Present: Pereira J. and Ennis J. 1912.

JAYASURIA *et al. v.* SINNO APPU *et al.*

207—D. C. Tangalla, 1,192.

Non-notarial agreement to clear land and stack the timber—Person clearing to sow kurakkan and take all the crop—Is timber "produce"—"Share"—Ordinance No. 21 of 1887.

By a non-notarial document the defendants agreed to clear within one year a block of land belonging to plaintiffs and to stack all the timber—to be sawn by the plaintiffs. In return the plaintiffs agreed to allow the defendants to sow kurakkan on the land and have the produce of the same for one year.

Held, that this agreement was valid though not notarially executed.

THE facts are set out in the following judgment of the District Judge:—

The plaintiffs, claiming to be owners of a block of land at Ridiyagama, sue defendants, their lessees, to recover Rs. 4,000, being the value of 5-18ths of a crop of kurakkan sown on about 200 acres of it.

It is admitted that 200 acres were cleared by the defendants and kurakkan sown on it.

The second plaintiff alleges that there were two agreements between the parties, the first being the one produced by the defendants (*vide* D 1). The terms according to this were that defendants should clear the whole block of 300 acres within one year from the date of the agreement and stack all the timber to be sawn by second plaintiff. In return he was to allow them to sow kurakkan and take the produce thereof. He says he cancelled that agreement and entered into a verbal agreement with defendants that he should get 5-18ths of the crop. There is no proof of this except his bare statement. If there was such a second agreement he should have got back the original one (D 1), or made an endorsement on it giving the terms of the second. I believe the first defendant when he says that plaintiff made an attempt to get him to sign another agreement, which he refused. I have no hesitation in believing that D 1 was the agreement entered into between the parties.

Was that agreement valid in law? The plaintiffs' counsel submitted that this was a contract governed by Ordinance No. 7 of 1840, and should have been notarially executed. If this contention is right, the plaintiffs are as much affected by it as defendants, for they are in no better position.

Now, the decision referred to by the plaintiffs' counsel in *8 S. C. C. 67*, referring to "anda" cultivation, has been superseded by law, viz., section 1 of Ordinance No. 21 of 1887. Contracts for paddy or chena cultivation for a time not over twelve months need not be notarially executed, if the consideration be that the cultivator shall give the

10—J N. 35177 (1/34)

1912.

Jayasuria v. Sinno Appu

owner a share of the crop. So, even if we assume there was a second agreement by which plaintiffs were to get 5-18ths of the crop, this contract is not invalid. But I have held there was no second agreement, the consideration for which was the 5-18ths of the crop to be given by the cultivators to the owners.

Does the fact that the cultivators were to take the whole crop without giving the owners any share require the agreement to be notarially executed ? I think not. This is not an interest affecting land. The cultivator has no permanent interest in the soil. He is in a different position from a planter, say, of coconuts, who has a planter's share affecting the land. In other words, kurakkan must be regarded as *fructus industriales* as distinguished from *fructus naturales*, and therefore no notarial document is required (*vide 8 S. C. C. 21*).

If I am wrong in this view, the defendants are still entitled to compensation for work and labour done. It appears that after the land was cleared and sown with kurakkan the Crown stepped in and claimed the land and forbade the removal of all the kurakkan, one-fourth and one-tenth of which was sold for Rs. 150. .....

I dismiss plaintiffs' action with costs, and allow defendants the sum of Rs. 1,950, *i.e.*, Rs. 750 for damages and Rs. 1,200 for work and labour done.

Document D 1 was as follows:—

Beliatta,
Kahawatta, June 6, 1911.

I hereby authorize S. T. Sinno Appu of Tangalla and Narasinghe Vidanagamage Don Andris of Mulana to clear my land of three hundred acres at Ridiyagama, situated within the following boundaries .....

The whole block of three hundred acres to be cleared within one year from date, and all the timber to be safely stacked to be sawn by me.

In return I agree to allow the above-named two men to sow kurakkan in the land and have the produce of the same within the above period (*i.e.*, one year).

BERNARD F. DE SILVA.

The plaintiffs appealed.

Elliott, for plaintiffs, appellants.

Bawa, K.C., for defendants, respondents.

Cur. adv. vult.

