

APPELLATE CIVIL.

Before Mr. Justice Holloway and Mr. Justice Kindersley.

ZINULABDIN ROWTEN (PLAINTIFF) v. VIJILIEN VIRAPATREN
(DEFENDANT).*

Landholder—Madras Act VIII of 1865.

A Zemíndár hypothecated certain villages comprised in his Zemíndarí as security for a debt, at the same time leasing the said villages to the mortgagee at an annual rent, the amount of which was to be, as it fell due, credited in liquidation of the debt.

1876.
June 8.

Held that the plaintiff, who was the assignee of the hypothecation deed and the lease, was not a "Landholder" within the meaning of Madras Act VIII of 1865.

THIS suit was brought by the plaintiff to compel the defendant to accept pattá for Faslí 1284 (1875) for the lands, &c., enjoyed by him in the village of Karuvur, in the Zemíndarí of Singavanam in the Pattukottai taluq.

Plaintiff alleged that the Zemíndár of Singavanam hypothecated the villages of Karoovoor, Marayakudi, Yelambavayel, Serukottaiyur, Vennatur, and Kadamangalam to Annamalai Chetty in Faslí 1281 (February 1872) for 30,000 Rupees, leasing out the villages at the same time to the said Annamalai Chetty for 15 years at Rupees 4,400 per annum, on condition of the amount being credited annually in liquidation of the debt; that Annamalai Chetty enjoyed the villages in Faslí 1281; that, after his death, his undivided brother, Nagappa Chetty, and wife Kaliyatchi enjoyed the villages in Faslís 1282 and 1283, and in the beginning of Faslí 1284 transferred the lease of the villages to the plaintiff together with the hypothecation bond, under a document called the Sattulal Pattram making over to him the produce of Faslí 1283, and that the villages have since been in the enjoyment of the plaintiff, who has given pattás to, and taken muchalkas from 50 of the ryots of the villages.

* These facts were admitted by the defendant's agent who, however, contended that the plaintiff is a sub-renter, and that, therefore, he cannot proceed under Act VIII of 1865.

* Special Appeal, No. 1 of 1876 against the decree of the Acting District Judge of South Tanjore, dated the 27th September 1875.

1876.
 ZINULABDIN
 ROWTEN
 v.
 VIJEN
 VIRAPATREN.

As to the plaintiff's position, the Deputy Collector of the Tanjore Division observed: "Nagappa Chetty and Kaliyatchi have only transferred to the plaintiff the lease obtained by Annamalai Chetty from the Zemindar. I consider, therefore, that the plaintiff is in the position of Annamalai Chetty, and that, therefore, he is no sub-renter, and directed the defendant to accept the pattá from, and execute a muchalka in accordance therewith to, the plaintiff, and to pay the costs of the suit."

The defendant appealed from this decree to the District Court of South Tanjore on the following, amongst other grounds:—

As the plaintiff's claim had been objected to by defendant on sufficient grounds, plaintiff is not entitled to any relief in this summary suit but by a regular suit.

The right which the plaintiff says he has got for tendering a pattá, is not in the least established.

The Judgment of the District Judge was as follows:—

"The real question is—can the plaintiff compel the defendant to accept a pattá or not.

"The facts are that a Zemindár leased some of his villages to one Annamalai Chetty (since deceased) for a term of years. This was done in February 1872, and Annamalai Chetti (it is said) thereon made an agreement for rent with the defendant and other ryots for a term of four years from Faslí 1282 (1872) to Faslí 1285 (1875). After this he died, and his representatives leased the village to plaintiff in September 1874 (it is admitted), and the plaintiff thereon sought to compel defendant to accept a pattá, tender of which is admitted.

