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on to award them for subsequent years and until the date of delivery of possession. But it did not do so—And the case at IV, M. H. C. R., page 257, is an authority that in execution mesne profits could only be granted within the plain terms of the decree. We do not see that the circumstance that mesne profits were in that case not awarded at all, distinguishes it in principle from the present case, in which they were awarded for one year; because the decision of the Court in that case was founded on the construction of Section 11, Act XXIII of 1861, and the Court, reading that section with Sections 196 and 197 of Act VIII of 1859, held that it was clear that the words relating to mesne profits subsequent to the date of the suit must be limited strictly to mesne profits made payable by the decree in the suit. As the mesne profits in regard to which this appeal is made were not made payable by the decree, they could not be awarded in execution. We must, therefore, reverse the order of the Civil Judge, but without costs.

Appellate Jurisdiction(a)

Special Appeal No. 150 *of* 1872.

RA'JAGOPA'LA A'YYANGA'R..... *Special Appellant.*

THE COLLECTOR OF CHINGLEPUT and another..... *Special Respondents.*

Plaintiff, a Mírásidár, purchased certain land in 1850 which he allowed to lie waste from 1853. In 1866, on the application of the 1st defendant who was also a Mírásidár to the 2nd defendant, the local Revenue Authority, the land was granted to 1st defendant and made over to his possession. Plaintiff was admittedly in arrears of kist. In a suit by plaintiff to recover the land it was contended that non-cultivation and non-payment of rent for a considerable time warranted the Revenue Authorities in entering upon and disposing of the land: *Held*, in Special Appeal, that plaintiff's tenancy could only be determined by his resignation or abandonment of his holding, or by the procedure laid down in Act II of 1864: that the letting land lie fallow does not necessarily lead to the inference of abandonment, and that, in the present case, plaintiff, not being found to have abandoned the land, had been ejected in a manner which the law does not recognize.

S. A. No. 139 *of* 1858 (Sadr Rep., 1859, p. 21); *S. A. No.* 482 *of* 1860 (Sadr Rep. 1861, p. 112); *S. A. No.* 839 *of* 1861 (1, M. H. C. R., 12); *R. A. No.* 20 *of* 1863 (1, M. H. C. R., 407) and *R. C. No.* 3 *of* 1868 (4, M. H. C. R., 153) considered.

1872. *August* 16. *S. A. No.* 150 *of* 1872.

THIS was a Special Appeal against the decision of E. B. Foord, the Civil Judge of Chingleput, in Regular Appeal No. 116 of 1870, reversing the decree of the Court of the District

(a) Present: Innes and Kernan, JJ.

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Munsif of Chingleput in Original Suit No. 244 of 1866 on the file of the District Munsif of Karungúli.

Ananda Charlu, for the special appellant, the plaintiff.

The *Government Pleader*, for the Collector of Chingleput.

The facts found and the arguments of counsel are set forth in the following

JUDGMENT:—This was a suit to recover a piece of land which had been taken from plaintiff's possession by 2nd defendant (a Deputy Tahsildár) and made over to the possession of 1st defendant. The admitted facts seem to be that the land had been left long uncultivated, and that on the application of the 1st defendant to the 2nd defendant, the local Revenue Authority, the land was granted to him and made over to his possession.

The District Munsif found, on the evidence, that the plaintiff had purchased the land at a Court sale in the year 1850, and that at the date of the cause of action he had left it uncultivated for 13 years, or from 1853. He went on to consider whether the proprietary right was lost by allowing the land to lie fallow. This question he decided in the negative, and he then came to the conclusion that the Revenue Authorities could not, at their pleasure, give the land of one to another, on the mere ground that it had been left uncultivated. That it was open to them, during the period mentioned, to have entered the land in the plaintiff's pattah and received from him the revenue due upon it, but that they had neglected to do this and could not, therefore, justify the delivery of the land to 1st defendant by the neglect of plaintiff to pay the revenue. He, therefore, gave judgment for plaintiff

The Civil Judge considered that the question was whether plaintiff forfeited his right to the land by neglecting to pay its assessment, his liability to pay being admitted. He reversed the decision of the Munsif, being of opinion that the 2nd defendant was competent, in the protection of the public revenue, to grant the land to the 1st defendant. The Civil Judge was guided in the decision he came to by the Reports of Cases at pages 12 and 407 of Vol. I of the High Court Reports; which he considered applicable to mírási as well as ordinary pattah

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land in a case like the present, in which both the competing parties, plaintiff and 1st defendant, are mírásidárs.

