

These facts distinguish the case from that of Miscellaneous Petition No. 465 of 1880.

An adjustment not having been certified by either party within the time limited by law, the District Judge was right in setting aside the order of the District Munsil, as under the provisions of Section 258 of the *Civil Procedure Code* the Court could not recognize an alleged adjustment in such circumstances.

We dismiss the appeal with costs.

NOTES.

[I. UNCERTIFIED ADJUSTMENT NOT TO BE RECOGNIZED BY THE EXECUTING COURT :—

(1897) 25 Cal. 86 ; (1911) 24 M. L. J. 541, *dissenting* from HEATON, J. in (1910) 12 Bom. L. R. 686.

II. EVEN WHEN IT IS PUT FORWARD BY JUDGMENT DEBTOR—

24 M. L. J. 541 ; (1908) 12 C. W. N. 485.]

[3 Mad. 114]

APPELLATE CIVIL.

The 4th March, 1881.

PRESENT :

SIR CHARLES A. TURNER KT., CHIEF JUSTICE, AND MR. JUSTICE
KINDERSLEY.

Nattu Achalai Ayyangar and another.....(Defendants), Appellants
versus
Parthasaradi Pillai.....(Plaintiff), Respondent.*

Rent Recovery Act (Madras Act VIII of 1865)—Sale of immoveable property, irregularity in, Effect of.

A suit lies to set aside a sale of immoveable property irregularly conducted under the provisions of Act VIII of 1865.

If notice of sale is not served in the way prescribed by Section 39 the sale must be set aside.

[115] In this suit the plaintiff sought to set aside the sale of certain lands irregularly brought about by the first defendant under the *Rent Recovery Act*, and to recover possession thereof from the second defendant, the purchaser at the revenue auction sale.

The defendants contended that sales of immoveable property under Act VIII of 1865 could not be set aside. This contention was founded on Section 40†, which prescribes that the sale of the interest of defaulters in land shall be conducted under the rules laid down for the sale of moveable property distrained

* Second Appeal No. 707 of 1880 against the decree of A. L. Lister, Acting District Judge of Chingleput, reversing the decree of the District Munsif of Tiruvallur, dated 16th August 1880.

† [Sec. 40:—When no appeal has been made to the Collector against such notice by preferring a summary suit within one month from the date of service upon the defaulter, or as above specified, or when an appeal has been decided against the defaulter, the party entitled to the arrears shall be authorized to take measures for the sale, which shall be conducted under the rules laid down for the sale of moveable property distrained for arrears of rent.]

for arrears of rent. These rules are contained in Sections 15*—35†. Section 36 runs as follows: "No irregularity in publishing or conducting a sale of moveable property under this Act shall vitiate such sale; but any person who may have sustained damage by reason of such irregularity shall be allowed to bring a summary suit before the Collector to recover compensation for such damage."

It was also contended that there had been no irregularity.

The Munsif found for the plaintiff on the first point, but against him on the second point, and dismissed the suit.

On appeal the District Judge reversed the Munsif's decree on the ground that the sale was irregularly conducted and collusive, and set aside the sale.

The defendants appealed to the High Court.

Mr. *Johnstone* for the Appellants.

Kristnasami Chetti for the Respondent.

The Court (TURNER, C.J., and KINDERSLEY, J.) delivered the following

Judgment :—There is no error of law in the Judge's ruling that it is competent to the owner of saleable interests in immoveable property sold under Sections 38, 39, and 40 † Act VIII of 1865, to bring a suit to question the propriety of a sale of such property.

Seizure and sale of moveable property. * [Sec. 15 :—In the seizure and sale of moveable property for arrears of rent, the following Rules shall be observed :—

1st.—The landholder or his authorized agent shall furnish to the person employed to demand of arrear. **Demand of arrear.** **which the arrear fell due.** **if the arrear be not at once paid,** **to the satisfaction of the distrainer,** **Copy to be left with defaulter.** **public sale in due course unless the amount of the arrear, with interest and the expenses of the distress, be previously discharged.** The person employed to distrain shall produce the writing which, if the arrear be not at once paid, or if no arrangement for securing the same be entered into to the satisfaction of the distrainer, shall be his authority for making the distress, and, on the day on which the property may be distrained. He shall deliver a copy of such writing to the tenant, endorsing thereon a list of the property distrained, the name of the place where it may be lodged or kept, and a notice that it will be brought to public sale in due course unless the amount of the arrear, with interest and the expenses of the distress, be previously discharged.

2nd.—When the tenant may be absent, a copy of the writing with the endorsement Or, if absent, at his residence. shall be fixed or left, on the day of the distraint, at his usual place of residence, or on the premises where the property may have been distrained.]

† [Sec. 35 :—The property shall be paid for in ready money at the time of sale, or as soon after as the Officer holding the sale shall appoint, and the purchaser shall not be permitted to carry away any part of the property until he has paid for the same in full. When the purchaser may fail in the payment of the purchase money, the property shall be resold, and the defaulting purchase shall be liable for any loss arising, as well as for the expenses incurred on the re-sale, and such loss and expenses shall be recoverable by summary suit before the Collector. When the property may, on the second sale, sell for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made. When the purchase money has been paid in full, the officer holding the sale shall give the purchaser a certificate, describing the property purchased by him, the date of sale, and the sum paid.]

‡ [Sec. 38 :—When arrears due to any of the land holders specified in Section 3 may not be liquidated within the current revenue year, and when, by express contract or by the usage of the country, the defaulter may have a saleable interest in the land on which the arrear is due, it shall be lawful for such landholder to sell such interest in

The main issues are whether or not the first appellant was entitled to exercise the power of sale, and, if he was so entitled, whether the sale was held after proper proceedings had been taken, and whether the sale was duly conducted. The Judge has found there was no tender of a proper patta, and, therefore, no arrear due; that the notice required by Section 39 was not duly served; and that, at the time of sale, the value of the saleable interests was most improperly depreciated by an intimation to the [116] persons attending the sale that the sale to a stranger would be questioned.

The Act is precise, and properly so, as to the manner in which a notice of sale is to be served. The due service of a notice of sale not having been established, it is unnecessary for us to go further. Unless this is proved, the sale must be set aside. The appeal fails and is dismissed with costs.

NOTES]

[JURISDICTION—CIVIL COURT—

Suit lies to set aside an irregularly conducted sale :—(1881) 3 Mad. 114 : (1903) 27 Mad. 94=13 M. L. J. 479.

In (1903) 27 Mad. 483, the principle of 3 Mad. 114 was confirmed and the contrary view in 10 Mad. 368 was dissented from.]

satisfaction of the arrears and of interest thereon at the prescribed rate, and of costs of attachment when any such has taken place.

Sec. 39 :—When the person to whom an arrear is due intends to avail himself of the powers given by the preceding section, he shall give the defaulter a written notice of his intention to sell, and such notice shall state the amount due for arrears, interest, and costs, if any, and shall inform him that if the amount is not liquidated within one month from the date of service upon him, his interest in the land shall be sold. The notice shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorized agent, or, when such service cannot be effected, by affixing a copy of the notice on some conspicuous part of his last known residence, or on some conspicuous part of the land to which it refers. A duplicate of the notice shall also be sent to the Collector, with an endorsement stating the date of service, and the mode in which it was effected.

Sec. 40 :—*q. v. supra* 3 Mad. 115.]