"It is firstly urged that the plaintiff being a sub-renter or assignee of Annamalai Chetti, he cannot enforce acceptance of a pattá. The Deputy Collector decided that the plaintiff is in the position of Annamalai Chetti, and that, therefore, he can do so. I cannot agree to this. Section I of Act VIII of 1865 provides that certain persons are included under the term "landholders;" among these are "persons farming land from the above persons;" (i. e. Zemindárs and the like) only landholders can take proceedings under the Act, and there is nothing that will allow the

plaintiff as a sub-renter or assignee to do so. I can only understand the above words as limiting the power of taking proceedings under this Act, and that in case of such assignment as is here found, if it be good, the plaintiff can only proceed by a regular suit.

“There is no dispute as to the terms of the pattá. I allow this appeal and reverse the decision of the Lower Court by directing that the suit be dismissed with all costs.”

From this decision the plaintiff appealed to the High Court on the following grounds :—

1st. The Court below misconstrued Section 1, Act VIII of 1865.

2nd. The plaintiff is competent under Act VIII of 1865 to tender pattás to the ryots of the villages in question, and fifty of the ryots have actually exchanged pattás and muchalkas with the plaintiff.

Rama Row for the special appellant, contended that the plaintiff was a “farmer” within the meaning of Madras Act VIII of 1865. *Ramasami, Aien v. Manjeya Pillai*. (1)

[HOLLOWAY, J.—In *Chauki Gounden v. Venkataramanier* (2) a distinction is drawn between “farming” and “leasing.”]

Yes, but in *Ramasami Aien v. Manjeya Pillai* (1) the Court seems to have considered the terms synonymous.

Mr. *Shepherd* for the special respondent contended, that the plaintiff was not a “landholder” or a “farmer” within the meaning of Section 1 of the Rent Recovery Act, but a mere sub-lessee whose claims, if any, must be established in a regular suit.

HOLLOWAY, J.—We are inclined to think that Madras Act VIII of 1865 does not apply to the present case. The term “tenant,” as employed in the Act does not mean any person who takes land from any other person. It is defined in Section 1 of the Act as including “all persons who are bound to pay rent to a landholder.” A tenant then, for the purposes of the Act, is a lessee from a “farmer,” or “landholder.” Section 1 of the Act declares that the term ‘landholders’ when used in this Act shall be taken to include

(1) 6 Madras H. C. Rep., p. 61.

(2) 5 Ibid., p. 208.

1876.
 ZINULABDIN
 ROWFEN
 v.
 VIJIEH
 VIRAPATREN.

the following persons :—“ All persons holding under a Sunud-i-Milkeut Istimrar, all other Zemíndárs, Shrotriemdars, Jaghir-dars, Inamdars, and all persons farming lands from the above persons, or farming the land revenue under Government. Also all holders of land under Ryotwar settlements, or in any way subject to the payment of Land Revenue direct to Government, and all other registered holders of land in proprietary right.” The term “ farmer” is not used in its ordinary English sense of one who himself cultivates land, but in the sense in which it is employed in France—a meaning given to it when we speak of farmers of revenue. Farmers under the Act are men who contract to take all the profits of certain lands, and to pay a specified sum to the person from whom they take. “ Landholder” includes direct descendants of those named in Section 1 of the Act. This man is not a direct descendant of any Zemíndár, Shrotriemdars, &c. He is, therefore, not a “ landholder” under the Act. That seems to dispose of this case. The appeal must be dismissed with costs.

KINDERSLEY, J., concurred.

Appeal dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Holloway and Mr. Justice Kindersley.

PASUPATI LATCHMIA (PETITIONER) v. PASUPATI MUTHAM-BHATLU (COUNTER-PETITIONER),*

Execution—Limitation—Adjective Law.

1876.
 June 8.

Execution is a proceeding to enforce a decree of a Court, and comes under the head of purely adjective law. Such being the case, the law of limitation prevailing at the time of the application must govern.

THE counter-petitioner sought in 1875 to execute a decree in a suit instituted before the 1st April 1872, the last application for execution having been made on the 23rd February 1872. The Judgment debtor contended that the present application came

* Civil Miscellaneous Regular Appeal No. 33 of 1876, against the order of the Acting District Judge of Nellore, dated the 11th November 1875.