

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 4781

DATED 6th December 98

[Despatch Abstract.]

Recording B.P. or during the printing & circulation
to all copies of a copy of the High Court's judgment
in the Patent appeals nos 64 & 70 of 1897 on the file
of the High Court, Madras, regarding the
infringement of the patent for the use
of the trees & such.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Revenue
Local & Munl. (1898) Department.

CURRENT No. 8122

SK
6/1/88

From The Board of Rev. LR

Order No. 4781 Dated Dec 8 1898

Recorded.

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3/11/88

8/1/88

MS
29-11-98

RD
30-11-98

No. 293 P

Dated 5-11-98

Received

Registered 28/11

Enclosures —

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SUBJECT

Ordering the printing and circulation to all collectors of a copy of the High Court's Judgment in Letters Patent Appeals nos 6 and 7 of 1897 on the file of the High Court, Madras regarding the rights of tree pottadars to the land on which the trees

BACK PAPERS.

G.O.	No.	Department	Date

FURTHER PAPERS.

G.O.	No.	Department.	Date.

REVENUE DEPARTMENT.

1898.

Board of Revenue

(Land Revenue),

MADRAS.

Printed November th.

Proceedings, No. 293, 5th November 1898.

NOVEMBER.

Ordering the printing and circulation to all Collectors of a copy of the High Court's judgment in Letters Patent Appeals Nos. 6 and 7 of 1897 on the file of the High Court, Madras, regarding the rights of tree pattadars to the land on which the trees stand.

PROCEEDINGS OF THE BOARD OF REVENUE
(LAND REVENUE).

READ—again, Proceedings of the Board of Revenue (Land Revenue), No. 169, Routine, dated 19th January 1898.

ABSTRACT.—Recording letter from the Collector of Tinnevely informing that the appellants in Second Appeals Nos. 158 and 159 of 1895 on the file of the High Court, Madras, have taken an appeal to the Full Bench under the Letters Patent and that its result is not known.

READ—also the following letter from A. W. B. HIGGINS, Esq., Collector of Tinnevely, to the Secretary to the Commissioners of Land Revenue, dated 24th October 1898, Ref. on B. and C. No. 1820-Genl. :—

With reference to Government Order, No. 1033, Revenue, dated 10th December 1897, and in continuation of my letter Ref. on Cur. No. 4-G.B. Cl., dated 9th January 1898, I have the honour to forward herewith, for perusal and favour of return, a copy of the High Court's judgment in Letters Patent Appeals Nos. 6 and 7 of 1897 regarding the rights of the pottadars in this district to the land on which the trees stand. The appeal was dismissed with costs to Government (Rs. 100—Pleader's fee).

RESOLUTION—No. 293, dated 5th November 1898.

The judgment received with the Collector's letter read above will be printed and circulated to all Collectors in continuation of Board's Proceedings, No. 8, dated 8th January 1898.

(True Copies and Extra et.)

Davidson
Acting Secretary.

To all Collectors (Divisional-officers).

Copy to the Secretary to Government, Revenue Department.

Exd. Md. Pahlavan

APPENDIX.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Wednesday, the Tenth day of August, One thousand eight hundred and ninety-eight.

PRESENT :

The Hon'ble Mr. H. H. SHEPARD, *Officiating Chief Justice.*

" " Justice DAVIES, and
" " MOORE.

Letters Patent Appeals Nos. 6 and 7 of 1897.

1. Theivu Pandithan, and
2. Velayudam Pandithan
The Secretary of State for India in Council represented by
the Collector of Tinnevely

Appellants in both cases
(Plaintiffs).
Respondent in No. 6 of 1897
(1st Defendant).

1. Chinnakannu Pillai,
2. A. Subramania Pillai,
3. Subramania Pillai,
4. Perianayaga Kurukkulier,
5. Nellayappa Pillai,
6. Somasundram Pillai,
7. Andiappa Pillai,
8. Muthukumarasamia Pillai,
9. Jesuvadiya Ferdinand,
10. Arunachellam Pillai,
11. Sivagurunatha Pillai,
12. Govindam Pillai,
13. Thiru Subramania Pillai,
14. Kuppaniengar,

Respondents in No. 7 of 1897
(Defendants 2, 3, 4, 5, 10, 12,
13, 14, 15, 16, 17, 19, 20, 21
and representatives of the 8th
defendant).

