

**(1944) 11 MAD CK 0026**  
**In the Madras High Court**

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| Dhara Rama Subbayya and Another           | APPELLANT  |
| Vs                                        |            |
| Annavarappu Lakshmi Narasimham and Others | RESPONDENT |

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**Date of Decision :** 01-11-1944

**Acts Referred:**

**Citation :** AIR 1945 Mad 246 : (1945) ILR (Mad) 571 : (1945) 58 LW 43 : (1945) 1 MLJ 70

**Hon'ble Judges :** Mockett, J;Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

**Bench :** Full Bench

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**Judgement**

Kuppuswami Ayyar, J.—Appeal No. 267 of 1943.—The appellants are respondents 12 and 13 in I.A. No. 142 of 1940 on the file of the

Subordinate Judge of Tenali. They are the legal representatives of the first defendant in O.S. No. 30 of 1937 on the file of that Court. It was a suit

for recovery of possession of certain properties with mesne profits. A preliminary decree was passed on 17th March, 1939, and the properties

were taken possession of shortly thereafter. There were two appeals to this Court against the preliminary decree which were both dismissed on 4th

February, 1942. In the meanwhile, I.A. No. 142 of 1940 was filed on 9th February, 1940, for ascertaining the mesne profits. A commissioner was

appointed to ascertain the same. After taking evidence and after examining the documents, he submitted a report on 14th November, 1941. The

learned Subordinate Judge on receipt of the report heard the objections of both sides and gave a decree and it is against this decree for mesne

profits that this appeal has been filed by respondents 12 and 13, who are the legal representatives of the first defendant in the suit.

2. The only two points urged are that the learned Subordinate Judge had gone wrong in estimating the mesne profits payable in respect of some of

the items for the years 1934-1935 and 1935-36 and the other is in respect of his refusing to allow Rs. 231-1-7 claimed as collection charges. So

far as the first objection is concerned, I do not think the appellants have made out a case for interfering with the order of the learned Subordinate

Judge. A commissioner was appointed to inspect the lands for ascertaining what the income from these lands would be and his report has been

accepted. The appellant sought to let in evidence some lease deeds alleged to have been executed in the material years and they have been

rejected by the commissioner and the learned Subordinate Judge agreed with him. They are unregistered documents and there are indications to

show that they must have been obtained subsequently. Further, it is a matter only of approximation. When there is no definite date and when an

estimate could be made approximately, it cannot be said that the learned Subordinate Judge had gone wrong in accepting the estimate of the

commissioner who had given cogent reasons for arriving at the figure mentioned by him in his report.

3. The only other point is about the collection charges. The appellants' case is that they had leased these lands to tenants and had to collect rents

from them and for collecting the rental from the lands, they had to incur expenses for going to the localities for getting the lease deeds and again for

collecting moneys and that the learned Judge ought to have allowed them 10 per cent on the gross income of the properties for such collection

charges. There would be justification for the appellants in claiming the collection charges if the mesne profits had been assessed on the actual rent

collected by them. This is not a case in which the tenant in possession of the lands had occupancy rights. The right which the appellants had was a

right to be in actual possession of the lands and receive income from them. It is only in cases where the person who has to pay mesne profits had

no right to be in physical possession of the land but only to collect rent, can it be said that there would be justification for deducting the collection

charges out of the rent collected by him from the tenants in possession for ascertaining the mesne profit. In a case where the person is entitled to be

in actual possession, then the mesne profits have to be ascertained with reference to the yield of the land, and the net income after deducting the

cultivation charges and other expenses would represent the mesne profits payable to the decree-holder. In this case, the commissioner has not

