

[3 Mad. 121.]
APPELLATE CIVIL.

The 22nd March, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Bhagirathi Panda.....(Defendant) Petitioner

versus

Padala Gopaludu.....(Plaintiff) Counter-Petitioner.*

Rent Recovery Act—Refusal to restore property illegally distrained—Cause of action—Limitation.

A refusal to restore property improperly distrained under the Rent Recovery Act (Madras Act VIII of 1865) after the attachment has been set aside and the property ordered to be restored under Section 17† of the Act is not a cause of action upon which a summary suit can be brought under Section 20. ‡

The cause of action in such a case is the illegal distraint and the continued detention of, and refusal to restore, the property are only aggravations of that wrong.

Semle.—A summary suit under Section 17 would lie under such circumstances for loss or damage sustained when the distress has been declared illegal, and the right to bring a summary suit is not limited to the loss sustained prior to the order declaring the distress illegal as suggested in *Srinivasa v. Emperummar Pillai*. (1. L. R., 2 Mad., 42).

The period of Limitation for a suit under Section 17 must be computed, if not from the date of the distress, at any rate from the date the distress was declared illegal.

[122] THE facts and arguments in this case sufficiently appear in the judgment of the Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.).

Mr. Lascelles and P. V. Rungachari for the Petitioner.

Anundacharlu and Sundram Sastri for the Counter-Petitioner.

Judgment:—It appears that the defendant, claiming that an arrear of rent was due to him on the 15th January 1877, attached paddy belonging to the plaintiff and his sub-tenants. He failed to give a correct list of the attached

* C. M. P. 405 of 1879 against the decision of T. G. Maltby, Acting Principal Collector of Ganjam, dated 14th August 1879.

†[Sec. 17:—Officers empowered to sell distrained property are required to bring to the notice of Collectors any material irregularity committed by distrainers under color of this Act, and are authorized, in such a case, to postpone a sale pending the Collector's order. When it shall come to the Collector's knowledge, either through the above Officer or otherwise, that the distrainer did not give to the tenant the written demand and the list of distrained property required by Section 15 or failed to give the prescribed notice of the distraint to the Collector or Officer empowered by the Collector in that behalf, the Collector shall direct the restoration of the distrained property to the owner. The distrainer shall not be allowed to proceed further under this Act for the recovery of the arrear of rent, and the tenant shall be at liberty to sue him summarily before the Collector for any loss or damage which he may have sustained.]

‡[Sec. 20:—When property distrained may be stolen or lost, or damaged or destroyed while in the keeping of the distrainer by reason of his not having taken the necessary precautions for its due preservation, he shall be responsible to the owner for the loss or damage, and the Collector shall be authorized to pass a judgment to that effect on a summary suit being brought before him, and on the loss or damage being proved.]

property to the plaintiff, and neglected to send the notice to the Collector within the ten days appointed by the Act.

The plaintiff, on the 20th January 1877, appealed against the distraint, and on the 10th December 1877 the Deputy Collector ordered the release of the attachment on the ground that the provisions of the Act had not been complied with.

On the 11th March 1878 the Deputy Tahsildar reported that the defendant refused to deliver the paddy to the plaintiff.

On the 11th May 1878 an order was issued to the Tahsildar directing him to make over the property to the plaintiff.

On the 29th June 1878 the Tahsildar reported the defendant refused to deliver the paddy to the plaintiff.

On the 26th July the Tahsildar was ordered to send the parties to the Collector if the defendant persisted in his refusal.

On the 28th September the parties appeared, but the defendant left before the inquiry was made, and on the 2nd November the Deputy Tahsildar was ordered to ascertain how much paddy was due to the plaintiff.

On the 28th December the Tahsildar reported the defendant ought to give $2\frac{1}{2}$ garces of paddy to the plaintiff, but refused to do so, and the plaintiff declined to accept that quantity.

On considering this report the Assistant Collector, on the 5th March 1879, made an endorsement on it to the effect that plaintiff's proper course was to bring a suit under Section 20 of the *Rent Act*.

On the 10th March the plaintiff instituted this suit, in which he claimed to recover the value of the paddy distrained.

The defendant did not appear, and the Assistant Collector having heard the case *ex parte* awarded the plaintiff a decree for Rs. 405-2-4. The defendant subsequently applied for but was refused a rehearing, and there being no appeal has applied to this [123] Court under Section 622, *Civil Procedure Code*, to set aside the decree.

The learned Counsel contends, on the authority of the decision in *Srinivasa v. Emperumanar Pillai* (I.L.R., 2, Mad., 42) that in the circumstances no summary suit lies under the provisions of the *Rent Act*; that the facts alleged did not give a right to sue under section 20 of the *Rent Act*; and that in any case the suit was barred by *Limitation*.

We agree with the ruling quoted that the refusal to restore possession of the distrained property is not a proceeding taken under color of the *Rent Act*, and we assent to the learned Counsel's arguments that the suit is not sustainable under Section 20 of that Act, for damages are not claimed on the ground that the distrained property was stolen or lost or damaged or destroyed by reason of any want of proper care on the part of the distrainer, but it may be a question whether the Court of Revenue had not cognizance of the claim under the provisions of Section 17, which authorize a tenant, when a distress has been declared invalid, to sue summarily for any loss or damage he may have sustained. Although in this case the loss he has sustained is detention of his property, the cause of damage was the illegal distraint, and the continued detention and the refusal to restore are only aggravations of that wrong. The learned Judges who decided Special Appeal No. 440 of 1878 (*Srinivasa v. Emperumanar Pillai* I. L. R., 2 Mad., 42) appear to have interpreted the words "loss or damage he may have sustained" as limiting the right of summary suit given by that section to the loss sustained

up to the date of the order for restoration. It is unnecessary we should determine the point on this application, but we may suggest for consideration that it might have been expected a summary remedy would be given for the loss incurred before as well as after the order for restoration and that in some cases the loss sustained before the order may include the full value of the property distrained, for the distrainer may have put it out of his power to restore it before the order was passed. Moreover, a summary remedy is given for loss occasioned by want of care on the part of the distrainer while the property is in his keeping and whether such loss occurred before or after the order for restoration was passed.

It is, as we have said, unnecessary for us to decide the point in the case before us, because assuming the suit was maintainable [124] the period within which it could be brought in the Revenue Court had expired before it was instituted.

The period of *Limitation* for a suit under Section 17 must be computed, if not from the date of the distraint, at any rate from the date when the distraint was declared illegal.

We must therefore set aside the decree, but under the circumstances we shall direct that each party bear his own costs of this application.

NOTES.

[CAUSE OF ACTION:—LIMITATION—

The period from which period is calculated for purposes of limitation for suits to recover damages for illegal distraint is the date of distraint and not the date on which the decree is declared illegal:—(1896) 8 M. L. J. 109.]

[3 Mad. 124.]

APPELLATE CIVIL.

The 23rd March, 1881.

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE KERNAN.

President of the Municipal Commission, Guntur.....Plaintiff

versus

Srikakulapu Padmarazu.....Defendant.*

Towns Improvement Act, 1871—Limitation—Suit for tax.

A suit for recovery of instalments of profession tax under the provisions of The Towns Improvement Act, 1871, is governed by Article 120,† Schedule II of the Limitation Act.

* Referred Case 11 of 1880 by the District Munsif of Guntur.

† [Art. 120, Sch. II, Act XV of 1877 :—

Description of suit.	Period of limitation.	Time from which period begins to run.
Suit for which no period of limitation is provided elsewhere in this schedule.	Six years ...	When the right to sue accrues.]