15. Pateha Perumal Pillai
and
16. Iswara Murthia Pillai
Legal representatives of the de-
ceased Shunmugam Pillai—*vide*
order on C. M. P. No. 776 of
1896, dated 14th August 1896.

Appeals under section 15 of the Letters Patent against the judgment of the Hon'ble Mr. Justice Benson, dated 7th September 1897, passed on Second Appeals Nos. 158 and 159 of 1895, presented against the decrees of the Subordinate Judge's Court of Tinnevely in Appeal Suits Nos. 289 and 264 of 1892.

These appeals coming on for hearing on Wednesday and Thursday, the 20th and 21st July 1898, and having stood over for consideration till this day, the Court delivered the following.

JUDGMENT.

Officiating Chief Justice.—This being a second appeal we have first to ascertain what are the facts found by the Lower Appellate Court. In the Court of First Instance the plaintiffs obtained a declaration of title to a piece of land measuring 1 acre and 77 cents. In that Court no issues of fact, properly so called, were adjusted. The case was originally decided on the 1st issue which raises mixed questions of law and fact and ultimately on the new issue framed by the Subordinate Judge which raises a question of law. The Subordinate Judge sums up in paragraphs 6 and 8 of his judgment the findings of the District Munsif. His own opinion formed with reference to the plaintiffs' documents of title is expressed at the end of the 20th paragraph. He holds that the plaintiffs have not proved any title to the land in dispute. His opinion with reference to evidence of enjoyment by enclosing the land and planting fresh trees is expressed at the end of the 26th paragraph. He adds that the evidence does not establish "any exclusive possession in the plaintiffs with an intention to appropriate the lands as theirs earlier than ten years ago." He says the plaintiffs have failed to prove that the trees were planted by them. He further finds that the plaintiffs and their neighbours have used the land as a common threshing floor for more than ten years before the suit began. Finally, he deals with the question of law as to the right over the soil of the holder of what is called a tree patta. Apparently he considers that there is

evidence of cases in which two pattas have been given to different persons—one for the land and the other for the trees on the same land. On these findings it is clear that the plaintiffs cannot claim the decree for which they have asked nor even the declaratory decree which the District Munsif gave—for that decree refers to the whole area 1 acre and 77 cents, of which part as I understand is used as a threshing floor. Moreover, it was admitted before us and apparently in the District Munsif's Court that the plaintiffs' claim must be confined to the land covered by trees standing in a group. In these circumstances the plaintiffs having set up a case which they are unable to prove, I cannot say the Subordinate Judge was wrong in dismissing the suit. Without further enquiry he was not in a position to frame a proper decree. For this reason I concur in the dismissal of the appeal but I must not be taken to agree with the opinions expressed by my learned colleagues with regard to the rights of a tree pattadar and the nature of the revenue levied upon such pattadars. It is admitted that plaintiffs and other persons holding tree patta have some rights in the soil. What those rights are, whether in the nature of a profit à prendre or of such nature as to entitle the pattadar to exclusive possession, must be determined upon some other occasion. In this case owing to the way in which the suit was framed and defended the opportunity has been lost for deciding the question.

Davies, J.—Being in second appeal we must take the facts as found by the Lower Appellate Court. Those facts are that in the Tinnevely district the Government grant a patta for palmyra trees exclusive of the land on which the trees grow and that for the land, either a separate patta is granted—sometimes to the pattadar of the trees and sometimes to another person—or the land is allotted to the villagers for communal purposes as in this case for a threshing floor, or it is not allotted at all but kept at the disposal of the Government. The plaintiffs' claim is that they as holders of the patta for the trees are *ipso facto* entitled to the land as well. Their claim as originally laid was a claim to the whole of the unoccupied survey field in which their trees stood although the major portion of the field was not covered by their trees. But now their claim has been narrowed down to the land immediately underneath their 87 trees which, it is said, form a "group." It is only by virtue of the trees forming a group that the plaintiffs lay claim to the land below; for it is conceded that the patta for a single palmyra tree or for two or three scattered trees growing in, say, an acre field, gives no right to the land. The number of trees and the degree of their relative proximity which are necessary to constitute a group have nowhere been defined, and this very indefiniteness is itself an indication of the shadowy nature of the plaintiffs' claim.