In Special Appeal we have to consider the general question of whether the Revenue Authorities could legally make over the land to 1st defendant.

We thought the case of such importance that the Government ought to be represented, and we directed the Collector to be made a party.

Ananda Charlu appeared for the special appellant. Mr. Handley, the Government Pleader, appeared for the Collector. He admitted the plaintiff's possession, but in support of the decision appealed from quoted the Sadr Court's decisions in *Special Appeal No.* 139 *of* 1858, at page 21 of the Vol. for 1859; in *Special Appeal No.* 482 *of* 1860, at page 112 of the Volume for 1861; also the cases at pages 12 and 407 of 1, M. H. C. R., and at page 153, 4, M. H. C. R.

Mr. Handley said that these cases showed that actual abandonment of the land need not be found, but that cessation of cultivation for a considerable time is all that is necessary to warrant the authorities in entering upon and disposing of the lands.

In the first of these cases the land had been left waste by plaintiff for 12 or 13 years, and in 1853 the defendant, who said he had purchased it of plaintiff, obtained a pattah for the land. The evidence of purchase was disbelieved, and the Civil Judge and District Munsif awarded the land to plaintiff. The Special Appeal was dismissed by the Court of Sadr Adálat, the Judges (Hooper, Strange and Phillips) observing that "the Collector was not warranted in issuing a pattah to "the 1st defendant without giving plaintiff, as the ancient "occupant, the opportunity of cultivating the land, or ob- "taining from him his consent that it might be assigned to "the defendant." In the next case (*Special Appeal No.* 482 *of* 1860) the suit was to recover a plot of garden land said to be the property of the plaintiff, who had, however, abandoned it for some years, after which it was granted by the Zamindár to the defendants. The Principal Sadr Amín, differing from

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the Munsif and following the decision just referred to, gave judgment for plaintiff. In Special Appeal the Judges (Phillips and Frere) took a distinction between this and the former case.

They said, "in that suit the defendant pleaded purchase "from the plaintiff and thus acknowledged the existence of his "title up to the date of the alleged sale, but failed to establish "this sale by any sufficient proof. It has been repeatedly "held by this Court that, as a general rule, lands which have "been abandoned and left waste by the original cultivators "are at the disposal of the Revenue Authorities, whom the "Zamindár in this case represents." Reading these two cases together, it results that as the law stood at the date of those decisions, so long as the occupant had not absolutely abandoned his land so as to leave it to be administered by the State as a thing *publici juris*, the Revenue Authorities had no power by mere delivery, or by grant of a pattah, to transfer the possession of it to another.

The report of the case in 1, M. H. C. R., 12 is very short and meagre as to the facts found, but as the Judges (Strange and Frere) expressly refer to the decision in *Special Appeal No.* 482 (just noticed) and base their decision upon it, it is fair to conclude that their ground for reversing the decisions of the Courts below, was the fact that plaintiff had abandoned his title to the land. In the case at 1, M. H. C. R., 407, the plaintiff was an ordinary pattahdár and was expressly found to have abandoned the land, and the judgment of the High Court affirming the decision of the Civil Judge, which dismissed the plaintiff's claim, went expressly upon that ground. The case at 4, M. H. C. R., 153, was also quoted by Mr. Handley to show that a mírásidár, as the plaintiff is, holds an hereditary tenancy under Government, determinable on default in payment of the assessment. That case, however, is not an authority for that proposition. The Small Cause Court had found as a fact that the plaintiff was a mírásidár, and informed the High Court of the meaning of the term mírásidár in Tanjore. But the decision of the High Court had only to deal with the question of whether such a tenant could sub-let, and this was the only question decided. Taking it, however, that the rights of a mírásidár are at least not less extensive than what is here

