

QUEEN-
EMPRESS
v.
MUTTI-
RULANDI.

clearly property. Section 58 requires that a receipt for a cheque exceeding Rs. 20 in amount shall be acknowledged by a receipt duly stamped, if demanded. In the case before us, a cheque for Rs. 100 was sent to the accused and by him acknowledged in the following terms: "Your cheque for Rs. 100 to hand." We entertain no doubt but that it is an instrument chargeable with the stamp duty of one anna within the meaning of s. 61 of the Stamp Act, Act I of 1879, and the petition is dismissed.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

KELAN (PLAINTIFF), APPELLANT,

and

MANIKAM (DEFENDANT NO. 2), RESPONDENT.*

Revenue Recovery Act, ss. 41, 42—Sale for arrears of revenue—Land subject to kanam—Purchaser's title not subject to kanam holder's rights.

Where land subject to a kanam was sold for arrears of revenue due by the pattadar and owner and the kanam holder claimed to retain possession as against the purchaser on the ground that his rights were not affected by the sale:

Held, that reading ss. 41 and 42 of Madras Act II of 1864 together, the purchaser's title was not subject to the kanam.

The contracts referred to in s. 41 of the Act are those which do not create a charge on the proprietary right in the land sold.

APPEAL from the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, reversing the decree of K. Imbichuani Nayar, District Munsif of Tellicherry, in suit 463 of 1885.

Plaintiff having purchased certain land sold for arrears of revenue under Act II of 1864 (Madras), sued to recover the same. Defendant No. 1 was the original owner and pattadar. Defendants 3 and 4 were tenants under defendant No. 2 who claimed, under a kanam for Rs. 350 (granted by defendant No. 1 prior to the sale to plaintiff), to retain possession until his kanam was redeemed.

The Munsif found that no encumbrances had been reserved at the revenue sale and citing *Zamorin of Calicut v. Sitarama*(1) decreed for plaintiff.

* Second Appeal No. 503 of 1887.

(1) I.L.R., 7 Mad., 405.

Defendant No. 2 appealed.

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The Subordinate Judge held that, though the land was bought free of encumbrances, the contract between defendant No. 1 and his tenant, defendant No. 2, would still be binding on the purchaser by virtue of s. 41 of Act II of 1864.

He also held that *Zamorin of Calicut v. Sitarama*(1) was not applicable to this case and that *Lakshmaya v. Appadu*(2) was more in point.

Plaintiff appealed.

Sankaran Nayar for appellant.

Sankara Menon for respondent.

The Court (Muttusami Ayyar and Shephard, JJ.) delivered the following

JUDGMENT:—The land in dispute belonged to the 1st defendant and he demised it on kanam to the respondent under (exhibit I). It was since sold for arrears of revenue due thereon and the appellant bought it at the revenue sale held under Act II of 1864. The Subordinate Judge considered that the appellant took the land subject to the kanam and it is urged in appeal that the decision is wrong in law. The Subordinate Judge observes that s. 42 is controlled by s. 41 and must be construed so as to validate all contracts between the defaulter and his tenants. We are unable to adopt the construction suggested by him. It is provided by s. 42 that all the lands brought to sale on account of arrears of revenue shall be sold free of all encumbrances. Reading ss. 41 and 42 together, the only conclusion that can be arrived at is that the contracts contemplated by s. 41 are such as do not create a charge on the proprietary right in the land in suit or an under-tenure and thereby impair its value. Though ordinarily some rent is payable under a kanam document and it constitutes a tenancy on that ground for 12 years or more, yet the tenancy is created on the basis of a subsisting mortgage; and if the mortgage becomes inoperative under s. 42, the tenancy which rests on it must also fail. We may add that, in the case before us, the kanam document contains a stipulation that the whole income derived from the land shall be taken in liquidation of the interest due on the amount of the loan, and there is therefore no founda-

(1) I.L.R., 7 Mad., 405.

(2) I.L.R., 7 Mad., 111.

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tion for the contention that it created any tenancy at all. The cases cited by the Subordinate Judge are not in point.

We reverse the decree of the Subordinate Judge and restore that of the District Munsif. The respondent will pay the appellant's costs throughout.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

1887.
Dec. 15.

IN THE MATTER OF KITTU AND OTHERS.*

Act XIII of 1859, s. 2—Limitation Act no bar to a claim to recover an advance.

Act XIII of 1859 being a penal enactment, the Limitation Act is no bar to a claim under s. 2 to recover an advance made to a labourer.

CASE referred under s. 439 of the Code of Criminal Procedure by S. H. Wynne, Acting District Magistrate of South Canara.

The facts were stated as follows :—

“A complaint was brought under Act XIII of 1859 to recover a sum advanced in respect of work, which work was not done. The Magistrate has rejected the complaint under s. 203 of the Code of Criminal Procedure, because a suit to recover the sum would be barred by limitation. As it is expressly stated in the preamble to Act XIII of 1859 that the reason for the enactment is that the remedy by suit is wholly insufficient, I do not think the order was legal. There is no law limiting the time within which complaints under Act XIII of 1859 may be brought. The Act is penal, its object being to make ‘persons guilty of fraudulent breach of contract subject to punishment,’ and therefore proceedings taken under it are not suits and are not governed by art. 120 of sch. II of the Limitation Act.

“I request that the case be submitted for the orders of the High Court.”

The parties did not appear.

The Court (Collins, C.J., and Muttusami Ayyar, J.) delivered the following

* Criminal Revision Case 448 of 1887.