October 9, 1912. ENNIS J.—

This appeal raises an interesting question as to the construction to be placed on Ordinance No. 21 of 1887, which enacted that Ordinance No. 7 of 1840 (under which a contract establishing an interest in land was of no validity unless executed notarially) should not be taken to apply to any contract or agreement for the cultivation of paddy fields or chena lands for any period not exceeding twelve months, if the consideration for such contract or agreement shall be that the cultivator shall give to the owner of such fields or lands any share or shares of the crop or produce thereof.

The plaintiffs in the case sued the defendants for a share in the crop of certain lands for which the plaintiffs had entered into an agreement with the defendants for cultivation. The plaintiffs assessed their claim on a calculation of an average crop on 200 acres cultivated. It is agreed that an agreement between the parties was entered into on June 6, 1911, whereby the plaintiffs authorized the defendants to clear 300 acres of land, stipulating that the block was to be cleared within one year from date, and that all the timber was to be safely stacked to be sawn by the plaintiffs. In return the plaintiffs agreed to allow the defendants to sow kurakkan in the land and have the produce of the same within that period, *i.e.*, one year.

The plaintiffs in formulating their claim stated that this document was superseded by a second document which they gave to the defendants stipulating for a customary share in the kurakkan crop.

The defendants admitted that 200 acres had been cleared; denied that the agreement D 1 had ever been superseded by a subsequent agreement; and counterclaimed Rs. 3,000 for work and labour done and Rs. 1,500 damages for the loss of the crop (which was confiscated by the Government) and for the stoppage of the work of cultivation at the instance of the plaintiffs.

The District Court dismissed the plaintiffs' action and allowed the defendants Rs. 1,200 for work and labour done and Rs. 750 for damages. On the facts of the case the District Court found that only one agreement had been entered into between the parties, viz., D 1, and that D 1 was a valid agreement within the meaning of Ordinance No. 21 of 1887.

It has been urged for the appellants that the document D 1 was inadmissible in evidence, as it was not notarially executed, the argument being that the document does not stipulate for a share of the crop, and that the Ordinance No. 21 of 1887 legislated to remove agreements for " anda " cultivation only from the disabilities imposed by Ordinance No. 7 of 1840.

Clearly the agreement was an agreement for the cultivation of chena land for a period not exceeding twelve months. The question is, Was the consideration for the contract a share of the crop or produce of the land to be given by the cultivator to the owner?

I am of opinion that it was. The Ordinance does not specifically refer to " anda " cultivation, which is cultivation under an agreement the consideration for which is a share of the crop raised by the cultivator.

The Ordinance goes further and speaks " of the crop or produce of the fields or lands," not only of the crop raised by the cultivator. Felled timber is a product of the land procured by the work and labour of the cultivator, and in the present case in the course of his cultivation, viz., in the process of clearing land for the sowing of the crop.

1912.

ENNIS J.

Jayasuria v. Sinno Appu

In my opinion this was a cultivating agreement and no more. That the consideration for the agreement was a share in the produce of the land obtained in the course of cultivation, and that the learned District Judge was right in admitting the document D 1 in evidence, and I see no reason to differ from him in his finding that there was no subsequent agreement, and his ascertainment of the amount due to the defendants for work and labour done and for damages on the facts admitted and disclosed before him. The appellants have asked the Court to reconsider by way of indulgence the amounts decreed to the defendants on the ground that since the institution of the suit they find that only 35 acres were cultivated, and not 200 as stated in the plaint and admitted by the defendants in their answer. We refused affidavits to be read as to the facts now alleged, as we considered that the plaintiff was not entitled to any indulgence, as the matter did not rest only on the plaint and answer, the plaintiff himself having gone into the box and sworn that 200 acres had been cultivated.

I would affirm the decision of the District Court and dismiss the appeal.

PEREIRA J.—

I agree. The words of the agreement D 1 are susceptible of the construction that the defendants were to cultivate the chena and have all the produce in return for labour to be expended by them in felling and stacking the timber. Even so, as the timber when felled would be "produce," and as the plaintiffs would have the full benefit of the defendants' labour in felling and stacking it, I do not think that it is quite clear that the agreement is outside the purview of section 1 of Ordinance No. 21 of 1887.

Appeal dismissed.