

1890
JULY 10.
—
APPEL-
LATE
CIVIL.
—
15 B. 71.

in which case the decision in *Gungadhur Shikdar v. Ayimuddin Shah Biswas* (1) would apply, but that they have since been allowed to spend money on the cow-house and convert it into a dwelling-house; and he considered that under such circumstances it would not be equitable to allow the plaintiff to eject them. But to give the defendants such an equity it was necessary for them to prove that they built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure," as explained by Lord Kingsdown in *Ramsden v. Dyson* (2). But there is no admission by plaintiff, nor any evidence whatever, that such was the case. We may also remark that here the defendants have been in possession for forty years, and have probably had the full benefit of their expenditure.

We must, therefore, vary the decree of the Court below by directing that the plaintiff be put into possession of the land and house, with costs on defendants throughout. The defendants' cross appeal is dismissed with costs.

Decree varied.

15 B. 73.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood and Mr. Justice Telang.

RAMCHANDRA VASUDEVSHET (*Plaintiff*) v. BABAJI KUSAJI (*Defendant*).* [15th July, 1890.]

Stamp Act I of 1879, sch. II, art. 13 (b)—Construction—Lease for planting cocoanut trees.

A person whose occupation is that of a cultivator and takes a lease of land for planting cocoanut trees is, in respect of that occupation, a "cultivator." A lease given by him is one exempt from stamp duty under art. 13 (b) of sch. II of the Stamp Act I of 1879 if the annual rent reserved thereby does not exceed one hundred rupees.

[74] THIS was a reference by Rav Sabeel S. N. Karandikar, Subordinate Judge of Malvan, under s. 49 of the Stamp Act I of 1879.

The question referred by the Subordinate Judge for the High Court's decision was:—

Whether the exemption contemplated by art. 13, cl. (b) of sch. II of the Stamp Act I of 1879 extends to leases and *kabulayats* for land taken up for growing trees, and whether the Ex. 12 is exempt from duty?

The Subordinate Judge's opinion on the point was in the negative.

(Translation of Exhibit 12.)

Shri (*i.e.*, prosperity, &c.)

Kabulayat to Rajashri Ramchandra Vasudev Set Adari, inhabitant of Malvan, by Babaji Kusaji Vaigankar, inhabitant of Malvan. I give this *kabulayat* in writing as follows:—You are at present enjoying your *thikan* (*i.e.*, land) Cubarbaug situate at the village of mauje Malvan, in

* Civil Reference No. 6 of 1890.

(1) 8 C. 960.

(2) L.R. 1 H.L. 170.

the Subdivision Malvan, in the district of Ratnagiri. Land out of the same I have taken on a contract for planting mad (*i.e.*, cocoanut), &c., trees. The particulars thereof are as follows:—

1890
JULY 15.
—
APPEL-
LATE
CIVIL.
—
15 B. 73.

* * * * *
Land as thus described, I have taken for planting (trees). Now, in the land of piece No. 1 there are three old cocoanut trees and three undani trees. Excepting these trees there are 50 cocoanut trees planted by me, and I shall, in addition to these, plant up to 30 cocoanut trees and 10 undani trees, and 15 kaju trees, and in the land of piece 2 I shall plant up to 40 cocoanut trees and 5 undani trees and 10 kaju trees. I shall plant trees as mentioned above and complete the planting within five years.

2. According as the abovementioned trees begin to bear fruit, I will, as regards the cocoanut trees, after my enjoyment without any payment for three years make payments of *vasul* from the fourth year for the cocoanut trees in the land piece No. 1 at the rate of four annas after each fruit-bearing cocoanut tree, and at the rate of three annas nine pies after each fruit-bearing cocoanut [75] tree in the land piece No. 2; and besides this on the undani trees in the total land beginning to bear fruit (I will pay) at the rate of two annas after each fruit-bearing tree and at the rate of six pies after each fruit-bearing kaju tree. Should any trees die after the commencement of payment, I should be given credit for the *vasul* at the respective rates in respect of such trees. In the place of (each) tree dying I shall plant new trees in the same year, and keep the plantation complete. Now 8 cocoanut trees in the land piece No. 1 have begun to bear fruit in the current year. After enjoying the years for which I am to be excused payment, I shall pay the *vasul* in respect of such trees. And on any trees in the said *thkian* out of those planted by me dying, I am to enjoy one-half of the trees and you may take away the other half.

