

(1909) 10 MAD CK 0028
In the Madras High Court

Paramasawmi Iyengar

APPELLANT

Vs

Pusala Thevan and Others

RESPONDENT

Date of Decision : 08-10-1909

Acts Referred:

Citation : (1910) 20 MLJ 142

Judgement

1. The question is whether the plaintiff is entitled to claim wet assessment on dry lauds cultivated with wet crops, whatever may be the source of irrigation. The Judge has found that there was no contract, express or implied, to pay rent at the rate claimed, and nothing has been urged before us to show that he was wrong. It was then argued that the plaintiff is entitled to prove that he is entitled to do so by custom. The Deputy Collector and the District Judge held that the custom is invalid as it is opposed to the provisions of Act VIII of 1865. We agree. We are unable to agree with the appellant's pleader that in such cases the landlord does not raise the rent. Where the rent payable is in fact higher, the case falls within the proviso to Section 11, Rent Recovery Act. A usage to charge assessment at the wet rate on account of the tenant's converting land from dry to wet or any other improvements effected at the tenant's expense is illegal. See *Fischer v. Kamakshi Pillai* ILR (1997) M. 136. The ground of decision is that a landlord is entitled to raise a rent only if the improvement is effected at his own expense or at the expense of Government, and in either case only with the sanction of the Collector. We hold for the same reason, that the custom set up in this case is illegal and that the condition in the patta which enables the landlord to receive a higher rent when the wet crop is cultivated with water brought into the fields at the tenant's

expense cannot, therefore, be enforced. The second appeals, Nos. 921 to 925, 928 to 932, 934. 936, 937, 940 to 944, 946, 948, 951 and 952 of 1908 are accordingly dismissed with costs and the others without costs.