Privy Council Appeal No. 54 of 1926.

B. Raja Rajeswara Sethupathi, Raja of Ramnad, since deceased (now represented by R. Shunmuga Rajeswara Sethupathi) *Appellant*

v.

Mangalam and others - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 30TH MAY, 1930.

Present at the Hearing:
LORD TOMLIN.
SIR LANCELOT SANDERSON.
SIR GEORGE LOWNDES.

[*Delivered by* LORD TOMLIN.]

Their Lordships need not trouble the respondents' Counsel.

This is an appeal which deals with the settlement of *puttahs* under the Madras Estates Land Act, No. 1 of 1908.

Before the subject matter of the appeal is dealt with one preliminary observation can properly be made. This litigation has lasted from 1909 until the present time. Partly no doubt on this account the record has assumed substantial proportions. Their Lordships are indebted to Mr. De Gruyther for the lucid and concise way in which he has presented the case to them, thereby, in their Lordships' opinion, saving a great deal of public time.

Now, under the Act in question, where a difference arises between the landholder and the *ryot* as to the form which the *puttah* should take, procedure is provided by which the difference can be determined by the Collector. Sections 55, 56 and 57 of the Act contain the relevant provisions.

Section 55 relates to the case where the landholder fails to grant a *puttah* in such terms as the *ryot* is entitled to. There the *ryot* can sue for the proper *puttah* before the Collector.

Under Section 56 when the ryot fails to accept the *puttah* tendered to him and to give a *muchalka* in exchange, the landholder may sue before the Collector to enforce the acceptance of such *puttah*.

Section 57 provides as follows :—

> " In adjudicating suits under sections 55 and 56, the Collector shall first inquire whether the party sued is bound to grant or accept a *puttah*, and, unless this be proved, the suit shall be dismissed. If the plaintiff establishes that the party sued is bound to grant or accept a *puttah*, the Collector shall inquire whether the *puttah* demanded or tendered is a proper one. If it is found to be so, the Collector shall pass a decree directing the defendant to grant the *puttah* in exchange for a *muchalka* or accept the *puttah* and give *muchalka* in exchange. If the Collector is of opinion that the puttah demanded or tendered is not a proper one, he shall decide what the terms of the *puttah* should be, and shall embody such terms in his decree which shall be of the same force and effect as if a *puttah* and *muchalka* had been exchanged."

Under the procedure of the sections referred to these proceedings were launched. They came before the Special Deputy Collector. From him they passed to the District Judge. From the District Judge they proceeded to the High Court. Ultimately they are here before His Majesty in Council.

Now, six points have been placed before their Lordships by Mr. De Gruyther on behalf of the landholder as matters in respect of which he desires to complain of the conclusion reached by the High Court.

The first point is one which deals with the rent which the tenant has to pay in the case where he omits to cultivate some part of the land, that is, leaves it to lie fallow. Upon the *puttah* as actually framed in accordance with the conclusions of the Court below, the tenant is excused rent if the land is allowed to lie fallow.

The point turns upon the construction of Sections 4 and 27 of the Act.

Section 4 of the Act is in these terms : " Subject to the provisions of this Act, a landholder is entitled to collect rent in respect of all *ryoti* land in the occupation of a *ryot*." Section 27 provides :—

> " If a question arises as to the amount of rent payable by a *ryot* or the conditions under which he holds in any revenue year, he shall be presumed, until the contrary is shown, to hold at the same rate and under the same conditions as in the last preceding revenue year."

In India it has been held that where there is a custom by which the tenant is relieved of rent in the case of land allowed to lie fallow, the custom is one of the conditions under which the tenant holds within the meaning of Section 27, and that Section 4, which entitles the landholder to collect rent in respect of all *ryoti* lands, is restricted in its operation by the existence of such a custom.

The District Judge in the present case has held that there was a custom to relieve the tenant of rent in respect of land allowed to lie fallow. Their Lordships are bound by the finding of fact of the District Judge as regards the existence of the custom.

In their Lordships' view, the custom is one of the conditions under which the ryot holds his land within the meaning of Section 27 of the Act, and the operation of Section 4 is restricted to the extent to which the tenant by the custom is relieved of his rent. Their Lordships are therefore of opinion that there is no ground upon which the decision of the Courts below on this point can be interfered with.

