

As to the first question, the omission to make an exception in favor of a partial restraint of trade to the general prohibition contained in section 27 clearly indicates an intention not to give legal effect to such restraint in this country. It was so held by KINDERSLEY, J., in *Oakes v. Jackson*(1), though he was also of opinion that the covenant in that case was unreasonable even under the English law. In *Madhule Chander Parmanick v. Rajcoomar Doss*(2), CORCH, C.J., and PONTIFEX, J., held that the words in section 27 "Restrained from exercising a lawful profession, trade or business" do not mean an absolute restriction and are intended to apply to a partial restriction also. That decision was followed by the High Court at Calcutta in *Brahmaputra Tea Company v. Searith*(3). The conclusion I come to, therefore, on the first question, is that the agreement, so far as it restrains the sale to others than the plaintiff, is bad.

In this view it is not necessary to decide the second question. I may add, however, that the restriction is to endure according to the agreement so long as the excise system is in force and it is not confined within a reasonable limit in respect of time. Practically, the agreement was intended to debar the first defendant from dealing in salt which he might manufacture for an indefinite period, except with the plaintiffs and for the stipulated kudiwaran. It seems to me that such agreement would be unreasonable even if legal effect could be given to a partial restraint. The decision of the District Munsif is not illegal, and I dismiss this petition with costs.

RAGAVAYYA
v.
SUBBAYYA.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Weir.

SAMA (PLAINTIFF), APPELLANT,

v.

STRINIVASA (DEFENDANT), RESPONDENT.*

1890.
Aug. 6.

Revenue Recovery Act (Madras)—Act II of 1864, ss. 42, 44—Sale of part of a holding for arrears of revenue due on another part.

The plaintiff sued, as the purchaser under a court-sale, for possession of certain land, which the defendant's vendor had purchased at a sale held under the Revenue Recovery Act for arrears of revenue accrued due on other land belonging to the judgment-debtor:

Held, the suit should be dismissed.

SECOND APPEAL against the decree of C. W. W. Martin, District Judge of Salem, in appeal suit No. 246 of 1887, reversing the decree of T. S. Krishna Ayyar, District Munsif of Krishnagiri, in original suit No. 123 of 1887.

(1) I.L.R., 1 Mad., 134. (2) 14 B.L.R., 76. (3) I.L.R., 11 Cal., 545.

* Second Appeal No. 1298 of 1889.

SAMA
v.
Srinivasa.

Suit for the declaration of the plaintiff's title to, and for possession of, certain land with mesne profits.

The land in question was formerly the property of one Krishna Char. The land was sold in execution of a decree against Krishna Char and the plaintiff became the purchaser and it was ordered that possession be given to him. The defendant put in an objection petition, stating that he had purchased the land from one Venkataramayyan, who purchased it at a revenue sale under Act II of 1864 for arrears of revenue due to Government by Krishna Char in respect of some other lands. The Court allowed the objection and ordered the plaintiff to give up possession to the defendant. The plaintiff, therefore, now sued as above.

The District Munsif passed a decree for plaintiff, which was reversed, on appeal, by the District Judge, who said :—

“The words, immovable property, in section 5, of the Revenue Recovery Act, refers to immovable property other than land and includes house, &c., not standing on land subject to the payment of revenue. The Act does not give the defaulter the power to elect what portion of his land shall be held to be in arrear. Whether he has one patta or many, he has a certain amount on the aggregate to pay to Government, and, if he falls into arrear, the Collector may say that he considers the arrear to be due from one piece of land in his holding as much as from another, though the defaulter may have absolutely paid up the dues on that patta for that particular piece of land; but it is made the duty of the Collector to sell only such portion of the whole land as will satisfy the arrear and to give such notice of the sale of the land on the land itself as will enable incumbrancers to protect their own interests by paying up the arrears.”

The plaintiff preferred this second appeal.

Seshagiri Ayyar for appellant.

Parthasaradhi Ayyangar for respondent.

JUDGMENT.—Having regard to the language of sections 42 and 44 of the Revenue Recovery Act, we think the District Judge has arrived at a right conclusion.

In sales of land for arrears of revenue no procedure other than that of section 42 of the Act is provided. No provision is made for the case of separate portions of a holding, on which arrears have not actually accrued, being sold subject to incumbrances, and

the only procedure prescribed for sales for arrears of revenue is that contained in section 42, which enacts that the lands shall be sold free of all incumbrances.

SAMA
v.
STRINIVASA.

Then section 44 provides that it shall be lawful for a Collector to sell the whole or any portion of the land of the defaulter. These words, in our opinion, clearly mean the whole or any portion of the holding of the defaulter and not merely the whole or any portion of the fraction of the holding on which the arrears have actually accrued.

The object of making the provision so wide in its terms is the necessity of securing the public revenue.

For the same reason we are of opinion that the words "the land," in section 2, where it is said that the land, &c., shall be regarded as the security for the public revenue, mean the lands of the holding and not the portion of land in respect of which the arrears may accrue.

The appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

PALANI (DEFENDANT NO. 1), APPELLANT,

v.

PARAMASIVA (PLAINTIFF), RESPONDENT.*

1890.
Aug. 12.

Regulation XXV of 1802 (Madras), s. 12—Revenue Recovery Act II of 1864 (Madras) ss. 32, 41—Rent Recovery Act—Act VIII of 1865 (Madras), ss. 3, 9.

The purchaser at a revenue sale is *prima facie* entitled to claim the faisal rate of rent.

SECOND APPEAL against the decree of V. Rangayyar, Subordinate Judge of Salem, in appeal suit No. 120 of 1888, confirming the decree of D. Iyyavayyar, District Munsif of Namkal, in original suit No. 410 of 1887.

Suit by the plaintiff, a mittadar, who had purchased the land now in question at a revenue sale, to enforce the acceptance by the defendants of pattas for fasli 1294, containing a stipulation

* Second Appeal No. 1037 of 1889.