3. You are at present paying the Government assessment in respect of the same. But from the current year I shall pay, in addition to the amount of the contract mentioned above, the amount of the Government assessment together with the local fund cess, whatever it may come to, in respect of this land in proportion to the amount assessed for the *thikan* at the time of the survey. I shall pay the same into the Sirkar.

4. I shall make all the outlays of the expenses in respect of bringing the said land into a proper condition and in respect of digging a well and in respect of pulling up a fence and of Deva-Devaski; and bestowing good labour (upon the land), I shall complete the planting within the period fixed. Should I fail to complete the planting within the time fixed, or should I cause loss by failing to bestow good labour upon the *thikan* you may take the said land into your possession without listening to any excuse in respect of the labour that may have been (already) spent upon it by me.

In the manner mentioned in the above four clauses, myself and my sons, grandsons and other generations shall carry on the *vahivat* and shall pay off the *vasul* every year. There should not be any further oppression. Should your *bhaubands* or any one else object to our carrying on the *vahivat* of the land, you are to answer the objection. To this effect the *kabulayat* is truly [76] given in writing. Date the 12th of the month of July in the year 1885. Written by Vinayak Govind Kulkarni Malvankar.

Attestations.

Signature.

There was no appearance for the parties.

1890

JULY 15.

APPEL-

LATE

CIVIL.

15 B. 73.

JUDGMENT.

TELANG, J.—The lessee in this case seems to me to be properly designated as a "cultivator." He is so called, in fact, in the Registrar's endorsement upon the lease, and I do not see why he is not to be treated as a "cultivator" within the meaning of art. 13 (b) of sch. II of the Stamp Act I of 1879. The distinction between agriculture and horticulture, which is dwelt upon by the Subordinate Judge, need not be considered, because neither word is used by the Legislature. The only question is whether a person taking a lease of land for planting cocoanut trees is, in respect of that occupation, necessarily to be regarded as not a "cultivator" although his occupation generally is in reality that of a cultivator. I see nothing in the Act which requires us to decide in that sense. Of the cases referred to by the Subordinate Judge, it is enough to say that the Bombay case—*Narayan Ramchandra v. Dhondu Raghu* (1)—relates to a lease for building purposes, and the section could hardly be deemed to apply to a case of that character; and the Allahabad case—*Reference under Stamp Act, 1879* (2)—was that of a contractor or speculator, not a cultivator.

BIRDWOOD, J.—I think that the exemption contained in sch. II, art. 13 (b), of Act I of 1879 was probably enacted for the special benefit of the class ordinarily known as the cultivating class of the country. Still the lessee in this case, though he may not belong to that class, is undoubtedly a cultivator in the strict sense of the term. I think, therefore, that the *kabulayat* passed by him, which falls within the definition of a lease contained in s. 3, cl. (12) of the Act, is exempted from stamp duty if the annual rent reserved thereby does not exceed one hundred rupees.

SARGENT, C. J.—I concur.

15 B. 77.

[77] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Candy.

THE COLLECTOR OF KANARA (*Appellant*) v. KRISHNAPPA HEDGE
(*Opponent*).* [17th July, 1890.]

Civil Procedure Code (Act XIV of 1882), ss. 412, 622—Withdrawal of a suit by a pauper—Court's authority to make an order for payment of Court fees—Collector, though not a party to the suit, can move under s. 622.

The plaintiff, after having filed his suit *in forma pauperis* came to an amicable arrangement with the defendants, and asked the Court that the suit should be dismissed. The Court granted this application, but made no order as to the payment of Court fees. Thereupon the Collector applied to the High Court, under s. 622 of the Code of Civil Procedure (Act XIV of 1882), to direct the lower Court to make an order for the payment of the Court fees under s. 412 of the Code.

Held, that the Collector, though not a party to the suit, was entitled to move the High Court under s. 622 of the Code.

Held, also, that s. 412 had no application to the present case, as there was no adjudication of the rights of the parties, and the plaintiff could not, therefore, be said to have failed in the suit. The Subordinate Judge had, therefore, no jurisdiction to make the order desired by the Collector.

* Application No. 67 of 1890.