

(1956) 07 MAD CK 0030
In the Madras High Court
Case No : Appeal No. 7 of 1954

K. Gopalaswami Ayyangar

APPELLANT

Vs

Sri Athamanathaswami Devasthanam at Avidayarkoil

RESPONDENT

Date of Decision : 12-07-1956

Acts Referred:

Citation : AIR 1958 Mad 80

Hon'ble Judges : Rajamannar, C.J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : V. Vedantachari and T. Rangaswami Ayyangar, for the Appellant; M. Ranganadha Sastri, S. Gopalan and M.V. Kapali Sastri, for the Respondent

Judgement

Panchapakesa Ayyar, J.—The appeal has been filed by one Gopalaswami Aiyangar, the defendant in O. S. No. 70 of 1953, on the file of

the Subordinate Judge, Tanjore (O. S. No. 22 of 1951, on the file of the District Court, West Tanjore). The facts were briefly these:

2. That was a suit filed by Sri Athmanathaswami Devasthanam of Avidayarkoil, by its hereditary trustee, Sri Subramania Pandarasannadhi,

Adheenakarthha of the Tiruvaduthurai Adheenam, for recovering Rs. 11,415-8-6, being the principal and interest due from the appellant, as

damages for use and occupation of the temple lands for fasli 1357-1360, at Rs. 3-9-0 per acre per annum. It was alleged that the suit lands

measuring 729 acres 17 cents and lying in three villages Kalagam, Pazhayanagaram and Arasalankaranbai, belonged absolutely to the temple in

iruwaram eka bhogam right and did not constitute ryoti lands but were pannai or home farm lands which lay as waste from time immemorial and

constituted old waste, and that in fasli 1354, the then Pandarasannadhi, the previous "trustee of the temple, was trying to reclaim some portions of

those lands and to bring them under cultivation, in pursuance of the vigorous grow-more-food campaign initiated by the revenue authorities and encouraged by the H. R. E. Board, but that, as the temple had not the necessary resources, the progress of reclamation, if undertaken by it, would be inappreciable and very slow. The Government were urging for speedy reclamation of these lands and for bringing them to cultivation, as they were irrigable under the Cauveri-Mettur project. The revenue authorities recommended one Srinivasa Aiyangar as a suitable man for taking in hand the reclamation, as the temple was not able to do it by itself. But Srinivasa Aiyangar's offer was not accepted for some reason or other by the then Pandarasannadhi. The Manager of the Thiruvaduthurai Mutt was one V. Krishnaswami Aiyangar then. He was also the legal adviser for the Mutt at Kumbakonam. His grandson was married to the appellant's daughter. Whether the appellant came to know about this scheme for reclaiming the suit lands from his sambandhi Krishnaswami Aiyangar, the Manager, or independently, he made an offer to the Pandarasannadhi, Ex. B-1, dated 31-7-1944, to reclaim the land, offering to pay the temple cash rent or a portion of the crop, after the usual remissions and concessions for the earlier years in such cases of reclamation. He requested to be put in possession of the lands forthwith in order to enable him to take advantage of the concessions offered by the Government regarding the water rate and to raise the crops at once. The revenue authorities strongly recommended his application, holding him up as a man of influence and resources and as one who had built a temple in Madras at his own cost and was maintaining it at a great sacrifice. The then Pandarasannadhi was said to have consulted his advocate at Madras regarding his power to grant the prayer in Ex. B-1, without any sanction of the Hindu Religious Endowments Board. The Advocate replied that it was within the ordinary powers of his management to grant the prayer. Thereupon, the then Pandarasannadhi granted the suit lands on patta to the appellant, after receiving a premium of Rs. 3,000, and delivered the suit lands to the appellant on 21-8-1944, under Ex. B-22, in pursuance of his order, Ex. A-3, dated 16-8-1944. The rate of rent was not fixed in Ex. A-3 or Ex. B-22. The appellant was told that no rent would be demanded from him for faslis 1354 and 1355, that is, for the first two years. Even in the suit, the rent for those years was not claimed. The then Pandarasannadhi intimated to the H.

