

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

KRISHNASAMI (PLAINTIFF No. 2), APPELLANT,

v.

VENKATARAMA AND OTHERS (DEFENDANTS Nos. 2 to 5
AND PLAINTIFF No. 1), RESPONDENTS.*

1890.
Feb. 18, 21.

*Revenue Recovery Act (Madras)—Act II of 1864, s. 2—Remedies of assignee from
Government of land revenue—Land security for revenue.*

The land revenue payable on certain land having been assigned to a temple by Government, which, however, continued to issue a patta for the land, the panchayat of the temple are entitled to bring the land to sale to discharge arrears accrued due.

SECOND APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in appeal suit No. 169 of 1888, modifying the decree of S. Subba Ayyar, District Munsif of Negapatam, in original suit No. 410 of 1886.

Defendant No. 1 was the owner of certain land. The Government revenue on it was assigned over by the Government to a temple at Teruvalur in lieu of the mohinee or annual money allowance which the Government had been paying to that institution. Defendant No. 1 mortgaged his land; the mortgagee obtained a decree for his debt and brought the mortgaged property for sale in execution, and defendants Nos. 3 to 5 and the mortgagee became the purchasers in August 1885. Defendant No. 2 bought from the mortgagee the portion of the land purchased by him.

Defendant No. 1 did not pay the revenue due on the land for fasli 1293 (1883). The plaintiffs (the panchayat of the temple) brought this suit to recover the amount due from defendant No. 1 and by the sale of the land on which it was due. Subsequently defendants Nos. 2 to 5, being in possession of the property, were joined as defendants on the plaintiffs' application.

The District Munsif passed a decree as prayed. The Subordinate Judge on appeal modified the decree by exonerating the land.

* Second Appeal No. 169 of 1889.

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 RAMA.

Plaintiff No. 2 preferred this second appeal, defendants Nos. 2 to 5 and plaintiff No. 1, who was a minor, being joined as respondents.

Krishnasami Ayyar for appellant.

Subramanya Ayyar for respondents Nos. 1 to 4.

PARKER, J.—The plaintiffs are assignees of the kist due on the patta of defendant No. 1, and are not farmers of land revenue under Government. They are not, therefore, landlords within the meaning of the Rent Recovery Act. The patta is still granted by the Government to defendant No. 1. Defendants Nos. 2 to 5 are purchasers in execution of decrees against defendant No. 1. As the whole land in a patta is liable for the revenue due on the holding, the shares purchased by them are undoubtedly liable for the kists due on the whole patta.

It has never been asserted that the plaintiffs as assignees of the Government revenue have all the powers which Government possesses under Act II of 1864. They have, however, as assignees a right of suit for the kists due to them, and under section 2 of Act II of 1864, the land itself is security for the revenue due thereon.

The decree of the District Munsif appears to me to be correct. I would reverse the decree of the Subordinate Judge and restore that of the District Munsif with costs in this and in the Lower Appellate Court.

SHEPARD, J.—I have felt some doubt on the question whether the kists payable to the appellant in virtue of the arrangement with Government could be considered as secured by a charge on the lands in the appellant's favor. It is argued that on any assignment of revenue made by Government to a private person the amounts payable cease to be public revenue within the meaning of the Act of 1864, and, therefore, are no longer secured by a charge on the land. In the present case, however, the patta is still granted by Government, and it does not appear that Government has parted with the right to the revenue. The fact that the Collector has temporarily appropriated a part of the public revenue to the liquidation of a public charge cannot, I think, deprive it of the character of public revenue. The District Munsif was, therefore, right in the conclusion he arrived at on the fourth issue.

I agree with Parker, J., as to the decree which should be drawn up.