

APPELLATE JURISDICTION (a)

Special Appeal No. 73 of 1870.

KRISTNA RÁU and another.....*Special Appellants.*

MÁHADEVA MUDALI.....*Special Respondent.*

Special Appeal No. 74 of 1870.

KRISTNA RÁU and another*Special Appellants.*

NYNIAPPA MUDALI.....*Special Respondent.*

Special Appeal No. 75 of 1870.

KRISTNA RÁU and another*Special Appellants.*

SOLAYAPPA MUDALI.....*Special Respondent.*

Special Appeal No. 76 of 1870.

KRISTNA RÁU and another*Special Appellants.*

CHINNA SUBBU MUDALI.....*Special Respondent.*

Special Appeal No. 77 of 1870.

KRISTNA RÁU and another*Special Appellants.*

KRISTNA MUDALI.....*Special Respondent.*

Before a dispute regarding the rate of rent can be decided in a suit brought under Section 9 of Act VIII of 1865, merely on the ground of what appears to be just, the Court must consider the reasonableness of the rate according to local usage, and, when such usage is not ascertainable, according to the rates for neighbouring land of similar description and quality.

1870.
July 22.
A. Nos. 73,
75, 76 & 77
of 1870.

SPECIAL Appeals against the decision of E.B. Foord, the Civil Judge of Chingleput, in Regular Appeals Nos. 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 of 1868, modifying the decisions of the Assistant Collector of the Madras District in Original Suits Nos. 1, 2, 3, 4 and 5 of 1868, respectively.

These suits were brought, under Section 9 of Madras Act VIII of 1865, to enforce acceptance of pattahs.

The Assistant Collector in his judgment said—

“ The only question that arises in this case is as to what rate of varam should be given by the Zamindár to the ryot. It appears that for ten years the Zamindár has been in the habit of giving 5 kallams, but he alleges that it was his will to do so, and that he was not obliged to give 5 kallams, but only 4, and he adduces in proof of this that

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

in the accounts prepared by the karanams in his kachabri 4 kallams were entered as the varam, and the odd kallam, making the fifth, was entered as one kallam jashti. On examining the accounts previous to the year, the balance appears to be in favor of 4 kallams being the varam, the best that is at any time entered for the ryot being 4 kallams and 6 markals. It is impossible to find out with certainty what the varam really is, and under these circumstances, I take advantage of the latter part of Clause III of Section XI of the Act, by which, in the event of the varam being unascertainable, the Collector is authorized to fix such rates as may appear to him to be reasonable. I consider that 4 kallams and 6 markals would be a proper assessment, and accordingly direct that the pattah now tendered by the plaintiffs be altered in such a way as that 4 kallams and 6 markals do appear in it as the rate of varam instead of 4 kallams, and that defendant do accept such pattah, so amended as above, as may be given him by the plaintiffs, and execute a muchalka in accordance with the same, agreeably to Section 10 of the Act.

1870.
July 22.
S. A. Nos 73,
74, 75, 76 & 77
of 1870.

Plaintiffs and defendants presented cross-appeals to the Civil Court.

The Civil Judge in his judgment modifying the decision of the Assistant Collector, said—

“ These suits were brought under Act VIII of 1865 by the same plaintiffs, who are Zamindárs, against the several defendants, who are their tenants, to enforce the acceptance by them of pattahs alleged to have been tendered in accordance with Section 7 of the said Act.

The defendants objected to receive their pattahs on the grounds that they were entitled to 5 kallams out of 10 of the crop, whereas only 4 kallams out of 10 were allowed to them in the said pattahs.

The Assistant Collector found that, for the ten years previous to the institution of the suits, the defendant had received from the plaintiffs 5 kallams out of 10 of the crop, but on examining the karanam's accounts for the period of ten years previous to the above ten years, he found that, according to the 'varam,' sometimes 4 kallams and some-

1870. times 4 kallams and 6 markals were received by the cultiva-
July 22. tors. It being therefore, in his opinion, impossible to ascer-
A. Nos 73, tain the 'varam,' he decreed under the concluding part of
75, 76 & 77 Clause 3, Section 11 of the said Act, that defendants should
of 1870. receive 4 kallams and 6 markals, as being a rate which
 appeared just to him, and ordered that pattahs so amended
 should be received by the defendants.

Both parties appeal against these decisions, the plain-
 tiffs on the ground that the rates decreed are too high,
 and the defendants on the ground that they are too low.
 I am clearly of opinion that in all these cases the defend-
 ants are entitled to receive 5 kallams out of 10 as their
 share of the crop, because, I think, that the plaintiffs' ad-
 mission that they have divided the crop with defendants at
 that rate for the ten years previous to the institution of this
 suit, bars them from reducing that rate, which, in fact,
 amounts to raising the rent upon the lands in defendant's
 occupancy, except on the ground of improvements made by
 them (plaintiffs). No such ground is even suggested by the
 plaintiffs.

For these reasons, I resolve to modify the decisions of
 the Assistant Collector, and to adjudge the defendants en-
 titled to five-tenths of the crop, and I direct that pattahs
 so amended be granted by the plaintiffs to the several
 defendants."

The plaintiffs appealed to the High Court.

Sanjiva Rau, for the special appellants,

Savundaranayagam Pillai for *Sloan,* for the
 special respondent in No. 73.

The Court delivered the following

JUDGMENT:—*In Special Appeal No. 73 of 1870.* This
 was a suit brought before the Collector to compel the accept-
 ance of a pattah by the defendant as the tenant of the plain-
 tiff, under Madras Act VIII of 1865; and the question raised
 between the parties was whether the defendant was entitled
 to a larger kudivaram than 4 kallams out of 10. The Assist-
 ant Collector who heard the case decreed, under the conclud-
 ing part of Clause 3, Section 11 of the Act, that four kallams

and six markals out of ten was the just rate, and ordered the acceptance of a pattah at that rate.

1870
July 22.

S. A. Nos. 73,
74, 75, 76 & 77
of 1870.

Both sides appealed to the Civil Court, and that Court modified the Assistant Collector's decree by ordering the acceptance of a pattah allowing to the defendant five kalams out of ten. And the Court appears to have so decided on the ground that the crop had been divided at that rate for 10 years previous to the institution of the suit, and that that rate was reasonable and just.

This mode of dealing with the case, it appears to us, has not given due effect to the provisions in Clause 3, Section 11 of the Act. Before a dispute regarding the rate of rent can be decided in a suit like the present, merely on the ground of what appears to be just, the Court must consider the reasonableness of the rate according to local usage, and, when such usage is not ascertainable, according to the rates for neighbouring lands of similar description and quality. It is necessary, therefore, to require findings on the following issues :—

What is the proper rate of rent to be inserted in the pattah according to local usage, or if such usage be not ascertainable, then, what is the proper rate of such rent according to the rates established or paid for neighbouring lands of similar description and quality ?

If the evidence does not warrant a finding on these points, then a finding should be returned on the further issue,—What, in the judgment of the Court, is the just rate ?

On behalf of the appellant this Court has been asked to admit as evidence three muchalkas executed by the defendants in Special Appeal Nos. 73, 75, 77, and two others said to be in the record of a suit in the District Munsif's Court at Poonamallee. We think these documents should be received on their genuineness being proved or admitted.

Special Appeals Nos. 74, 75, 76, & 77 of 1870. Our judgment in Special Appeal No. 73 equally applies to these appeals, and they will be disposed of on the findings which may be returned in that appeal.