Privy Council Appeal No. 58 of 1919.

Surisetti Butchayya and another - - - - - - *Appellants*

v.

Sri Rajah Parthasarathy Appa Row Bahadur Zamindar Garu and another - - - - - - - - - *Respondents.*

Tallapragada Subba Row and another - - - - - *Appellants*

v.

Sri Rajah Venkatadri Appa Row Bahadur Garu - - - - *Respondent.*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH JULY, 1921.

Present at the Hearing:

LORD ATKINSON.
LORD PHILLIMORE.
SIR JOHN EDGE.

[*Delivered by* LORD ATKINSON.]

This is a consolidated appeal against two decrees, both dated the 14th April, 1916, of the High Court of Judicature at Madras, affirming two decrees, both dated the 30th March, 1914, of the Court of the District Judge of Kistna at Masulipatam, which affirmed two decrees, both dated the 25th April, 1913, of the Court of the Suits Deputy Collector, Kistna District, Ellore, made in Summary Suits No. 376 and No. 377 of 1912.

Though the parties in each of these suits, as well as the property affected, are different, the questions raised for decision in both appeals are practically identical, so that the decision made in one disposes of the other.

In the first suit the first defendant who had been in a suit dealing with the estate of the Zamindar upon which the Lanka lands, the subject of the suit, are situated, appointed Receiver by the Court by a lease bearing date the 31st March, 1908, demised to the two plaintiffs, the appellants in this appeal, and to the deceased husband of the second of the two defendants, the respondents in the appeal, a considerable tract of Lanka land.

over 100 acres in extent, for a term of three years from the 31st March, 1908, reserving thereout a cist or rent of Rs. 2,420 per annum.

Some of the provisions of this lease demand consideration. It contains a recital that, in an auction held by the lessors or on whose behalf, of course, the receiver acted, the lease had been made. The practice prevailing on this estate in reference to such lands as were demised was proved to be this: that when a lease was about to expire, or had but recently expired, an auction was held. Those who desired to become lessees of the land previously demised, bid at this auction, and the new lease was granted to the highest bidder, whether he was the old lessee or another. There was thus no custom of continuity of occupation. The outgoing lessee had no privilege or advantage. It is further recited that as the lessees had executed a Muchilka in favour of the lessors agreeing to cultivate the said Lanka lands under the conditions set forth in the lease, the lessors had " written and given their patta." One of these conditions was that as regards planting seeds, turfs, grass, etc., and enlarging the extent of land, the lessees were to regard all the orders the lessors had issued or might issue. Another condition was that the lessees were to continue to cultivate only 110 acres and 85 cents. A third, that if the Government should during the lease take any of the demised lands for conservance works or any other purpose, the lessees would get a remission for that land of only the average cist that might accrue with reference to the Izara cist. That in the event of the Government taking lands with crops upon them the lessees might receive compensation from the Government for loss of profits, but would not be given any compensation out of the estate funds for such crops. A fourth condition, that if within the term silts should be formed and loss be caused by erosion, the lessees must bear the loss and pay the whole cist, etc. every year, and that they were not to apply for remission on any ground whatever. Again, the lessees were to bind themselves to all the steps the lessors might take against them under the Madras Rent Recovery Act 8, 1865, in regard to the collection of arrears. These are distress, sale or eviction. Another condition was that the lessees were not to transfer their Izara rights to others without the lessors' consent, and again; another, that neither the lessees nor the ryot who cultivates it, nor the merchant who purchases it, nor anybody else, shall take the tobacco and other produce raised on the Izara Lanka to other places than the Izara Lanka.

It is clear from this provision that the parties contemplated the cultivation of the land and the raising of crops upon it by ryots. No clause prohibiting subletting is to be found in the lease.