R. E. Board the orders passed by him in Ex. A-3, and he said wrongly in that communication, Ex. A-5, dated 4-10-1944, that the lands granted

were service tenure lands. On a further report being called for by the H. R. E. Board, he said that the lands were not service tenure lands, and

added that he was himself competent to grant the lease, and that the legal adviser had also told him so on 16-8-1944, as shown in Ex. B-24. He

then went on to eulogise the efforts of the appellant to reclaim the lands speedily, adding that he had reclaimed 200 acres out of the suit lands

within two months, spending of least Rs. 30,000 and a phenomenal amount of time and energy.

3. Then, on 6-1-1945, he fixed the rent payable by the appellant for the suit lands at Rs. 3-9-0 per acre, besides the water cess from 1356 fasli,

and was proceeding to exchange patta and muchilika with the appellant when, on 8-3-1945, the H. R. E. Board issued a notice, Ex. B-6, to him

under S. 76 of the H. R. E. Act, calling upon him to justify the lease granted to the appellant. He had had correspondence with the H. R. E. Board

regarding that matter between October 1944 and March 1945. He stated in Ex. B-10, a statement by him before the H. R. E. Board, that the suit

lands were ryoti lands, and that the transaction was well within his competence, being in the ordinary course of management as trustee, and that no

sanction of the Board under S. 76 (1) of the H. R. E. Act was necessary. The Board, however, passed an order, Ex. A-7, on 27-10-1945,

declaring the lease to the appellant as invalid, as being neither necessary nor beneficial to the temple, and that amounted to an alienation by way of

sale or permanent lease, requiring sanction of the Board.

4. On 9-3-1946, one Rajagopala Aiyar, claiming to be a worshipper in the plaint temple, filed a petition in the District Court under S. 76 (2) of the

H. R. E. Act for quashing the order under Ex. A-7 as erroneous, illegal and passed without jurisdiction. The appellant denied having set up

Rajagopala Aiyar to file that petition, though the lower Court has opined that he was the man at the bottom of the petition. Whatever it be, the

learned District Judge dismissed that petition stating that it was for the appellant to prove in appropriate proceedings that he had occupancy rights

in the suit lands. There the matter rested for the time.

5. The then Pandarasannadhi died in April 1951, and the present

Pandarasannadhi succeeded him and issued a notice Ex. A-1, dated 15-6-1951, through an advocate, to the appellant, repudiating the lease granted to the appellant by his predecessor and treating the appellant as a person in unauthorised occupation of the temple lands and liable to pay the temple half the crops, the usual waram, but claiming only Rs. 10,418-10-0 for faslis 1357-1360 as per the rent fixed by his predecessor and not claiming for faslis 1354-1355, and stating that the rent for fasli 1356 had been adjusted out of the payments made by the appellant. The appellant not having paid as per the demand, the Pandarasannadhi filed the suit for recovering Rs. 11,415-8-6, the principal and interest.

6. The appellant contested the suit vigorously. His main contentions were that the suit lands were ryoti lands in an estate, and that he had been legally admitted into possession by the previous Pandarasannadhi, the trustee of the temple, and had paid premium and rent, and had perfected his occupancy rights, and that it was well within the rights of the previous Pandarasannadhi, in the course of his management as trustee, to grant such a lease and to let him into possession, and that no sanction of the Board was necessary under S. 76 of the H. R. E. Act. He also contended that he had spent three lakhs of rupees on reclamation to the knowledge of the previous Pandarasannadhi, the present Pandarasannadhi and the H. R. E. Board, and that the H. R. E. Board had acquiesced in the previous trustee's letting him into possession under Exs. A-3 and B-22, and could not now repudiate the lease or deny his right of occupancy. He added that Rs. 1,000 which he had paid towards the rent for the suit faslis had not been taken into account, though the plaintiff had alleged that every payment had been taken into account. He contended also that the previous Pandarasannadhi had agreed to waive the rent for faslis 1357-1359. Finally he urged that the suit would lie only in a revenue Court, under the Estates Land Act, and not in a civil Court, and that the suit by the plaintiff would not also lie in view of the provisions of the Rent Reduction Act,

XXX of 1947. The learned Subordinate Judge framed the following issues:

1. Is the defendant a ryot, and is the suit not cognisable by this Court?
2. What are the terms and conditions of the tenancy?
3. Is the plaintiff bound by any waiver of rent by the preceding trustees?

4. What is the amount of rent or damages due?

5. To what relief, if any, is the plaintiff entitled?

Additional issue:

Whether the plaintiff is not competent to sue in view of the provisions of the Rent Reduction Act, XXX of 1947?

