Privy Council Appeal No. 105 *of* 1921.

Sri Raja Bommadevara Naganna Naidu Bahadur Zemindar Garu and another - - - - - - - *Appellants*

v.

Ravi Venkatappayya 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 29TH JUNE, 1923.

Present at the Hearing :

LORD BUCKMASTER.
LORD DUNEDIN.
LORD CARSON.
SIR JOHN EDGE.
LORD SALVESEN.

[*Delivered by* LORD CARSON.]

The appellants are the Zemindars of North Vallur Estate in Kistna district, and the respondents are the occupancy tenants of certain villages in the said estate.

In 1904 the Zemindar, father of the appellants, brought before the Court of the Head Assistant Collector of the Bezwada Division Kistna district, forty-nine summary suits under Section 9 of the Madras Rent Recovery Act, 1865, against the respondent raiyats to enforce the acceptance by them of pattas or leases of Faslis 1314 and 1315 (1904 and 1905) which had been tendered to them. The Zemindar demanded asara or varam rates for wet lands. The tenants on the other hand denied the claim of the Zemindar, pleading that certain rates had been fixed in Fasli, 1292 (1882), which were alone recoverable and not the asara or varam rates (produce sharing system) demanded by the Zemindar. The suits were dismissed by the Head Assistant Collector, Bezwada Division finding as a fact that the conversion of the asara rates into cash payment in 1283 Fasli, which was

confirmed in 1292 Fasli, and had been acted upon ever since, was a permanent arrangement, and that the plaintiff (the said Zemindar) was not therefore entitled to impose on the tenants pattas on the asara basis. On appeal by the Zemindar, the District Judge affirmed the decrees of the Collector in respect of the finding of fact relative to the character of the arrangement of 1283 Fasli, and upheld the orders dismissing the suits. On further appeal to the High Court of Madras, the High Court set aside the orders of the lower Courts, holding that "the pattas tendered by the plaintiff were proper pattas, and that the defendants must accept them."

The tenants, thereupon, appealed from the judgment of the High Court to His Majesty in Council, and on the 18th June, 1914, the Lords of the Judicial Committee of the Privy Council set aside the judgments and decrees of the High Court on the ground that as there were concurrent findings of fact in the Courts below, an appeal to the High Court was precluded by the Code of Civil Procedure, Sections 584 and 585. Their Lordships, however, ordered that the cases should be sent back to be remitted to the Court of the Collector for the drawing up of proper decrees and dealing with any other questions that might be outstanding in these actions between the parties. The case before this Board is reported in L.R. 41, I.A. 258, where the facts outlined above are more fully stated. Meanwhile during the pendency of the said appeal to His Majesty in Council the Zemindar instituted similar suits for arrears of rent in respect of 1316 Fasli to 1322 Fasli under Section 77 of Madras Act I, of 1908, and decrees were made against the tenants, all of which, except those of 1322 Fasli were realised in execution. No application was made for stay of trial of any of the suits pending the disposal of the appeal to this Board. The matters for determination in the present consolidated decrees raise questions as to the effect, if any, of the decision of this Board of the 18th June, 1914, on the subsequent judgments and execution thereunder.

On the one hand, on the 2nd October, 1914, the appellants brought the present suits against the respondents, claiming dry cash cist (rent) for dry lands and claiming ambaram (rent in kind, or its equivalent in money) for wet lands, whilst the tenants (respondents) contended that the Zemindar was only entitled to dry cash rate on all the lands, and that the order of the Privy Council had so decided.

On the other hand, the tenants (respondents) instituted the present suits against the father of the appellants, who now represent him, for a refund of amounts paid by them in excess of dry rates for the rents of 1314, 1316–1321 Fasli, claiming that the said decision of the Privy Council in suits for 1915 Fasli was to the effect that the Zemindar was entitled only to dry rates as fixed in 1292 Fasli, and that not only the decisions of the High Court but also those of the Collector and the District Judge, which were given subsequently on the strength of that decision, were void and *ultra vires*.

In the Zemindar's suits the deputy Collector of Bezwada decreed the suits, fixing the rent at the rate of Rs. 6 per acre for wet land and rates varying from Rs. 3 to Rs. 2.8.6 for dry lands. On appeal, however, the District Judge of Kistna held that the Privy Council judgment operated as *resjudicata* with regard to the claim for rent for future years, and he decreed a uniform rent of Rs. 2.12 odd per acre.

