

Appellate Jurisdiction. (a)*Special Appeal No. 254 of 1869.*CHAUKI GOUNDEN.....*Special Appellant.*VENKATARAMANIEE and another...*Special Respondents.*

The definition of the word "landholders" in Madras Act VIII of 1865, Section I, includes the Poligar of an unsettled Polliem. Such a landholder is therefore entitled to sue under the Act to compel the acceptance of puttahs by his tenants.

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THIS was a special appeal against the decision of C. F. Chamier, the Civil Judge of Salem, in Regular Appeal No. 264 of 1868, reversing the decision of the Sub-Collector of Salem, in Original Suit No. 2 of 1868.

The statement of the case by the Sub-Collector was as follows :—

This was a suit by the plaintiff, the Poligar of Shulagherry, for an order to the defendants to receive a puttah for the lands specified in the plaint.

It was alleged that a former poligar gave to one Papi Gounden a puttah (exhibit I) permanently renting to him the whole of the village for Rupees 25 per annum, and that the defendants having acquired the right thus given are entitled to hold it on the same terms.

There are in the puttah A only ten padukal fields, regarding which it is admitted that there is no dispute whatever. The only points therefore to be settled are, whether the defendants are bound to receive a puttah for the land described as "Kassu Kavali poramboke;" whether this ground comprises 20,000 gulies, and whether the assessment placed upon it by the plaintiff is just or not. Also whether the exhibit No. IX is in any way binding on the plaintiff.

Now as regards the question as to whether the defendants are bound to take a puttah for this land or not, it appears to me as they have admitted that it is in their possession, and as they are unwilling to give it up, that they most decidedly are.

The defendants seem to have in no way concerned themselves as to its extent, as the 2nd defendant admits that he received from the plaintiff a written notice to attend on a certain date and see it measured, and that he did not think fit to comply with this, and the 1st defendant appears not to

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

have given the matter the slightest attention. The Ayacut accounts referred to by the defendants cannot be found either in the Talook or Collector's Cutcherry. From a certified copy of the pymash accounts procured from the Collector's Office, it is shown that the extent of this land was then set down at 20,000 gulies. The plaintiff has now measured it and proves by the witnesses called by him, that its real extent is as per exhibit E, 39,671 gulies or nearly double of that shown in the exhibit D.

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Having decided that the puttah tendered by the plaintiff was a fair one, the judgment of the Acting Sub-Collector contained the following observations with regard to the contention of the defendants:—

There remains now to be considered the question—Is the plaintiff bound to adhere to the conditions of the exhibit I or not? I am of opinion that he is not,—my reasons being 1st, that the Shulagherry polliem being unsettled and being the property of Government, each succeeding poligar being a tenant at will of the Crown, no rental at rates lower than those payable upon neighbouring lands of similar quality is binding upon either Government or the successor of the poligar who rented out the land; 2nd, that even if this was not the case, and the exhibit I is what defendants wish to make it appear, a cowle, it is clear from the wording of it that it was not “*bonâ fide*,” granted for the purpose of clearing and bringing waste land into cultivation or for the purpose of making any permanent improvement thereon, and having been granted by a predecessor of the plaintiff is not binding on him.

For the reasons above given, I am of opinion that the defendants are bound to receive a puttah for the land specified in the plaint.

Upon appeal the Civil Judge dismissed the plaintiff's suit. The following was the judgment of the Civil Judge:—

The plaintiff possesses no proprietary right or interest in the land as is clearly shown in the judgment of the Lower Court. The provisions for the exchange of puttahs and muchilkas do not therefore apply to his case. A poligar to whom an absolute and indefeasible title had been conveyed by the Government would be a “Zemindar” within the

1870. meaning of Sections 1 and 3, Act VIII of 1865; but the
February 23. qualified estate of the holder of an unsettled polliem who
S. A. No. 254 is at the best a life-tenant would not be regarded as a pro-
of 1869. prietary interest such as Zemindar possesses in his estate.*
 Indeed, it has been expressly held that the holder of an
 unsettled polliem has no property in the soil. I think
 therefore that the plaintiff can only avail himself of the Act
 by coming in under Section 13 as a landholder subject to the
 payment of land revenue direct to Government. On this
 ground I reverse the decree of the Lower Court and dismiss
 the suit. The plaintiff will pay the costs of the defendants
 in both Courts.

The plaintiff appealed specially to the High Court
 against the decree of the Civil Judge for the following
 reasons:—

The provisions of Act VIII of 1865 are applicable to
 the plaintiff's case.

Rama Row, for the special appellant, the plaintiff.

Srinivasa Chariyar, for the special respondents, the
 defendants.

The Court delivered the following

JUDGMENT:—This was a suit brought before a Collector
 to enforce the acceptance of a puttah under Madras Act VIII
 of 1865. In Section 1 of that Act the definition of "land-
 holders" apparently divides them into two classes having
 different rights under the Act. The 1st Class can compel
 the interchange of puttahs and muchilkas as provided by
 the Act, but the 2nd Class have only the rights given to
 them by Section 13. The plaintiff in the present case is
 the poligar of an unsettled polliem, and the Collector com-
 pelled the defendants as tenants to accept a puttah from
 him. The Civil Judge held that the plaintiff fell within
 the 2nd Class of "landholders" and was consequently not
 entitled to sue to compel the acceptance of a puttah, and his
 suit was dismissed accordingly. The terms of the definition
 in Section 1 are certainly far from explicit, but apparently
 it was intended to include in Class 1 of "landholders," all
 landholders to whom the old puttah Regulation XXX of 1802,
 was applicable. There can be no doubt that that Regulation

* Vide Wilson's Glossary of Indian Terms, title Zemindar.

was intended to include, and in practice was always acted upon as including poligars, and we think that poligars like muttahdars who are also not named were intended to be comprised in Class 1 of the definition under the words "other Zemindars;" that is other than those who hold by an Istimrar Sunnud. The poligar of an unsettled polliem may, according to the generally received theory as to his rights, have only an estate for life in his polliem, but for such an estate as he has his relation to the Government on the one side and to the occupiers of lands within his polliem on the other side resembles that of a Zemindar. He receives from the ryots, who have certain customary rights of occupancy, his share of the income or produce derived from their lands, and pays to the Government a certain fixed sum short of this amount under the denomination of peshcush. It seems to have been intended to include in Class 1 besides those who pay a mere quit rent to Government (which is so far an extension of the old puttah Regulation) and the farmers of the land Revenue from Government properly so called, and farmers of lands under Zemindars, all who like Zemindars occupy in some degree the position of middlemen between the occupants of the land and the Government, and pay to the Government a fixed sum called peshcush, being something short of the total revenue calculated as receivable from the lands comprised within their estates, and to include in Class 2 those who, whether under the ryotwar settlement or otherwise, pay direct to Government what is really the full land revenue assessed on their holdings. In this view as to the correct construction of the definition, the plaintiff in the present suit was entitled to bring it, and the appeal must now be remanded to the Lower Appellate Court in order that it may be disposed of upon the merits. The plaintiff is entitled to his costs of this special appeal, and the other costs will abide the result of the suit.

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Appeal allowed.