Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Raja Parthasarathi Appa Row Savai Aswa Row Bahadur, Zemindar Garu v. *Chevendra Venkata Narasayya and others, from the High Court of Judicature at Madras; delivered the 27th April,* 1910.

Present at the Hearing:

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

MR. AMEER ALI.

[*Delivered by Mr. Ameer Ali.*]

These are Consolidated Appeals from certain Decrees of the High Court of Madras made on the 26th of September, 1904, and 19th of January, 1905, respectively.

The Suits, which gave rise to the Appeals, were, along with a number of others, instituted by the Appellant Zemindar on the 15th of August, 1900, against his tenants of the village of Chevendra, in the Madras Presidency, under Section 9 of the Madras Rent Recovery Act (VIII. of 1865) to enforce the acceptance of Puttahs tendered by him and the execution of Muchilkas corresponding thereto.

[17] P.C.J. 253. L. & M.—100—13/4/10. Wt. 98.

Although this litigation has passed through several Courts in India, the matter in controversy lies within a small compass.

Act VIII of 1865 requires landholders specified in Section 3, to which category the Plaintiff belongs, to enter into written engagements with their tenants; and no suit or legal proceeding to enforce the terms of a tenancy is sustainable unless Puttahs and Muchilkas have been exchanged or "unless it is proved that the party attempting to enforce the contract had tendered such a Puttah or Muchilka as the other party was bound to accept"; (Section 7). In case of a refusal to accept a Puttah such as the landholder is entitled to impose, he can proceed under Section 9 by a Summary Suit before the Collector to enforce its acceptance.

Section 11, which lays down the rules to be observed in the decision of suits involving disputes regarding rates, is important.

It declares that—

> "(i) All contracts for rent, express or implied, shall be enforced.
>
> "(ii) In Districts or villages which have been surveyed by the British Government previous to 1st January, 1859, and in which a money assessment has been fixed on the fields, such assessment is to be considered the proper rent when no contract for rent, express or implied, exists.
>
> "(iii) When no express or implied contract has been made between the landholder and the tenant, and when no money assessment has been so fixed on the fields, the rates of rent shall be determined according to local usage, and when such usage is not clearly ascertainable, then according to the rates established or paid for neighbouring lands of similar description and quality. Provided that if either party be dissatisfied with the rates so determined, he may claim that the rent be discharged in kind according to 'the Warum,' that is, according to the established rate of the village

for dividing the crop between the Government or the landlord and the cultivator. When 'the Warum' cannot be ascertained, such rates shall be decreed as may appear just to the Collector after ascertaining if any increase in the value of the produce or in the productive power of the land has taken place otherwise than by the agency or at the expense of the ryot."

The rest of the section is not material to the present cases.

The Puttahs tendered by the Appellant required the tenants respectively to deliver to him by way of rent a specific share of certain crops grown on what are called "wet" or irrigated lands comprised in their holdings and certain money-rent for land on which "dry crops" were raised—his case being that the Asara or sharing system was the Mamool or customary mode of payment in the village of Chevendra, and that the tenants had refused to accept the Asara Puttahs for Fasli 1309; hence the Suits.

The tenants denied that the Asara system was in force in their village, and alleged *inter alia* that money rates had prevailed there for a considerable number of years "continuously up to date," and were the proper rates; and that by a specific arrangement entered into in Fasli 1299 (1889) an uniform rate of Rs. 5 per acre had been settled in perpetuity for the lands held by them respectively. They also took exceptions to the "rules, conditions, and items" in the Asara Puttahs as being improper and illegal.

The two material issues framed by the first Court are (3) and (6), which are as follows:—

"3. Whether the system of payments of rental in money, or whether the system of payment of rent in grain is the proper cist of payment?

"6. Whether there was a special contract in F. 1299 between the parties as to the rates and what were the terms of the contract and whether such contract is still binding?"