The one right which the plaintiffs admittedly have in connection with their right of enjoyment of the trees is the right of access to them for taking their produce and for manuring and watering them when occasion requires. A right to plant fresh trees and a right of enclosing the land on which the trees stand for its exclusive enjoyment, which rights the plaintiffs also set up, they have failed to establish. Now, if the right of access to, and enjoyment of, one tree does not give a right to the land underneath it, which is admitted, a mere difference in the number of trees can make no difference in the character of the right. The plaintiffs' claim, however, seems really to be based on two other grounds. The first is that the tree-tax which they pay is a substitution for the land-tax. There is found to be no authority for this proposition so far as the Tinnevely district is concerned, while the history of the matter as set forth in the official correspondence filed as evidence in this case shows the exact contrary to be the case. The Collector Mr. Puckle's proposal was to consolidate the two taxes, the land-tax and the tree-tax, into one which is unmistakable proof that they were different items of revenue and not the same.

The second ground for the plaintiffs' claim would appear to be the assertion of an abstract right founded on some principle of natural justice that the owner of the trees should necessarily be the owner of the land on which they grow. But this principle is not observed in the Tinnevely district where the actual condition of affairs often is for one person to be the owner of the land and another person to be the owner of the trees. The numerous cases that have been put in evidence prove this fact beyond a doubt. It is not contended that in such cases the owner of the trees could claim to be the owner of the land as against its private owner, and if the claim could not be supported against the private owner, how can it be supported against the Government? The plaintiffs have, in my opinion, entirely failed to prove the right which they assert.

What their right is has, I consider, been laid down in the Full Bench ruling of this Court at I.L.R. 12, Mad., p. 210. They have "an interest during the continuance of their patta in the tree itself and in all that is necessary for the growth of the tree including the soil in which it grows." This interest exists so long as the tree exists, and together with this limited and restricted right in the soil they have an easement right of way to the tree over the adjoining land for the purposes mentioned before. I think the exhaustive judgment of Mr. Justice Benson which is appealed against is entirely right and I would confirm it and dismiss the appeal with costs.

Moore, J.—These are appeals under the Letters Patent against the decision of Mr. Justice Benson in Second Appeal Nos. 158 and 159 of 1895.

2. The plaintiffs (appellants) have for many years held a tree patta for a number of palmyras growing on survey field No. 587-D in the Senthamangalam village, Tenkani taluk,

Tinnevely district. It is admitted that a patta for the lands has never been given to the appellants and it is shown that a few years ago the land on which these palmyra trees stood was, under the orders of the Board of Revenue, converted into *poramboke* with the intention that it should be used by the villagers as a threshing floor. In their plaint (paragraph 16) the appellants pray that the Court may declare their right to get a patta for the land claimed by them and that the order transferring that land to *poramboke* may be cancelled.