The second point arises in this way : The land, the subject of the tenure, falls into two categories known as dry land and wet land respectively. The rent fixed for wet land is a proportion of the produce paid in kind. The rent in respect of dry land is a rate paid in cash proportionate to the yield of the first and second crops. There are cases where wet land may be cultivated for dry crops, either because the water in the tank is not available or possibly at the caprice of the tenant, and the question is what rate the tenant should pay by way of rent in respect of any wet land which he cultivates dry.

Now, the Collector held that : " In adverse seasons, when a dry crop is raised for want of sufficient supply in the tank, the charge of *sara sari* will be improper and only *varam* is then payable as wet land pays rent in kind."

Their Lordships understand this to mean that where some part of the wet land is cultivated dry by reason of insufficiency of water, it would be improper to charge for that portion which is cultivated dry a rent based on the value of the share of average produce attributable to the landholder arising from the land cultivated wet ; and that the proper rent payable in those circumstances is the landholder's proportion in kind of the actual crop raised.

When the matter came before the District Judge he said this (page 134 of the record) :—

> " It is objected before me that the tenants never raised the contention that dry crops should be specially treated if the water supply was insufficient. The Deputy Collector in his judgment himself states that the plaintiffs' pleader did not object to paying *sara sari* for dry crops on *nanja* land." [That is wet land.] " I must uphold the contention of the appellant that in these circumstances it was not open to the Deputy Collector to decree any special rate when there was an insufficiency of water in the tank. *Sara sari* will therefore be allowed to be levied whenever dry crops are raised on *nanja* land without permission."

That is to say, his conclusion is that the tenant raising by reason of insufficiency of water dry crops on wet land has got to pay in cash the value of the landholder's proportion of the produce based upon the average production of the wet lands.

Then on page 159 of the record there is to be found the High Court's conclusion upon this matter :—

> "It is difficult to see on what principle the tenant should pay 'wet *sara sari*' if, owing to want of water in the tank, he is unable to raise a wet crop. The effect of the District Judge's judgment will be to compel the tenant either to leave the land waste when there is insufficiency of water or to penalise him if he raises a dry crop as the only possible means of raising something on the land. It stands to reason that if a tenant, having water in the tank and therefore means of raising a wet crop, chooses to raise a dry crop, this should not affect the right of the landlord to charge wet rates but where, owing to want of water, a wet crop could not be raised, there is no reason why the landlord should still be entitled to charge wet *sara sari* rates. We vary the decree of the District Judge by declaring that plaintiffs will be liable to pay *sara sari* wet rates if they raise dry crops while they could have raised wet crops and do pay the usual dry rates if they raised dry crops owing to insufficiency of water."

Now, it is said that the effect of that is not to restore the Special Deputy Collector's judgment, but to introduce a variation and to make the tenant where water is insufficient liable to pay for dry crops raised on wet lands only some rate in cash which has reference to the rates paid on dry lands. Without examining the decree actually passed the true effect of the decision cannot be ascertained.

The only decree of the High Court, printed in the record, does not deal with the point ; as there were several suits, the matter may have been dealt with in some other decree, but their Lordships remain uninformed as to its contents. The appellant has failed to print it in his record or place it before the Board, and it is impossible for this Board to vary a decree the contents of which have not been placed before it, and are not known with certainty.

In these circumstances, in their Lordships' opinion, the appeal on this point must fail.

The third point is this : Apparently, it is the practice sometimes of landholders, in order to determine what is their proportion of the produce of a crop to harvest themselves a section of the field by way of experiment, and then to require the tenant to hand over produce in regard to the whole field upon the basis of what the yield of the particular section harvested by the landholder has been.

In this case the landholder claimed that that was a right which he had, and that provisions in regard to it ought to be inserted in the *puttah*. The Collector and the District Judge both refused to insert it, and the High Court at page 154 of the record said this :—

> "It is difficult to see what right the landlord has under the Act to enter upon the land of the tenant for the purpose of making what has been described by Mr. Srinivasa Ayyangar as an experimental harvest. The object seems to be to arrive at an arbitrary figure by harvesting a small portion of the crops and to throw upon the tenant the burden of showing that the actual crop was not equal to the experimental harvest. We are of opinion that such a right is clearly opposed to the provisions of Section 73 of the Act and that both the lower Courts were right in disallowing this claim."