fixed the mesne profits payable on the basis of the amount actually received by the appellants as rent. The lease deeds for the years in question were not proved and he had therefore to fix the mesne profits with reference to the yield from the property. He no doubt referred to subsequent lease deeds but it was only for the purpose of pointing out that the figure fixed by him was not high. If the mesne profits had to be fixed with reference to the yield of the property, it cannot be said that there could be any scope for allowing any deduction for collection charges. The gross income from the land minus the expenses that will have to be incurred for getting the gross yield would be the net income from the properties and this is the basis on which mesne profits had been fixed in this case and there can hence be no scope for allowing any deduction for collection charges. The commissioner in his report clearly indicated that he fixed the mesne profits with reference to the yield from the property and also after taking into consideration the cultivation expenses. Further the appellants have not let in evidence to show that they had incurred any collection charges. They rely upon a judgment of the Judicial Committee in Secretary of State for India in Council v. Sarojekumar Acharjya Choudhuri (1934) 68 M.L.J. 580 : L.R. 62 LA. 53 : ILR 62 Cal. 499 following the ruling of the Privy Council in Grish Chunder Lahiri v. Shoshi Shikhareshwar Roy (1900) 10 M.L.J. 356: L.R. 37 I,A. no : ILR 27 Cal. 951. In both these rulings there is reference to the practice of allowing 10 per cent for collection charges. They are all cases from Bengal where there is the permanent settlement. In most of these cases, it will be only the right to receive rent from the actual person cultivating the lands that would be the basis for the mesne profits. In such cases the collection charges had necessarily to be deducted and that was why evidently the practice grew up in Bengal, in the absence of evidence, of fixing 10 per cent as allowance for collection charges. It is not a custom of the people but only a practice of Court that is referred therein and so far as I am aware, there has been no practice followed by Courts either in the mofussil or here, of any definite percentage being allowed as collection charges when the mesne profits are fixed with reference to the yield of the land and when the person who is liable to account for the mesne profits is entitled to be in actual possession of the land. The case in Krishnayya Rao v. Maharajah of Pithapuram, (1934) 68 M.L.J. 580 : 1934 L.R. 62

LA. 53 : ILR 62 Cal. 499 was a case with reference to the zamindari. In Secretary of State for India in Council v. Sarojekumar Acharjya

Choudhuri (1900) 10 M.L.J. 356: L.R. 37 I.A. no : ILR 27 Cal. 951 it was the case of an island and the Secretary of State was made to pay

mesne profits but then, in the case of zamindari, and other public bodies they have an establishment to make these collections and in such cases,

there may be a justification for a deduction of the expenses of the establishment employed in the collection, but I do not think it can be said in the

case of parties like the appellants there will be any justification for making an allowance for collection charges when the mesne profits are fixed with

reference to the yield of the land.

4. Another point that was urged for the appellants is that with reference to items 10 to 20, the learned Subordinate Judge ought to have given a

joint decree against them and the second defendant but then it is the plaintiff that can complain against this omission and not the appellants. It may

be that the appellants are entitled to a claim for contribution from the second defendant but this is not a matter about which we are concerned in

this appeal.

5. I would therefore dismiss the appeal with costs.

Mockett, J.

6. I agree. I only wish to add a few remarks with regard to the contentions of the learned counsel for the appellants, that it has been laid down for

all time that in all the Courts in India, there is a rule to the effect that 10 per cent is the customary allowance for the collection expenses of the

profits. The decision of the Privy Council in Secretary of State for India in Council v. Sarojekumar Acharjya Choudhuri (1900) 10 M.L.J. 356:

L.R. 37 I.A. no : ILR 27 Cal. 951 was cited to a Bench of this Court in Krishnayya Rao v. Maharajah of Pithapuram (1934) 68 M.L.J. 580 :

1934 L.R. 62 LA. 53 : ILR 62 Cal. 499. and it will be observed at page 580 that when referring to that decision Patanjali Sastri, J., noticed that it

is "'a case arising in Bengal.'" An examination of the earlier decision which was approved by the Judicial Committee, namely, Grish Chunder Lahiri

v. Shoshi Shikarshwar Roy (1900) 10 M.L.J. 356 : L.R. 27 I.A. : ILR 27 Cal shows that there was "'a well-recognised practice in these Courts

(which means, the Courts of Bengal) and supported by evidence to the effect

that 10 per cent allowance should be made as a matter of ordinary practice for collection. The cases referred to by Sir John Wallis in Secretary of State for India in Council v. Sarojekumar Acharjya Choudhuri (1900) 10 M.L.J. 356: L.R. 37 IA.: ILR 27 Cal. 951 are all Calcutta cases. I venture therefore to think that when Sir John Wallis observed in the course of the judgment that "" in India "" 10 per cent is the customary allowance for mesne profits, His Lordship was referring to the Courts in India with whom their Lordships were then concerned, namely, the Courts in Bengal. The authorities cited before the Board by Mr. Dunne no doubt establish that it is customary to deduct collection charges but nowhere can it be found other than in Bengal that there is a custom that the amount of deduction should be 10 per cent. I am fortified in expressing this view by the fact that as stated by my learned brother who has far greater experience in these matters than I, no such custom has ever come to his notice. I may add neither has it come to my notice. The fact is that this may be a useful custom in the conditions prevailing in Bengal but the necessity for its appearance as a rule of practice in the Madras Courts has not yet arisen. I entirely agree with my learned brother's judgment with regard to the merits of this appeal, which should be dismissed with costs.