7. After discussing the entire evidence, he held, on issues 1 and 2, that there could be no doubt that the suit lands were situated in an estate, as

defined in Act I of 1908, as amended by Act XVIII of 1936, and that as they were cultivable lands, and had indeed been brought under cultivation

by the appellant, they must be deemed to be ryoti in character until the contrary was proved by the plaintiff, but that as the suit lands, though

cultivable, had remained uncultivated for a number of years and were for the first time being let to the appellant, and there was no proof of

necessity for the temple by granting such a lease, or benefit derived by it, it would amount to an alienation of temple property and the previous

trustee should have taken the sanction of the Board before granting a lease, and that, in the absence of that, the lease was invalid and the appellant

must be held to be only a person in permissive occupation of the suit property without acquiring any occupancy rights therein and that, under the

terms of the permissive occupation or tenancy, he must pay at the rate of Rs. 3-9-0 per acre on an average for the lands in his possession for each

year and would also be liable to eviction, since he was only a tenant at will. On issue 2, he found that the waiver of rent pleaded by the appellant

for faslis 1357 to 1359 was not proved to be true, and that in any event, the plaintiff was not bound by any such oral promise by the previous

Pandarasannadhi. On the additional issue, he found that the plaintiff was entitled to maintain the suit notwithstanding the provisions of the Rent

Reduction Act, XXX of 1947. On issue 4. he found that the plaintiff was entitled to recover Rs. 10,334-3-0 as damages after allowing for the

payments made by the defendant, including the Rs. 1,000 paid by him for fasli 1358, in the sums of Rs. 500 each and not taken into account in the

plaint, even, though this amount should have been taken into account for the rent of fasli 1358 and could not be adjusted towards the rent of fasli

1356, as the plaintiff claimed to have done, and that too without proof. In the end, therefore, he granted the plaintiff a decree for Rs. 10,334 with

subsequent interest and proportionate costs, and dismissed the rest of the suit with proportionate costs.

8. The defendants has filed the appeal regarding the decree itself and the portion decreed, and the plaintiff has filed the memorandum of cross

objections regarding the Rs. 1,000 disallowed.

9. We have perused the entire records, and heard the learned counsel on both sides. Only four questions arise for determination in the appeal, viz.,

1. Are the suit lands ryoti lands situated in an estate, or private lands or tank bed lands, bunds, channels, threshing floors, service tenures, etc., not

capable of being ryoti lands?

2. Was the appellant admitted to possession of the suit lands, under Ex. B-22 on 21-8-1944, and is he entitled to occupancy rights under S. 6 of

the Estates Land Act?

3. Was the previous Pandarasannadhi entitled under the law to grant the lease and admit the appellant into possession, in the ordinary course of his

management, without obtaining the orders of the H. R. E. Board? and

4. Had the lower Court no jurisdiction to entertain the suit, and has it to be filed only in a revenue Court?

10. We shall discuss the points seriatim below.

11. Point No. 1: There is absolutely no doubt, in the light of the evidence in the case, that the suit lands are ryoti lands, situated in an estate and are

not private lands either ab initio or by conversion from ryoti, or tank beds, bunds, threshing floors, cattle stands, village sites or service tenures,

exempted from the definition of ryoti lands under S. 3 (16) of the Estates Land Act. The lower Court itself has rightly held, in para. 10 of its

judgment, that there, can be no doubt that the suit lands are situated in an estate as defined in Act I of 1908, as amended by Act XVIII of 1936.

and that being cultivable lands, they must be deemed to be ryoti in character until the contrary was proved by the plaintiff. It went on to say that,

after the amending Act of 1936, the mere fact that the temple owned both the warams, and that the lands were iruwaram lands, would not prevent

the appellant from getting occupancy right, if he was properly let into possession by the person entitled to do so. It also rejected the plaintiff's case

that the suit lands were home-farm lands of the temple, as there was no proof of that, or of any cultivation by the temple itself, prior to 1-7-1908

or 1-11-1933, for a continuous period of 12 years. It held also that the temple had not acquired the kudiwaram interest in the lands prior to 1-11-

1933 for valuable consideration. It referred to the Full Bench judgment of this Court, *Periannan and Others Vs. Airabadeeswarar Soundaranayagi*