It is further stipulated that at the conclusion of the term the Lanka lands leased are to be dealt with according to the pleasure of the Estate Authorities without obtaining any release from the lessees, and that at the conclusion of the term, though it ends by the 30th June fasli 1319, the lessees are to give up

the Lanka land without leaving on it any produce whatever belonging to them by the end of May of that fasli for the convenient transaction of business. Provisions so elaborate as these are scarcely such as one would expect to find in the contract of tenancy of an ordinary ryot.

The appellants contend that by the provisions of certain clauses of the Madras Estates Act of 1908, this contract of tenancy is entirely superseded; that they are relieved from the obligations imposed on them by many of the covenants of their lease; that their tenure is changed, their occupancy continued, and their rent made subject to revision. If that be so, as they contend it is, then the burden rests upon them of clearly establishing that those clauses apply to their case. The obligation of proving the negative proposition that these clauses do not apply to their case does not rest upon the lessors.

On the 30th December, 1909, a notice was, on behalf of the lessors, served upon the lessees informing them that as the term of three years izara of the Lanka lands which they held from the lessors would expire by this fasli 1319, and as they were bound to quit the lands at the end of May, 1910, according to the contract of their registered Muchilka, they were required to remove by that date their things, etc., that were on the said Lanka lands and to vacate the same.

To this notice the lessees, on the 18th April, 1910, sent a reply to the effect that they were cultivating the lands as ryots when the Madras Estates Act, 1908, came into force; that they thereby acquired under Section 6 of that statute permanent occupancy rights in the said Lanka lands and would not vacate them; and, further, that they possessed the right to obtain patta of the said lands; and that if patta should not be granted to them they would take legal proceedings. Accordingly the appellants, in pursuance of this intimation of their intention, instituted on the 14th March, 1911, against the respondents, the suit out of which this appeal has arisen, praying the Court to determine what was a fair and equitable rent for the holding so leased to them, and, further, to make a decree directing the respondents to grant to them a patta in the form prescribed of their said lands on proper terms and to pay their costs.

In the judgment of Napier, J., who delivered the judgment of the High Court of Madras, the following passage is to be found: "It is admitted that the lessees did not cultivate the lands themselves, but sub-leased them to cultivating tenants." From the judgment of the Deputy Collector it clearly appears that it was proved before him by the witnesses examined on behalf both of the appellants and the respondents that the appellants had sublet, at all events, a considerable portion of the demised lands to sub-tenants who cultivated them personally, paying rent therefor. In the judgment of the Judge of the District Court is to be found the following passage:—

> "Much stress has been laid upon the fact that there were no tenants on the lands when leased to the plaintiffs. I do not see that this alters

> the case in the least, if the lands were leased to them under Izara tenure as I have held they were. It is in evidence the plaintiffs did not cultivate the lands at all themselves, but let them out to cultivating tenants. Even if they had cultivated some of the lands themselves, I do not think it would have altered the position as the Izara tenure was clearly understood between the parties when it was entered upon."

The above-mentioned extract from the judgment of Napier, J., cannot, in their Lordships' view, be treated as merely a restatement in wider language of the conclusion at which the District Judge had arrived. It may well be that before the High Court the advocate who appeared for the present appellants, feeling it hopeless, owing to the evidence that had been given, and to the judicial opinions which had been pronounced, to contest the point further, made the admission set forth by Napier, J. The passage from Mr. Justice Napier's judgment should, in their Lordships' view, be taken in its ordinary meaning, from which it follows that the appellants dealt with the lands demised as middlemen, subletting them to tenants who held their holdings subject to a rent payable to their immediate landlords, occupied them and cultivated them. The lessees claim to have a rent fixed for all the land demised to them by their leases, and to have a patta granted to them of all these lands. Their Lordships have not to determine, if Mr. Justice Napier's statement be accepted according to its ordinary meaning, whether, if the appellants had only sublet to occupying and cultivating sub-tenants a substantial portion of their lands, they would be altogether disentitled to the relief they seek, or would only be entitled to that relief in relation to the portion of the demised lands which they had not sublet, especially as this question was not raised or argued before their Lordships on the hearing of this appeal. A decision on either of them is not called for in this appeal, and their Lordships must not be taken to have formed, much less to have expressed, any opinion upon them.