3. That the Revenue authorities are not bound under the rules authorised by the Board of Revenue to grant a patta for land on which trees are standing to the holder of the tree patta is perfectly clear. In clause 2 of Standing Order No. 5 (printed at page 8 of the latest edition of the Board's Standing Orders) it is laid down that the issue of a tree-patta and the payment of the tree-tax entered therein conveys to the *pattadar* only the usufruct of the trees. The following rule is also laid down: "In all cases where such usufruct only is conveyed it should be noted on the patta that the *pattadar* has no right to cut down the trees and a condition should be inserted in all pattas granted in future that they are liable to be cancelled when the land is granted on patta." The pleader for the appellants, on this order having been brought to his notice, urges that it applies to scattered trees on Government topes only and not to the trees held by the appellants. It is argued that the trees for which the appellants held a tree-patta are not scattered trees but a group or groups of trees and it is contended that while scattered trees may continue to be held on a tree-patta, yet when such trees by addition made to their number are formed into a group or groups of trees the tree-patta for such group is converted into a land patta by some obscure and unexplained process. It also appears to be maintained that, on the supposition that it is not found that the conversion of scattered trees into a group *ipso facto* converts a tree-patta into a land-patta, yet that it should be held that the Revenue authorities are bound to grant a land-patta for the land on which a group of trees is formed, in lieu of the tree-patta previously held. I cannot find anything that can be called evidence in support of these somewhat curious contentions. It does not appear that the Revenue authorities draw any distinction in this matter between scattered trees and groups of trees, and it is not easy to see how they could do so. Do two trees standing not far apart form a group? If not, how many trees are required before the group can be held to have been formed? Such questions are not easy to answer. No doubt the tendency when the trees become crowded on a piece of land will be for the tree-patta to be converted into a land-patta and it will be remembered that clause 6 of the Standing Order already referred to provides that whenever an application is made for waste land containing trees which are held on tree-patta the holder of the trees is to be offered the first choice of taking the land at a *farm* assessment and he would no doubt avail himself of this power of choice where there are a number of trees in his patta and where consequently the amount of the tax approaches the figure of the land assessment.

4. It further appears to be contended that even if it be held that the rules laid down in the Standing Orders of the Board to which I have referred do apply to the case of palmyra trees held on tree-pattas as in the present case, yet that such rules must be held to be *ultra vires*, illegal and contrary to the declared intentions of Government. Such, as I understand them, are among the contentions advanced on behalf of the appellants—contentions which it must be admitted are by no means as clear as could be desired. In accepting these and similar contentions the District Munsif seems to have especially relied on a decision of Mr. Carr as District Judge of Tinnevely passed in 1875 (Exhibit L), an opinion expressed by Mr. McWatters, the Collector of Salem, in a case referred by him to the High Court to be found in the decision reported in I.L.R., 12 Mad., page 203, and a marginal note to No. 129 of the Standing Orders of the Board in Mr. Dalrymple's edition of those orders. Mr. Carr's decision is of course not binding on this Court, although that officer's lengthened service in the Tinnevely district entitles his opinion to be treated with deference. It should, however, be remembered that the then Collector, Mr. Comyn, in a letter addressed by him to the Board (Exhibit L) criticises in most adverse terms this judgment of the District Judge and that the Board also was of opinion that his decision, that the holder of a patta for trees was *ipso facto* to be considered the *pattadar* of the land, was erroneous although it was not considered advisable for reasons given in their proceedings (No. 935 of the 15th April 1875) to appeal to the High Court. No importance can, it is clear, be attached to the expression of opinion by the Collector of Salem already mentioned.

5. The following is the note in Mr. Dalrymple's edition of the Board's Standing Orders above alluded to. The first paragraph of Standing Order No. 129 runs as follows: "When the regular assessment of the land is paid no extra tax will be levied on trees of any kind which now exist or may hereafter be planted." And to this order the following marginal note is added: "Note.—The spirit of this rule is not contravened by the levy of a tree-tax in Malabar, Tinnevely, Tanjore and in the wet taluks of Trichinopoly, for this tax is there substituted for the land assessment instead of being an addition to it." The Subordinate Judge was of opinion that one reason why no great importance should be attached to this note was that it was no part of the substantive order but only the view of the compiler (paragraph 29 of his judgment). No weight can, in my opinion, be attached to this argument, for the statement that in Malabar, Tinnevely and Tanjore a tree-tax is substituted for the land assessment is to be found in clause 2 of Standing Order No. 5 of the last edition of the Standing Orders of the Board. It does not appear to me, however, that the wording of this Standing Order and note affects the question

now under consideration. What is there laid down is that when the regular land assessment is paid no extra tree-tax will be levied and it is added that the spirit of this rule is not contravened by the fact that in certain districts land assessment is calculated not with reference to the quality and character of the land as is usually done, but on the trees growing on it. The plaintiffs, however, in the present case, have been charged not land assessment but tree-tax and have been granted not a land-*patta* but only a tree-*patta*. The general principle laid down in the old Standing Order is that separate *pattas* should not be granted for trees and for the land on which they stand, but there are, as is well known in practice, many exceptions to this rule. In order No. 5 in the latest edition of the Standing Orders some of the means by which this anomaly can be done away with are set forth; but, however great that anomaly may seem to be, there can be no doubt that for years past there have been numberless cases in Tinnevely and elsewhere where separate *pattas* have been granted for the trees and the land.