Amman Kovil of O'Siruvayal and Others,) (A) and the observation of the learned Judges therein that a land can be deemed to be a private land

only on proof of the facts mentioned in S. 3 (10) of the Estates Land Act, and that mere proof that the landlord was the owner of both the warams

was not sufficient to establish the case that the land was private land. It went on to say that the law recognised only two categories of land in an

estate, viz., private land and ryoti land, and that the contention of the plaintiff that the suit land must be deemed to be part of old waste land, and,

therefore, private pannai land of the temple, could not be accepted. The learned counsel for the respondent-temple, was unable to attack that

finding, which is, in our opinion, the only proper finding in the light of the law and the rulings as they stand.

12. Private land" as defined in S. 3 (10), means the domain or home-farm land of the landholder, by whatever designation known, such as

kambattam, khas, sir or pannai, and includes all land which is proved to have been cultivated as private land by the landholder himself, by his own

servants or by hired labour, with his own or hired stock, for a continuous period of 12 years immediately before the commencement of the Act.

The essence of private land is that it was once cultivated by the landholder himself, except as regards kudiwaram lands acquired by the landholder

before 1-11-1933 for valuable consideration (which is not the case here) regarding which lands he is given some privileges. The suit lands were

admittedly wholly uncultivated before they were granted to the appellant on lease and delivered into his possession. So they can never be called

home-farm lands or private lands at their inception by any stretch of imagination.

13. It was also not contended that they were ryoti lands converted into private lands, the only way of such conversion recognised by law being by

proof of continuous direct cultivation for a period of 12 years prior, to 1-7-1908 or 1-11-1933, as the case may be, as held in *ILR (1952) Mad*

741: (AIR. 1952 Mad 323) (A). The test applied by another Full Bench ruling of this Court in *Bandara Jogi and Others Vs. Sri Rajah Chintalapati*

Seetharamamurthi Rajah Bahadur Garu and Others, also shows that, in the circumstances of this case, the suit lands remained ryoti lands, if they were once ryoti lands, and were not converted into private lands of the temple at any time.

14. Then the question is whether the suit lands are ryoti lands. We have no doubt whatever that they are ryoti lands as defined in S. 3 (16) of the Estates Land Act. The learned counsel for the respondent urged that, as these lands had not been cultivated for any period before the lease to the appellant and his being admitted into possession, they cannot be termed "cultivable land". The contention is wholly unsustainable. "Cultivable" is, of course, quite different from "cultivated". Any land which can be cultivated systematically will be "cultivable land". The appellant has urged that he had brought the entire suit lands under wet cultivation by the time of the suit, spending three lakhs of rupees for reclamation. There is no reliable evidence to show that any part of the suit lands remained uncultivated at the time of the suit, much less that any portion of it was uncultivable. The lower Court has held that all the suit lands were cultivable, though they had remained uncultivated for a number of years, and that is undoubtedly the correct conclusion from the evidence.

15. The Privy Council has held, in Naganna Naidu v. Pichaiya, ILR 52 Mad 797: (AIR 1929 PC 249) (C), that pasture land, which had remained uncultivated so far, but which could be reclaimed and brought under cultivation, would, when granted on lease, entitle the lessee to occupancy rights, as such land would be "cultivable land" under S. 3 (16) of the Estates Land Act, and therefore ryoti land. There is no ruling to the contrary.

The learned counsel for the respondent-plaintiff relied on a ruling of Krishnan, J., in A. Subbayya Vs. Sree Raja Venkataramiah Apparao Bahadur Zamindar Garu and Another, , where the learned Judge held that a waste land in an estate, which used to be usually submerged in water in the rainy season, and was not cultivated at all at any time, could not be termed to be ryoti land entitling an unauthorised person, who occupies it casually and cultivates it off and on, to rights of occupancy. But that ruling relates to lands which are not ordinarily and systematically cultivable, though some catch crop can be got now and then by expending an inordinate amount of labour and money on it. That ruling can therefore have no

relevancy to a case like this or to a case of fine cultivable lands like the suit lands, all of which have been brought under wet cultivation under the Cauveri-Mettur project. The proof of the pudding is in the eating, and, when the lands have been fully cultivated, it is not permissible to argue that they are not cultivable.