At the trial before the Deputy Collector it was admitted that money-rents at varying rates had been in force in the village since Fasli 1266 (1856), with the exception of two years (Fasli 1285 and 1286=1875 and 1876), when rent in kind was paid under circumstances regarding which the parties are not agreed; that in Fasli 1299 an arrangement was come to by which the varying money-rates prevailing in Chevendra were replaced by an uniform rate of Rs. 5 per acre, and Puttahs and Muchilkas were exchanged on that basis for a term of five years, and that the same arrangement continued for the next four years; that in Fasli 1309 the Plaintiff, wishing to revert to the Asara system, tendered to the tenants Asara Puttahs, which they refused to accept on the grounds already stated.

On the 3rd issue, viz., "Whether money-rent or rent in kind was the proper cist of payment," the Deputy Collector, principally on the fact that the Veesabadi or cash system (as opposed to the Asara) had prevailed in the village, with a short break, over more than forty years, held that payment in money was "the proper form of payment of rent."

On the question whether the rate of Rs. 5 was in 1889 fixed in perpetuity, he found, for reasons set out in his Judgment, "that there was a special contract between the parties to pay and receive at the rate of Rs. 5 an acre as an unchanging rent." He accordingly directed that the Puttahs tendered by the Plaintiff should be modified in conformity with his finding and that the Defendants should execute Muchilkas in accordance therewith.

On appeal by the Plaintiff, the acting District Judge agreed with the first Court that "money-rents alone were the proper mode of payment."

With regard to the question whether the rates settled in 1889 were permanent, he held that the tenants had not succeeded in establishing their allegation. And he added: "The Defendants, having failed to prove the express contract that Rs. 5 was agreed upon as the permanent rate, cannot be allowed to put forward the plea of an implied contract to the same effect. . . . . Having found that there has been a contract that the rent has to be paid in money, but that there has been none as to how much it is to be, I hold that under Section 11, cl. (iii), of the Rent Recovery Act the Plaintiff is entitled to be paid rent according to the established Warum of the village."

In this view, the District Judge remanded the cases to the first Court for the purpose of finding the proper Warum rates. In his Judgment on remand the Deputy Collector stated that he had already found on the evidence the Warum rates in force in the village when the Asara last prevailed there; but as the Asara system ceased many years ago, the Warum rates recognised then could not be considered the proper Warum rates for the present time.

On the return of the above finding the cases came before another District Judge, who was of opinion that, as money-rent had been found to be the proper form of payment, and no attempt had been made before him to disturb that finding, the tender of Warum Puttahs was wrong, and that the Suits should be dismissed on that ground.

On second Appeal by the Plaintiff, the learned Judges of the High Court appear to have dealt with the Judgments of the Lower Appellate Court both before and after the remand. In the first place, they held that, "even if it be found that the proper rates were only money

rates," the tender of a Warum Puttah was no objection to a Suit being sustained under the Rent Recovery Act. Dealing with the Judgment of the first District Judge, they were of opinion that it was not open to the Courts "to imply from the mere circumstance that the rent had been paid in money for a series of years, but at varying rates, an agreement to pay money-rent."

On the question of an implied contract to pay a fixed rent of Rs. 5 per acre, they considered the District Judge's finding to be unwarranted by law, and they set it aside and remanded the cases for a fresh finding, with the following observations :—

> "The question for determination was having regard to what transpired in Fasli 1299, when the uniform rent of Rs. 5 in respect of the whole of the lands in the village was agreed to instead of the different rates for different lands that obtained before and having regard to the fact that from that time for nine years continuously that rate was paid, whether that rate should be taken as impliedly assented to as the rate to be paid in future, and this was a question to be determined upon the evidence adduced and to which reference is made at length under the issue of express contract in the Judge's Judgment. There was no question of presumption, and the circumstance that prior to Fasli 1299 rent was paid at fluctuating rates and sometimes in kind and sometimes in money was quite immaterial with reference to the determination of the said question of implied contract. As to the third and last ground stated by the Judge 'again the Defendants having failed to prove the express contract that Rs. 5 was agreed upon as the permanent rate cannot be allowed to put forward the plea of an implied contract to the same effect' it is difficult to understand why Defendants were so precluded. These being all the reasons given for holding that there was no implied contract, the finding must be treated as unwarranted by law."

