of the Collector cannot impart the sanction which is antecedently requisite to the right to sue. We have no doubt that the Legislature has interposed the Collector between the land-holder and the ryots in order on the one hand to guard against prejudice to the cultivator

(*a*) Clause 4 is in the following terms :—

In the case of immemorial waste land and of lands left unoccupied, either through default or voluntary resignation, it shall be lawful for land-holders to arrange their own terms of rent ; provided that nothing in this rule shall be held to affect any special rights which by law, or usage having the force of law, are held by any class or person in such waste or unoccupied lands.

Provided always that nothing herein contained shall affect the right of any such land-holder, with the sanction of the Collector, to raise the rent upon any lands in consequence of additional value imparted to them by works of irrigation or other improvements executed at his own expense, or constructed at the expense of Government, and for which an additional revenue is levied from him. Provided also, that no puttahs which may have been granted by any such land-holder at rates lower than the rates payable upon such lands or upon neighbouring lands of similar quality and description shall be binding upon his successor, unless such puttah shall have been *bonâ fide* granted for the erection of dwelling houses, factories or other permanent buildings, or for the purpose of clearing and bringing waste land into cultivation, or for the purpose of making any permanent improvement thereon, and unless the tenant shall have substantially performed the conditions upon which such lower rates of assessment were allowed.

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by fanciful or unprofitable projects of the landlord :—to prevent the ryot from being (as the phrase is) improved out of his estate or holding, and on the other hand to secure the land-holder from being deprived of a fair return for a really desirable improvement of which the ryot takes the benefit. A ryot with a permanent right of occupancy ought not to have forced upon him at the mere will of the land-holder some speculative improvement which, though it may add somewhat to the market value of the land, may at the same time alter the character of the farm, and render the ryot's holding when burdened with the enhanced rent a far less profitable investment of his capital and labor than it was in its former condition. On the other hand, the ryot might in some instances unjustly avail himself of his peculiar rights of occupancy to take the benefit without sharing with his landlord in the burden of a thoroughly desirable improvement. It seems to us that the very important and by no means easy task of arbitrating between the land-holder and his ryots on such occasions has been imposed by the Legislature on the Collector in the first Instance at least. It is clear that in the present case the land-holder has not obtained the previous sanction of the Collector to the raising of the rent, and this objection is fatal to his present suit.

But it seems desirable that we should say something in regard to the second condition of the right to raise the rent because it was on this ground alone that the Lower Appellate Court dismissed the plaintiff's suit. It was contended for the plaintiff that it is only when the improvement has been made at the expense of Government that the right to raise the rent depends upon the condition that an additional revenue is levied from the land-holder. The use of the word "and" in the sentence "and for which, &c.," was relied upon in support of this contention. The sentence appears to be very loosely framed ; and in almost any construction of it, the word "and" seems to be superfluous and inaccurate. The additional revenue when levied is not *for* the works or improvements executed, but *for* or on account of the additional value thereby imparted to the lands; and if the words "for which" relate to the "additional value," then clearly the condition that an additional revenue is levied

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holds whether the works were executed at the expense of the land-holder or of the Government. But if the words "for which" were intended, with some laxity of language, to relate to "works of irrigation or other improvements," then there is no ground on which they must be limited in their relation to either the one or the other only of the two kinds described; the form of the sentence permits their being epually applied to both. It was said that the Government could only be supposed to intend to exact an additional revenue when the additional value had been imparted at their sole expense. This may be so, but certainly such intention has not been clearly expressed, and we ought not to hold, except on very clear words, that the Government have deprived themselves of the right to a fair share in the increased produce of the land though not directly brought about by State expenditure. Though it is not indispensable for us to decide the point, we think it right to express our opinion that the ground on which the Lower Appellate Court dismissed the plaintiff's suit is a sound one. The decree below must be affirmed, and this special appeal dismissed with costs.

Appeal dismissed.

Appellate Jurisdiction. (*a*)

Special Appeal No. 267 *of* 1869.

SUBBARAMIEN.....*Special Appellant.*

PONNUSAWMY CHETTY.....*Special Respondent.*

In a suit to recover the possession of land of which the plaintiff had been dispossessed in execution of a decree against the 1st defendant, it appeared that the plaintiff had applied within one month from the date of his dispossession to the Court from which the process of execution had issued under Section 230 of the Code of Civil Procedure setting up his title, and it was numbered and registered as a suit under the section. Before the claim came on for hearing the plaintiff was allowed by the Court to withdraw the proceeding with liberty to bring a fresh suit upon the claim set up. The plaintiff subsequently brought the present suit.

Held, that the former proceeding was a suit within the meaning of Section 97 of the Code, and liberty having been given on its withdrawal before decree to bring another suit the present suit was well brought.

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THIS was a Special Appeal against the decision of V. Sundara Naidoo, the Principal Sadr Amin of Tranquebar, in

Present: Scotland, C. J. and Collett, J.