16. Nor can it be said that any portion of the suit land is covered by the exceptions in S. 3 (16), like tank beds, tank buds, drainage channels, irrigation channels, threshing floors, cattle stands, village sites, service tenures, etc. That plea was not raised in the written statement and was only referred to by the lower Court itself, by referring to some entries in the registers, and without any evidence in support of them. We are satisfied that the contention cannot stand. It is significant that no ryot having lands under the alleged tank or irrigation channel, whose bed is said to be included in the suit lands, ever objected to the lease to the appellant or the cultivation of the suit lands by him. It is a eleventh-hour argument trotted out by the respondent's counsel taking advantage of the observations in the lower Court's judgment. We may add that the Privy Council, in AIR 1950 48 (Privy Council) reaffirmed its views in the earlier decision in ILR 52 Mad 797 (AIR.1929 PC 249) (C), regarding uncultivated pasture lands being ryoti lands capable of founding occupancy rights, if those pasture lands are cultivable. Of course, there are some lands in an estate which are not cultivable at all, like hill tops, permanently submerged lands, etc., and they will be incapable of being claimed as ryoti lands, with occupancy rights, by lessees for grazing, fishing, etc.

17. Point No. 2: That the appellant was admitted into possession of the suit lands on 21-8-1944, wider Ex. B-22, in pursuance of Ex. A-3, is proved beyond all doubt, and is indeed, not disputed. The appellant also paid Rs. 2,500 as rent towards the suit lands besides a premium of Rs. 3,000; that too is not disputed, the plaintiff himself having given credit to Rs. 1,500 out of the rents paid, to the suit faslis, though not to the balance of Rs. 1,000. It is also seen that rent for the suit lands was demanded from the appellant by the revenue inspector, under Ex. B-21, on 30-10-1950. So, it is clear that the appellant would get occupancy rights in these ryoti lands, provided the person who admitted him into possession had a right under the law to do so.

18. Point No. 3: There is little doubt in our mind that in the case of such ryoti lands remaining uncultivated, a trustee has himself powers, in the ordinary course of his management to let a tenant into possession, even though the consequence of it would be that the tenant would acquire occupancy rights and that there is no need for him to obtain the orders of the H. R. E. Board, it being not an alienation of trust property or even a permanent or long lease of private or pannai lands. In *Narayanaswami Naidu v. Subramaniam*, ILR 39 Mad 683: (AIR 1916 Mad 263) (F), a Bench of this Court has held that the term "landholder in S. 6 of the Act includes a receiver appointed to manage the estate, and that the receiver can let a tenant into, possession of cultivable lands in the estate, as such power would ordinarily be included in the powers of management. In *Sri Kallalagar Devasthanam Vs. Anthony Moopan*, , it was held that a trustee could let a tenant into possession of cultivable land in the estate of a temple and that that power could be exercised in the ordinary course of his management, and that the word landholder" in S. 6 (1) of the Madras Estates Land Act, does not mean the same thing as "landowner". In AIR 1950 48 (Privy Council) the Privy Council went further and held that even de facto trustees could let tenants into possession and enable them to acquire permanent rights, if they had the tacit assent of the de jure trustees as well as of the H. R. E. Board, who must be deemed to have acquiesced in such a lease by keeping silent when action was demanded. The Privy Council decision was in reversal of the decision of this Court in that case, reported in *Zakka Pattabhirama Reddi Vs. Menakur Balarami Reddi and Others*,), holding the contrary. It is obvious that the decision of the Privy Council would apply to the facts of this case also, though there is no need to import the theory of acquiescence and tacit assent of the H. R. E. Board, by its failure to take action for some time and by the action of the present trustee, even in this suit, acting on the terms of the lease to the appellant regarding the rate of rent, and non-demand of any rent for the first two years, and adjusting the rent paid under the lease, and failure to ask for possession, reserving it for future proceedings. In *Mahabir Das Vs. Udit Narain Verma and Others*, a Bench of the Patna High Court has held that a receiver appointed by Court has got the right to let a tenant into possession of cultivable land and enable him to acquire permanent rights, under the Bihar Tenancy Act, and that such a power

would be within his ordinary powers of management.

19. Nor were there any special circumstances making it incumbent on the previous Pandarasannadhi to refer the matter to the H. R. E. Board for

its sanction. The temple has no funds to reclaim the lands under S. 6 (4) and S. 26 of the Estates Land Act. The revenue authorities and the H. R.