The matter on remand came before a third District Judge, who found in favour of the implied contract.

On the return of the cases to the High Court, the second Appeals came on for final hearing on the 26th September, 1904, when the learned Judges accepted the last finding of the Lower Appellate Court as meaning that the rates settled in 1299 were intended to be permanent. They accordingly reversed the Decrees of the Courts below, and directed that the terms of the Puttahs tendered by the Plaintiff should be in conformity with the terms of the Puttahs of 1299, subject to certain corrections they had already pointed out in their previous Judgment.

Other Suits, under Section 9, brought by the Plaintiff in 1902, have been disposed of by the High Court in accordance with the above decision; and these Consolidated Appeals have been preferred by the Plaintiff to His Majesty in Council against the several Decrees of the High Court.

As the Respondents do not appear, the cases have been heard *ex parte*, and it has hence been necessary to refer at some length to the history of the litigation and the contentions of the parties.

It is clear that in 1299 different rates of rent prevailed in the village of Chevendra; some were higher than Rs. 5, others lower: in that year an uniform rate of Rs. 5 per acre was introduced by mutual agreement between the landlord and tenants, and leases were exchanged on that basis for a term of five years. The Defendants allege that the Plaintiff at that time expressly agreed the rate of Rs. 5 should be permanent. The Courts in India have disbelieved the story of an express agreement to that effect. An implied contract, however, has been inferred from the fact that rents at the same rate were paid and received for four years after the expiration of the term fixed by the leases of 1299. This circumstance is regarded as explainable only on the

hypothesis of an understanding that the rate of Rs. 5 should continue for ever, and as rendering probable the existence of an implied contract.

Their Lordships are unable to concur in that view or to hold that alongside of the express contract embodied in the leases exchanged between the parties there was a collateral implied agreement relating to fixity of rent. The Plaintiff denies any understanding of the kind alleged by the Defendants; their explanation as to the reason why such an important arrangement was not reduced into writing or incorporated in the Puttahs and Muchilkas of 1299 is that the Plaintiff told them that perpetual leases would require to be stamped; and they therefore rested content with his verbal assurance. The Courts in India do not appear to have placed reliance on this statement, nor are their Lordships prepared to accept it.

However much they regret this protracted litigation, they do not find themselves in a position to decide the cases finally. The theory of an implied contract on which the High Court has rested its decrees is, in their Lordships' judgment, untenable; there is thus no decision on the real question between the parties, viz., whether the Puttahs of Fasli 1309 are such as the Plaintiff is entitled to impose on the tenants. Section 11 of Act VIII. of 1865 lays down the rules for deciding disputes as to rates of rent. Cl. (iii) deals with the mode of determining the rate when no contract exists. It being found that there is no express or implied contract, the question must be decided in accordance with the rules contained in cl. (iii).

Their Lordships are disposed to agree with the High Court in the view that it is not open to Courts to imply from the mere circumstance that

the rent has been paid in money for a series of years an agreement to pay money-rent. But they see no reason why the fact that money-rent has prevailed in a particular locality for a considerable number of years may not form an element in the consideration of the question of usage.

On the whole their Lordships are of opinion that the Judgments and Decrees of the High Court should be set aside and the cases sent back in order that they may be remitted to the proper Court to determine in accordance with the provisions of cl. (iii), Section 11 of the Rent Recovery Act the rates the Plaintiff is entitled to receive, and their Lordships will humbly advise His Majesty accordingly.

In the circumstances their Lordships think the Appellant should bear his costs of these Appeals; the costs in the Lower Courts will be in the discretion of the High Court.

In the Privy Council.

SRI RAJA PARTHASARATHI APPA ROW SAVAI ASWA ROW BAHADUR, ZEMINDAR GARU

v.

CHEVENDRA VENKATA NARASAYYA AND OTHERS.

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