It appears to their Lordships to be plain, from the provision of the first seven chapters of this statute of 1908, if not indeed from the whole of it, that the object of the Act was to improve the condition and confer new rights and privileges especially upon the occupying cultivators of Ryoti land such as these lands admittedly were. It would be quite opposed to its policy to confer on middlemen who sublet to occupying and cultivating tenants, rights and privileges at all resembling those conferred on occupying cultivators, and, indeed, would result in depriving the latter class of the benefits intended to be conferred upon them. It could hardly be suggested that it was the object of the statute to bring about such a result as this, that the middleman could compel his landlord to grant him a patta at a rent to be fixed by a Court, and the middleman's occupying and cultivating sub-tenants should in their turn be able to compel their immediate landlord, the middleman, to grant to them pattas of their holdings at rents to be similarly fixed, and this, though the middleman was an absentee who never even visited his estate.

By Section 50 of the Act, Sub-section 1, the class of persons is described to whom the provisions of Chapter 4 are to apply. By Sub-section 2 of that Section, it is provided that a person of that class shall be entitled to have granted to him a patta for any current revenue. Turning back to Sub-section 1 to find the description of the class to whom the right is given, it is to be composed of ryots with a permanent right of occupancy, and also ryots holding old waste lands under a landlord otherwise than under a lease in writing.

It is obvious the lessees in this case are not members of this latter section of the class. It is equally clear that they are not members of the first section of the class. They are not ryots with a permanent right of occupancy. It is to be observed the word is "occupancy" not "possession." An owner may in one sense be in possession of his estate by the receipt of rent from the tenants of that estate, but not occupancy.

Section 51 prescribed what the patta is to contain, and by Sub-section 2 of that section it is enacted that any stipulation in restraint of cultivation or of harvesting by a ryot, or the giving up possession of his land by an occupying ryot at any specified time, is to be void and of no effect. A provision which in itself seems to suggest that the ryot, to be entitled to have a patta granted to him, has to be a cultivator of his holding.

Section 6, Sub-section 1, defines the persons who are to be entitled to acquire the permanent right of occupancy in holdings. This definition qualifies the first section of the class mentioned in Section 50 which are entitled to apply for a patta. They are those which were ryots, at the passing of the Act, and then in possession, or thereafter admitted by a landowner to possession of ryoti land not being waste land situate on the landlord's estate. It is this permanent right of occupancy which entitles the ryot to apply for the patta.

Section 46 prescribes the mode by which a non-occupying ryot may acquire a permanent right of occupancy of his land, but cases falling within Section 6, Sub-sections 4 and 5, are expressly excluded.

In the view of their Lordships the words "izador and farmer of rent" occurring in this sub-section are not synonymous. They denote two classes of persons. They are not defined in the definition clause. If izadors and farmers of rent are ryots at all they are, as appears from Section 46, non-occupying ryots, and cannot be converted into ryots with a permanent right of occupancy. For these several reasons their Lordships are of opinion that the appellants do not belong to the class of persons entitled to the kind of relief they seek to obtain, that the judgments appealed from were right and should be affirmed, and this appeal be dismissed; and they will humbly advise His Majesty accordingly. The appellants must in both appeals pay the respondents' separate costs.

In the Privy Council.

SURISETTI BUTCHAYYA AND ANOTHER

v.

SRI RAJAH PARTHASARATHY APPA ROW BAHADUR ZAMINDAR GARU AND ANOTHER.

TALLAPRAGADA SUBBA ROW AND ANOTHER

v.

SRI RAJAH VENKATADRI APPA ROW BAHADUR GARU.

(*Consolidated Appeals.*)

DELIVERED BY LORD ATKINSON.

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