E. Board were pressing the temple to have the lands reclaimed by some suitable person in pursuance of the grow-more-food campaign and World

War II, which made growing of more food indispensable national interests. There was, therefore, no need for the then trustee to refer the matter to

the H. R. E. Board for sanction as a special case. The fact that he did so without any need would not avail the plaintiff-respondent, as later on, he

himself contended before the H. R. E. Board that he had the power to grant the lease, and that no sanction of the Board was necessary, and the

Board had a prolonged correspondence with him about it and did nothing at all till he died, and even after his death allowed the next trustee to act

on the terms of the lease regarding non-claim of rent for two years, and claim of rent at the rate agreed to by the previous trustee for the remaining

years, and adjustment of rent already received towards the claim in the suit.

20. The learned counsel for the plaintiff-respondent relied on the ruling in *Moravaneni Veerayya and Others Vs. Sree Raja Bommadevara Venkata*

Bhashyakaralarao Bahadur, That ruling will have no application to this case, as there it was a case of trustee's converting home-farm lands into

ryoti lands for getting a substantial payment in cash and so it was held to be not binding on the estate without sanction. Here, it is merely a question

of putting a tenant in possession of ryoti lands, which had remained uncultivated so far, for the purpose of getting them cultivated and realising a

good additional income for the temple.

21. Finally, the learned counsel for the plaintiff-respondent relied on a ruling of the Supreme Court in *Lakshmana Nadar and Others Vs. R.*

Ramier, . That too will not help him. There it was merely held that a person cannot grant a right which he has no power to grant. But, here, we

have already seen that the trustee had the power to let the appellant into possession of the suit lands, which were ryoti lands, though remaining

uncultivated so far, without obtaining the sanction of the H. R. E. Board and of his own accord, that being within the ordinary powers of his

management. So, he granted only what he had power to grant and the Supreme Court ruling cannot have any application.

22. Point No. 4; There is no doubt whatever, in view of the findings on points 1 to 3 above, that this suit would only lie in a revenue Court, and

could not be entertained by the lower Court, a civil Court. It is not a case of a contract under which ryoti land is allowed to be used for non-

agricultural purposes, and the civil Court has therefore jurisdiction. It is a case of a tenant being admitted to ryoti lands for agricultural purposes,

viz., reclamation and cultivation. In that view, the plaint will have to be returned to the plaintiff for presentation before the proper Court, viz., the

concerned revenue Court, and we set aside the judgment and decree of the lower Court, and direct the plaint to be returned to the plaintiff for

presentation to the proper Court, viz., the appropriate revenue Court, As we are doing that, there is no need for us to consider whether the rent at

Rs. 3-9-0 per acre, demanded from the defendant in this suit, is the proper rent, and is payable for the entire extent, or whether only the rent

payable under the provisions of the Rent Reduction Act, XXX of 1947, will be payable, and that too for the extents cultivated actually in each fasli

as contended by the appellant's counsel even if the total remission story for faslis 1357 to 1359 is rejected. All these matters will have to be gone

into and decided by the revenue Court, the only competent Court to hear and decide them, when the plaint is presented there afresh.

23. The memorandum of cross objections filed by the plaintiff relates to the Rs. 1,000 paid in 1950-51 and claimed to have been adjusted to fasli

1356 but disallowed by the lower Court. We have no hesitation whatever in agreeing with the lower Court that this sum of Rs. 1,000 paid by the

defendant in 1950 and 1951 towards the rent of fasli 1358, as per the plaintiff's own accounts, was not adjusted in the plaint, though it was stated

that it was adjusted. The learned counsel for the plaintiff was not able to show from the accounts that it was adjusted to fasli 1356, or how it could

be adjusted to that fasli when paid for fasli 1358. He did not produce any entries proving the adjustment to fasli 1356, much less prove that it was

properly adjusted to that fasli. Indeed, he was not able to show us how the lower Court has gone wrong at all on this point. The memorandum of

cross objections, therefore, has to be and is hereby dismissed with the costs of the defendant-appellant.

24. In the appeal, the plaintiff-respondent will pay the defendant-appellant his costs, excluding the court-fee on the appeal memo, which will be refunded to the appellant. The costs in the suit will be provided for when it is disposed of (afresh) by the revenue Court.