Now, Section 73 of the Act provides that :—

"(1) Where rent is taken by appraisement of the standing crop the *ryot* shall be entitled to the exclusive possession of the crop. (2) Where rent is taken by division of the produce, the *ryot* shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing floor at such a time or in such a manner as to prevent the due division thereof at the proper time. (3) In either case, the *ryot* shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landholder. But before commencing to cut or gather the crop the *ryot* shall give reasonable intimation to the landholder or his authorized agent of his intention to do so."

In their Lordships' judgment the claim of the landlord to have inserted in the *puttah* any provision entitling him to make such an experimental harvesting as is suggested is contrary to the provisions of the section which has been read. The appeal on this head fails.

The next question relates to the tax or rent to be paid by the tenant to the landholder in respect of palmyra trees. The Collector and the District Judge have arrived at certain findings of fact in regard to palmyra trees, and they are these: That in two villages certain trees have been subjected to rent or tax, namely, 102 trees in one village, and 2 in another, but apart from those trees in those two villages, there has been no rent or tax paid in respect of any palmyra tree.

Section 12 of the Act provides that :—

"Subject to any rights which by custom or by contract in writing executed by the ryot before the passing of this Act are reserved to the landholder, every occupancy *ryot* shall have the right to use, enjoy and cut down all trees now in his holding, and in the case of trees which after the passing of this Act may be planted by the *ryot* or which may naturally grow upon the holding, he shall have the right to use, enjoy and cut them down, notwithstanding any contract or custom to the contrary."

Now, having regard to that section, it appears to their Lordships plain that the tenant is entitled to the trees unless in case of trees planted before the passing of the Act there is established any custom or contract in writing which limits his right. The finding of the District Judge, by which this Board is bound, is in effect that there is no custom or contract in writing for payment of rent or tax on palmyra trees except in so far as there has been a custom to pay rent or tax upon specific trees, namely, the 102 trees in one village and the 2 trees in another. In these circumstances, the appeal from that conclusion which has been affirmed by the High Court is, in their Lordships' opinion, hopeless.

Then the fifth point relates to temple service. The claim of the landholder is that certain temple service has been rendered from time to time by the tenants, and that they have rendered it as a condition of their tenure. The Collector and the District Judge have found that in fact, although service has been rendered from time to time by tenants, it is not proved that that service was rendered as a condition of their tenure, the evidence being con-

sistent with that service having been rendered as voluntary service. This finding is conclusive.

In these circumstances, in their Lordships' opinion, the appeal on this point also fails.

The last point is upon the form of the decree. It arises in this way : the tenants sometimes cultivate part of the bed of the tanks where the tanks have in part run dry. The High Court has in its judgment at page 158 of the record said this : " We are of opinion that the palintiff is bound to pay *sara sari* if he should put up ridges and cultivate *kulamkorvai* lands "—that is lands in the beds of tanks.

Now, that is a decision in favour of the landholder. Against that the landholder naturally does not appeal, and there is no appeal on the part of the tenant ; but the landholder says that when you turn to the actual decree, you find a divergence between the language of the decree and the language of the judgment. The language of the decree is to be found at page 161 of the record, and it is in these terms :—

> " that for Clause 4 in the Lower Appellate Court's decree, the following clause, namely, ' that the tenants are liable to pay *sara sari*, if they should put up ridges and cultivate *kulamkorvai* lands with the aid of either rain water or tank water ' be inserted therein."

It will be observed that the words " with the aid of either rain water or tank water " are words which do not appear in the judgment and it is said that they in some way alter the sense, and that the decree diverges from the judgment.

In their Lordships' opinion, in the absence of any light as to what is the effect of those added words, it is impossible for them to come to the conclusion that the decree is in any way erroneous. But they do not intend by saying that to preclude the appellant, if so advised, from making any application which may be open to him in India to have the decree corrected if, in fact, there is any error in the decree, having regard to the terms of the judgment.

The appeal on this point, therefore, must also fail so far as this Board is concerned.

The result is that the appeal fails on all points, and must be dismissed with costs to the 15th respondent, who alone appeared, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

B. RAJA RAJESWARA SETHUPATHI, RAJA OF RAMNAD, SINCE DECEASED (NOW REPRESENTED BY R. SHUNMUGA RAJESWARA SETHUPATHI)

v.

MANGALAM AND OTHERS.

DELIVERED BY LORD TOMLIN.

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