6. The only reported decision of the High Court that has been alluded to as bearing on this question is I.L.R., 12 Mad., 203. The point there at issue was as to whether a holder of a tree *patta* was a *known occupier* of land within the meaning of section 46 of the Madras Forest Act. It was held that he was a *known occupier* on the ground that he had during the continuation of his *patta* an interest in the tree itself and in all that was necessary for the growth of the tree including the soil on which it was growing. "Such interest," it is remarked, "though far inferior to the interest of the owner or lessee of the soil, is still an interest in land." It is of course true that the holder of a tree *patta* has an interest in the soil on which his tree grows but it cannot for a moment be held that it therefore follows that he is entitled to demand a *patta* for the land as a matter of right.

7. Exhibits XXXIX and XL are sufficient to show that for many years, and indeed as far as can be seen ever since the commencement of the current century, tree-*pattas* have been granted in the Tinnevely district with respect to palmyras which give the holders no rights over the soil on which the trees are growing except in so far as is necessary for their usufruct of the trees. It is also shown that in many cases a *patta* for the trees is granted to one man and a *patta* for the land on which they grow, to another. The origin of this custom is of course the undisputed fact that in parts of this district there is land miles in extent on which nothing but palmyras is or can be grown and that, as these trees are often situated at great distances from one another and scattered over a large extent of sandy waste land, it would not pay any one to hold them if he were to be obliged to pay the *taram* assessment on the land on which they stand. The manner in which the anomaly of double *pattas* is to be gradually extinguished is set forth in Standing Order No. 5 to which I have so often referred. So long as the land remains as assessed or unassessed waste with respect to which no *patta* other than a tree-*patta* has been issued, it is still land at the disposal of Government for which it can give or refuse a land *patta* as may be thought advisable.

8. A good deal has been said at the hearing of this appeal as to the right of the appellants to the trees growing on the land for which they claim a land *patta* and of the injustice which they will suffer if they are deprived of those trees. All that it is necessary to say as to this is that there can be no question as to the right of the appellants to the usufruct of the trees without let or hindrance but that there is nothing to show that any one has the slightest intention of interfering with their rights in this respect. That the plaintiffs (appellants) in their plaint do not allege that there has been any such interference or state that they apprehend such is sufficient to show that no weight need be attached to the appeal *ad misericordiam* now made on their behalf. They do not ask for a declaration of their right to the usufruct of the trees because that right has never been denied. It cannot reasonably be doubted that without any interference with the rights of the appellants with respect to their trees the villagers can make use of a sufficient portion of No. 587-D as a threshing floor. As pointed out by Mr. Justice Benson at the close of his judgment, the Subordinate Judge has found as a matter of fact that the reason why the Revenue authorities refused to grant a land-*patta* for the land was that it had been used in common by the villagers for years as a threshing floor. If there had not been some such ground for refusal it is only reasonable to assume that the land-*patta* would have been granted, the land assessment for the whole area being of course greater than the tree-tax on the by no means considerable number of trees on it.

9. On the ground that the appellants cannot claim as a right in a Civil Court to be granted a land *patta* merely on the ground that they hold a tree *patta* for some trees growing on the land, I would dismiss both these appeals with costs.

(By the Court.)

(Signed) J. T. GILLESPIE,
Dy. Registrar, Appellate Side.

To the Subordinate Judge of Tinnevely,
with record and six spare copies of printed judgment.

When given for copying _____
When copied _____
When examined _____
When signed _____

189

READ AGAIN G.O., No.

DATED

189

CURRENT No.

ENCLOSURES TO G. O., No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DUTY

CASES NOT FILLED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

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