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expressed, we do not think that the case for the defendant is much advanced by it. In a certain event which, it is conceded, has taken place, the tenancy is determinable, not determined, and the question is in what way determinable. The plaintiff contends in Special Appeal that the Revenue Authorities can only determine his tenancy under Madras Act II of 1864. Mr. Handley says they may determine it by re-entry. Now the plaintiff is admittedly in arrears, and we have only to look to Madras Act II of 1864 to see what course is lawfully open to the Collector in such a case. After certain formalities have been complied with, the land may be brought to sale and the new purchaser let in. There must first be a demand, to be followed by an attachment if not complied with, and intermediately between that and the ultimate sale, the Collector may enter to *manage*. He does not enter to determine the tenancy, nor has he any authority to do so. It would be a strange conclusion to arrive at that Act II of 1864 is only applicable to those cases in which the Collector is proceeding to collect arrears, and that if he chooses to forego arrears, he can at once enter and make over the land to another person; that is, that a tenant who is not formally called upon to pay arrears is placed in a worse position than one who has notice to pay them. The tenancy can, in our opinion, only be determined by the resignation of the tenant or his abandonment of his holding, or by the course of proceedings laid down in Act II of 1864. In the decisions of the Sadr Adálat and those of this Court, the basis of each decision in favor of the action of the Revenue Authorities was the fact of abandonment of his holding by the ryot or mírásidár.

Abandonment and resignation are, of course, on the same footing, except that the fact of abandoment must generally be a matter of mere inference, and the Revenue officer who acts on the assumption of it necessarily does so at his peril. The letting land lie fallow does not necessarily lead to the inference of abandonment, because it is susceptible of explanation in a hundred other different ways. And it would be very harsh to hold that a proprietor, because he exercises his right of abstaining from cultivating his land, must on that account be taken to have abandoned it. In the present case plaintiff is

not found to have abandoned the land, and he has been ejected in a manner which the law does not recognize. 1872. *August* 16. *S. A. No.* 150 *of* 1872.

The decision of the Civil Judge should be reversed and that of the District Munsif restored.

The special appellant is entitled to his costs in this and the Lower Appellate Court.

Appeal allowed.

Appellate Jurisdiction(a)

Civil Miscellaneous Special Appeal No. 221 *of* 1872.

VENKATARA'MANA HODAI.....*Appellant.*
BAPANNA PAI..... ..*Respondent.*

A suit was compromised by a rázináma which required that a decree should be passed in conformity with its terms. The Munsif, instead of passing a regular decree, endorsed an informal order on the rázináma, and five years afterwards, upon an application for execution, the Munsif made a formal decree and ordered its execution. The Civil Judge considered this procedure erroneous and ordered that the decree should not be acted on. *Held*, that it was competent to the Munsif to make a decree in pursuance of the rázináma upon the application of the party interested even after an interval of five years. —And that, the decree having been properly made, the Judge had no authority to direct that it should not be acted on.

1872. *August* 16. *C. M. S. A. No.* 221 *of* 1872.

THIS was an appeal against the order of the Civil Court of Mangalore, dated the 16th March 1872, passed on Miscellaneous Petition No. 144 of 1872, presented against the order of the District Munsif of Kandapúr, dated 12th January 1872.

The appellant was plaintiff in a Suit No. 20 of 1862 in the Court of the Munsif of Kandapúr, in which the respondent and another were defendants. The parties having compromised the suit, a rázináma was presented to the Court and the Munsif endorsed an informal order on it, but made no decree. Plaintiff, by Petition No. 259 of 1871, applied for execution, upon which the Munsif made a decree according to the terms of the rázináma and ordered its execution. On appeal the Civil Judge said—"In this case a compromise was filed but no decree prepared on it. After several (five) years had passed, and objections had been raised against the compromise, the present Munsif prepares a decree. I consider this was erroneous, and that it should not be acted on, but the parties be referred to a suit."

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