In the tenants' (respondents') actions for recovery of the excess of rent paid during the pendency of the appeal the Subordinate Judge of Bezwada on the 29th September. 1916, found in favour of the respondents (tenants).

The decisions in both sets of cases were challenged, and appeals taken to the High Court of Madras, and both sets of appeal were heard together.

On the 7th March, 1919, the High Court gave judgment. With regard to the suits instituted by the respondents for the refund of rent in consequence of the decision of the Judicial Committee, the Court held " that the tenants (respondents), on reversal of the decree of the High Court by the Privy Council, became entitled to recover the rent which they had overpaid in the intermediate suits by reason of this decision," and remanded the suits for disposal according to law.

The learned Judges of the High Court based their decision mainly, if not altogether, on the authority of a case decided by this Board, viz., *Shama Purshad Roy Chowdury* v. *Hurro Purshad Roy Chowdury*, reported in 10 M.I.A. 203, as interpreted by the majority of the full Bench in *Jogesh Chunder Dutt* v. *Kali Churn Dutt*, I.L.R. 3 Cal. 30, to be referred to later.

Their Lordships cannot agree with this view, nor do they consider that the case cited in evidence is an authority for the conclusions come to. It is clear and settled law, as stated in the case referred to at p. 211 of the report that " money recovered under a decree or judgment cannot be recovered back in a fresh suit or action whilst the decree or judgment under which it was recovered remains in force ; but this rule of law rests as their Lordships apprehend upon this ground, that the original decree or judgment must be taken to be subsisting and valid until it has been reversed or superseded by some ulterior proceeding. If it has been reversed or superseded the money recovered under it ought certainly to be refunded, and as their Lordships conceive, is recoverable either by summary process or by a new suit or action. The true question, therefore, in such cases is, whether the decree or judgment under which the money was originally recovered has been reversed or superseded ? "

Their Lordships entirely agree with this statement of the law, and, applying the test indicated, their Lordships can find no reason for holding that the decrees or judgments executed against the respondents were either reversed or superseded by the judgment of this Board of the 18th June, 1914. By that judgment their Lordships did not propose to deal with anything but the actual subject matter of the cases before them. In fact, the only point

decided was that the High Court, under the circumstances, had no power to reverse the decisions of the Subordinate Courts. The facts in the case of *Shama Purshad* (*supra*), were, in their Lordships' opinion, entirely different. In that case the Judicial Committee, in applying the test already quoted, viz., " whether the decree or judgment under which the money was originally recovered had been reversed or superseded," were of opinion that it was plainly intended by the Order in Council in that case that all the rights and liabilities of the parties should be dealt with under it, and that it would be in contravention of the order to permit the decrees obtained pending the appeal on which it was made to interfere with this purpose. It was also pointed out that the plaint in which the original decree was recovered, described the interest recovered by the decrees under appeal as part of the same cause of suit, holding, therefore, that such decrees were mere subordinate and dependent decrees, which could no longer be held to have remained in force when the decree on which they were dependent had been reversed. It is no doubt true, as stated in the judgment of the High Court, that in the case of *Jogesh Chunder Dutt* v. *Kali Churn Dutt* (*supra*) the decision in 10 M.I.A. was extended by a majority to apply to a case like the present, where it was sought to recover the difference between the enhanced rent recovered and the fixed rent which the tenant was bound to pay. But for the reasons already stated their Lordships cannot agree with the interpretation of the case in 10 M.I.A. applied by the majority of the Court, and prefer the reasoning and conclusions set forth in the judgment of Garth, C.J., which were concurred in by Jackson, J.

Their Lordships are therefore of opinion that in the tenants' (respondents') actions for the recovery of the excess of rent the appeal should be allowed and the actions should be dismissed. In the suits by the appellants for the rent of a Fasli subsequent to the decision of the Privy Council their Lordships see no necessity for referring the case back to the Court of the Honorary Suits Deputy Collector of Bezwada as has been ordered by the High Court. That Court, by decrees of the 3rd December, 1915, found that a suitable rate is Rs. 6 per acre, and the appellants have not before the Board questioned the amount of such decrees. Their Lordships therefore think these decrees should be affirmed.

Their Lordships will, therefore, humbly advise His Majesty that these appeals should be allowed but without costs, either in the courts before whom the suits were litigated or before this Board.

In the Privy Council.

SRI RAJA BOMMADEVARA NAGANNA NAIDU BAHADUR ZEMINDAR GARU AND ANOTHER

v.

RAVI VENKATAPPAYYA AND OTHERS

DELIVERED BY LORD CARSON.

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