

## APPELLATE CIVIL.

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

SRINIVASA THATHACHAR (DEFENDANTS), APPELLANTS,

v.

RAMA AYYAN AND ANOTHER (PLAINTIFF AND DEFENDANT No. 85),  
RESPONDENTS.\*

1893.  
March 23.  
September 7.

*Revenue Recovery Act—(Madras) Act II of 1884, s. 35—Payment of arrears of village revenue by the assignee of a mortgagee of portion of the village property—'Defaulter'—Registered and real owners.*

The plaintiff was assignee of a mortgage of 38½th pangus in a village consisting of 51½th pangus. Having sued the executants of the mortgage and obtained a decree in 1885, he, in 1887 and 1888, paid certain arrears of revenue due from the village, in order to prevent its sale. In 1888, the plaintiff's 38½th pangus were sold in execution of the decree of 1885 to the 85th defendant subject to a charge for the amount of the revenue arrears paid by the plaintiff. In 1890 the plaintiff instituted the present suit to recover from the entire village and from the defendants Nos. 1 to 84 personally the amount of these arrears:

*Held*, that the 85th defendant, as also the 38½th shares purchased by him, were liable for the debt conjointly with the remaining shares and the other defendants, the plaintiff having by payment of the arrears acquired a charge upon the land under s. 35 of the Revenue Recovery Act;

that not only registered proprietors but real owners and their holdings may be treated as defaulters within the meaning of s. 35 of that Act. *Seshagiri v. Pichu*, I.L.R., 11 Mad., 467, followed.

APPEAL against the decree of L. A. Campbell, District Judge of Salem, in original suit No. 9 of 1890.

The District Judge decreed in favour of the plaintiff and the 85th defendant, and dismissed the suit as against certain other defendants. The remaining defendants preferred this appeal.

The facts of the case appear sufficiently for the purpose of this report from the judgment delivered by the High Court.

*Pattabhirama Ayyar* for appellants.

*Govinda Menon* for respondent No. 2.

*Parthasaradhi Ayyangar* and *Tiruwenkatachariar* for respondent No. 1.

BEST, J.—The following are the facts of the case. The plaintiff (now respondent) was assignee of the mortgagee of 38½th

\* Appeal No. 151 of 1891.

SRINIVASA  
THATHACHAR  
v.  
RAMA AYYAN.

out of 51½th pangus of the agra-haram of Byrojee effected by some of the pangudars on 8th January 1881 for a sum of Rs. 8,245-7-5, borrowed to pay off the assessment, &c., due on the whole agra-haram. As such assignee plaintiff brought a suit (original suit No. 2 of 1884) against the executants of the mortgage and obtained a decree on 22nd June 1885. While the above suit was pending, the agra-haram was again advertised for sale for arrears of revenue, &c., which plaintiff paid off and instituted original suit No. 2 of 1886 for recovery of the amount so paid and obtained a decree for the same with interest on 27th August 1888. While original suit No. 2 of 1886 was pending, arrears accrued for subsequent faslies, and to prevent the sale of the properties for such arrears plaintiff paid a sum of Rs. 3,618-2-7 on the 13th April 1887 and a further sum of Rs. 1,707-7-0 on the 4th May 1888. In execution of the decree in original suit No. 2 of 1884, the 38½th pangus were sold on 24th September 1888, when 85th defendant purchased the same for Rs. 11,000. The suit, out of which the present appeal has arisen, was instituted by plaintiff in 1890 to recover from the entire agra-haram and from defendants 1 to 84 personally the amounts paid in 1887 and 1888, with interest costs and further interest.

The District Judge has found some of the defendants to have no interest in the agra-haram and therefore to be not liable, but against the rest, except the 85th defendant, he has given a personal decree. He has also exempted from liability for the debt the 38½th pangus purchased by 85th defendant at the sale in execution of the decree in original suit No. 2 of 1884, but has made the debt a charge on the remaining 13 pangus. Hence this appeal by defendants 1, 4, 5, 16, 17, 58 to 62, 66, 69, 74, 78 and 81.

