

APPELLATE CIVIL.

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

THAYAMMA (DEFENDANT), APPELLANT,

v.

KULANDAVELU AND OTHERS (PETITIONERS), RESPONDENTS.*

1889.
Jan. 24.
April 11.

Rent Recovery Act—Act VIII of 1865 (Madras), s. 17—Attachment and sale of the tenants' interest in the land for arrears of rent.

When default has been made in the payment of rent and the saleable interest of the defaulting tenant in the land is attached, the attachment cannot be declared invalid in a summary suit, under s. 17 of the Rent Recovery Act.

Under s. 38 of the same Act, a landlord cannot attach the saleable interest of a defaulting tenant in the land, until the expiry of the current revenue year.

SECOND APPEAL against the decrees of R. S. Benson, Acting District Judge of South Arcot, in appeal suits Nos. 190 to 193 of 1887, confirming the decisions of T. V. Narayanasami Ayyar, Temporary Deputy Collector of South Arcot, in summary suits Nos. 19 to 22 of 1886.

Summary suits against a mittadarni by three tenants. The mittadarni having attached the tenants' interest in the land for arrears of rent accrued due had obtained an order that it be brought to sale. * The tenants now objected to the sale on the following grounds:—

“(i) That the attachment, if true, has been made on the 4th June 1880, which is one year after the arrears became due and that the application for sale does not lie under section 2.

“(ii) That the original pattadars have not been served with notices under section 39.

“(iii) That the application for sale has not been made in time.”

The Lower Courts held the first objection to be valid and passed decree in favor of the tenants.

The mittadarni preferred this second appeal.

Mr. *Subramanyam* for appellant.

Respondents were not represented.

* Second Appeal Nos. 1135 and 1138 to 1140 of 1888.

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The further facts of the case and the arguments adduced on these second appeals appear sufficiently for the purpose of this report from the order of the Court (Collins, C.J., and Parker, J.).

ORDER:—Two objections are taken to the decree of the Lower Appellate Court. First, it is argued that section 17 of the Act had no application and that the Courts below were not authorized to declare the attachment invalid under that section. We are of opinion that this contention must prevail. The District Judge appears to think that the words “and sale” in section 15 render the provisions of sections 15–17 applicable to sales of the interest in land. We observe that the words quoted are superfluous, the rules in section 15 having nothing to do with sales. Section 15 deals with the demand and its service. Section 16 provides for notice to the Collector and the appraisal of the property. Section 17 deals with the effect of any irregularity in the distraint of movable property. Section 18 is the first section which lays down any rules as to sale, and it is this and the subsequent sections 33–36 which appear to be referred to in section 40. The tenants’ remedy against a notice under section 39 is by preferring a summary suit within one month. Whether the present is such a suit has not been decided.

It is then argued that the Courts below were wrong in deciding that the landlord was bound to take proceedings within one year from the date on which the rent fell due, and that the true explanation of section 38 is that for the purposes of that section, rent becomes due at the end of the current revenue year. We are unable to accede to this argument. Section 2 of the Act lays down in general terms that process against a tenant must be taken within one year from the time when the rent became due. It is admitted that in this case the rent became due in March 1879, and that the attachment, if any, was not made until June 1880. In our judgment the provisions of section 38 are clear and the Legislature thereby intended to give a defaulting tenant the opportunity of making good the arrears within the current revenue year. The landlord has, by section 14, the right to proceed against the crops and movable property of the tenant as soon as rent is unpaid; but, if he wishes to attach the saleable interest of the defaulter, he must wait to do so, until the expiry of the current revenue year. It is argued that thereby his right is

considerably curtailed. This no doubt is so, but such appears to us to be the intention of the Legislature in favor of the tenant.

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We shall call upon the Lower Appellate Court to return a finding upon the following issues :—

(1) “Whether the notice required by section 39 was duly served.

(2) “Whether the present suit was brought within time.”

Fresh evidence may be taken.

[The District Judge having reported that neither party called any evidence, these second appeals were dismissed at the final hearing.]

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

KULLAYAPPA (PLAINTIFF), APPELLANT,

v.

LAKSHMIPATHI (DEFENDANT), RESPONDENT.*

1889.
Jan. 18.
March 20.

Limitation Act—Act XV of 1877, ss. 4, 6, 14—Proceedings bonâ fide prosecuted in a Court without jurisdiction—Rent Recovery Act (Madras)—Act VIII of 1865, s. 78—Rent claimed by landlord not having tendered legal patta.

A landlord not having tendered a legal patta to his tenant made a demand on him as for rent, and on his refusal to pay attached his holding. The tenant, to release the attachment, paid the sum demanded under protest on 23rd September 1885. On 22nd March 1886 the tenant filed a suit on the small cause side of the District Munsif's Court to recover the amount so paid : that suit was dismissed for want of jurisdiction on 2nd September 1886. On the last-mentioned date the tenant filed the present suit on the same cause of action :

Held, (1) the suit was not barred by limitation under the six-months' rule in s. 78 of the Rent Recovery Act by reason of the provisions of s. 14 of the Limitation Act, 1877 ;

(2) the landlord not having tendered a legal patta was not in a condition to establish any right to recover rent directly or by way of set off.

SECOND APPEAL against the decree of S. Gopalacharyar, Subordinate Judge of Madura (East), in appeal suits Nos. 374 and 478 of 1887, reversing the decree of M. A. Tirumalacharyar, District Munsif of Dindigul, in original suit No. 438 of 1886.

Suit to recover, together with interest, Rs. 71-2-3 being a sum paid under protest by the plaintiff to the defendant to release

* Second Appeal No. 1166 of 1888.