

VENKATA
v.
PARAMMA. stated in the petition of complainant, passed an order upon such report in the absence of the husband for payment of maintenance :
Held, that the order was illegal.

APPLICATION under ss. 435 and 439 of the Code of Criminal Procedure to revise the order of F. D. O. Wolfe-Murray, Acting Principal Assistant Magistrate of Vizagapatam District, in maintenance case No. 5 of 1887.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Parker, J.).

Mr. *Michell* for defendant.

Mr. *Subramanyam* for complainant.

JUDGMENT.—The petition by the complainant was put in on 26th January 1886, and was referred to the Second-class Magistrate for inquiry and report on 28th January. This was irregular, as the Principal Assistant Magistrate was bound to make the inquiry himself. The defendant expressed to the Second-class Magistrate his willingness to pay to the complainant the maintenance fixed by the Court on his share of the property, and the order of 22nd January 1887 was apparently passed on this report.

There is nothing to show that defendant had even an opportunity of appearing before the Principal Assistant Magistrate, and the record would appear to show that he had no such opportunity.

We set aside the order and direct the Principal Assistant Magistrate to hear the case himself without further delay.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Brandt.

RAMASAMI (DEFENDANT), APPELLANT,

and

RAJAGOPALA (PLAINTIFF), RESPONDENT.*

Rent Recovery Act, 1865, s. 4—Patta—Uncertainty as to amount of rent.

An agreement in a patta to pay whatever rent the landlord may impose for any land not assessed which the tenant may take up is bad for uncertainty.

APPEAL from the decree of S. T. McCarthy, Acting District Judge

* Second Appeal No. 786 of 1886.

of Chingleput, reversing the decree of C. M. Mullaly, Acting Sub-Collector of Chingleput, in a revenue suit.

RAMASANI
v.
RAJAGOPALA.

The facts appear from the judgment of the Court (Kernan and Brandt, JJ.).

Mr. Norton and Ramachandra Rau Saheb for appellant.

Mr. Subramanyam for respondent.

JUDGMENT.—The Judge held that the condition that if defendant took up (presumably without permission) land not assessed, he should pay whatever tirva the sirkar (landlord) should fix, was bad for uncertainty, and that the patta tendered containing such clause was bad. In this opinion we agree. The tenant accepted for thirteen years a patta containing a similar condition; but we do not consider that the tenant was thereby precluded from objecting that the clause rendered the tendered patta illegal, because as the latter stands now it is uncertain what rent the landlord might fix, and the tenant, if bound, might be liable for an unreasonable rent beyond the value of the land.

This appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Brandt.

THE MADRAS DEPOSIT AND BENEFIT SOCIETY (PLAINTIFFS),

and

PASSANHA (DEFENDANT).*

1885.
July 25.

Transfer of Property Act, s. 69(1)—Mortgage—Invalid condition as to notice of sale—Sale valid.

In a deed of mortgage of property, situate within the town of Madras, it was provided that a power of sale might be exercised after fifteen days' notice. The property was sold:

Held that, (s. 69 of the Transfer of Property Act, 1882, requiring three months' notice before such a power of sale shall be exercised,) the condition as to notice was invalid, but that the sale was nevertheless valid.

CASE stated, under s. 69 of the Presidency Small Cause Courts Act, 1882, by J. W. Handley, Chief Judge of the Madras Court of Small Causes.

* Special Case No. 82 of 1887.