The first objection urged on behalf of the appellants is that in purchasing the 38½th pangus at the sale in execution of the decree in original suit No. 2 of 1884, 85th defendant was merely a benamidar for the plaintiff, and that the latter being the real purchaser, the charge is extinguished under section 101 of the Transfer of Property Act. On the issue whether the plaintiff was the real purchaser of the 38½th shares, the District Judge's finding is that, though there are reasonable grounds for the defendants suspecting such to be the case, they have failed to prove it. Such also is our finding after a careful consideration of the

evidence on both sides. It is, therefore, unnecessary to consider the question raised with reference to section 101 of the Transfer of Property Act.

SRINIVASA  
THATHACHAR  
P.  
RAMA AYYAN.

Other contentions on behalf of the appellants are (i) that none but registered holders of shares in the agraharam can be held personally liable for the claim of the plaintiffs, and (ii) that the District Judge has erred in exonerating from such liability the 85th defendant and the 38½th shares of the village purchased in his name.

The District Judge's finding is that the 38½th shares were sold subject to these encumbrances, but that nevertheless the shares must be held to be not liable for the same. His reasons for this finding are as follows:—A payment made by a mortgagee or other incumbrancer to save lands from sale for arrears of assessment is declared by section 35 of Act II of 1864 (Madras) to be a charge upon the land which should "only take priority over other charges according to the date at which the payment was made." Plaintiff is, therefore, *qua* such payment in the position of a mortgagee, and the decision in *Shaik Abdulla Saiba v. Haji Abdulla*(1) is authority for the position that what is sold by the Court in such cases is the right, title, and interest of the mortgagor as it stood at the date of the mortgage, and such being the case, it cannot be affected by the statement in the sale proclamation that the auction sale was subject to such incumbrances. It is difficult to follow the Judge's reasoning. It being found as a fact that the 38½th shares were sold subject to the charge, there seems no reason why the purchaser at such sale should be allowed to hold the same free of the charge.

As the arrears were due on these 38½th shares as well, there is no reason whatever for exonerating them from liability for a proportionate share of the charge in any case.

As to the contention that only registered owners can be treated as defaulters within the meaning of section 25 of the Revenue Recovery Act, and consequently the Lower Court's decree is bad in so far as it makes defendants who are not registered holders also liable for the money due to plaintiff, the answer is to be found in *Seshagiri v. Pichu*(2). As there pointed out, the right which the Government has to proceed against the registered pro-

(1) I.L.R., 5 Bom., 12.

(2) I.L.R., 11 Mad., 452.

SRINIVASA  
THATHACHAR  
v.  
RAMA AYYAN.

prietor in no way alters the liability of the real owner or of his holding for the arrears of revenue. Registered holders and their property are declared liable at the option of Government, in order that Government may not be hampered in the collection of revenue by being compelled to hold complicated inquiries as to real ownership. But, nevertheless, the revenue is a debt due from the real defaulter and a charge on the holding.

The remaining question is whether the decree is correct in so far as it makes the defaulters jointly and severally liable. As the entire holding was liable for the revenue to Government, it must, I think, be held to be similarly liable to the plaintiff who has, by payment of the arrears, acquired a charge upon the land under the provisions of section 35 of the Revenue Recovery Act.

As to the liability of defendants 58 to 60 (appellants Nos. 6 to 8) no issue appears to have been asked for in the Lower Court.

The result is that the 85th defendant, as also the 38½th shares purchased by him, must be held liable for the decree debt, conjointly with the remaining shares and the other defendants. The Lower Court's decree will be modified accordingly.

The appellants must pay the 1st respondent's (plaintiff's) costs of this appeal. They are entitled to their costs on the 38½th shares from second respondent (85th defendant) and must themselves bear the rest of their costs.

As to the memorandum of objections, I find the Judge has given no reasons for disallowing interest subsequent to the date of the suit.

I am of opinion that plaintiff is entitled to interest at 12 per cent. per annum till the date of decree, and at 6 per cent. per annum from that date to date of payment on the amount decreed, including costs.

The decree will be further modified accordingly.

MUTTUSAMI AYYAR, J.—I concur.