

## APPELLATE CIVIL.

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*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

RAGAVENDRA AYYAR (PLAINTIFF), APPELLANT,

v.

KARUPPA GOUNDAN AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*1896.  
August 10.  
September  
15.*Rent Recovery Act—Act VIII of 1865 (Madras), ss. 38, 39, 40—Limitation Act—Act XV of 1877, art. 12.*

Where a plaintiff sued to recover land alleged to have been sold under the provisions of the Rent Recovery Act, alleging that the provisions of section 7 of that Act had not been complied with and that therefore the sale was illegal:

*Held*, that the suit could not proceed without setting aside the sale and that the sale having taken place more than a year before the institution of the suit, the suit was barred.

SECOND APPEAL against the decree of M. B. Sundara Rau, Subordinate Judge of Salem, in appeal suit No. 25 of 1893, reversing the decree of Syed Tajudin Saheb, District Munsif of Namakkal, in original suit No. 411 of 1891.

This suit was brought for the recovery of certain land which had been sold under the provisions of Act VIII of 1865 and purchased by the second defendant, who resold it to the third defendant under the circumstances set forth in the judgment of Subramania Ayyar, J.

The District Munsif gave a decree for the plaintiff, which was reversed on appeal by the Subordinate Judge.

The plaintiff appealed.

*Sadagopachariar* and *Krishnasami Ayyar* for appellant.

*Srirangachariar* for respondents.

SUBRAMANIA AYYAR, J.—The facts of the case material for our present purpose are as follows:—The land, for the possession of which the appellant sues, was held by him under a mittadar who is a landlord within the meaning of the Rent Recovery Act (VIII of 1865) and the interest possessed by the appellant in the land was a saleable interest. The landlord, alleging that the rent due by the appellant for fasli 1297 was not duly

\* Second Appeal No. 419 of 1895.

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paid, proceeded to recover the amount by sale of the latter's interest in the land under the provisions of the enactment referred to. On the notice prescribed by section 39 of the Act being served by the landlord upon the appellant, he filed a summary suit under section 40, questioning the legality of the landlord's proceedings, chiefly on the ground that exchange of patta and muchilika had not been dispensed with and that there was neither an interchange of such engagements between him and the landlord, nor a tender of a proper patta to the former by the latter as required by section 7. But the suit was dismissed, as the appellant failed to prosecute it. Thereupon the Collector directed the appellant's interest to be sold, and it was sold on the 31st August 1889 and purchased by the second respondent, who subsequently conveyed his right to the third respondent. This suit was brought in September 1891.

The first question for determination is whether the suit is time-barred. Though the plaint does not pray for a cancellation of the sale, there is no doubt that the relief claimed cannot be granted without setting aside the sale, unless it was *ab initio* null and void, and therefore did not require to be set aside as contended on behalf of the appellant. In support of this contention his vakil relied upon the alleged omission, referred to above, on the landlord's part to comply with the provisions of section 7 of the Act. But this argument is palpably unsound.

Special powers, like those exercised by the Collector under the Act, may be circumscribed (a) with respect to place, (b) with respect to persons, (c) with respect to the subject-matter of those powers (*Narohari v. Anpurnabai*(1)). Now, as to the first, no question arises here. As to the second, the appellant and the mittadar were undoubtedly persons falling within the class of tenants and landlorders to whom the enactment applies; and as to the third, the interest sold was of a description liable to be seized and transferred at the instance of the landlord.

Therefore the non-compliance with the provisions of section 7 relied on on behalf of the appellant, though it has an essential bearing on the party's right to enforce the terms of the tenancy, has yet none with reference to any of the three matters as to which jurisdiction might be shown to fail.

(1) I.L.R., 11 Bom., 160.

Consequently the order under which the sale in the present case took place was passed with jurisdiction and, if the sale be impeachable, it can be impugned only in a suit instituted within one year from the date mentioned in Article 12 of the Limitation Act. This action, having been brought long after expiry of that period, was clearly barred. It is therefore unnecessary to consider the other questions urged.

The appeal fails and must be dismissed with costs.

BENSON, J.—I am clearly of opinion that the appellant cannot succeed without setting aside the revenue sale, and this can only be done by suit brought, within one year.

No such suit having been brought, the sale stands good.

I agree that the appeal fails and must be dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.*

MUTHU VIJIA RAGHUNATHA RAMACHANDRA VACHA  
 MAHALI THURAI (SON AND LEGAL REPRESENTATIVE  
 OF THE DECEASED DEFENDANT No. 3), APPELLANT,

1896.  
 August 14.  
 September 7  
 8, 29.

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VENKATACHALLAM CHETTI AND OTHERS (PLAINTIFF AND  
 DEFENDANTS NOS. 1, 2 AND 4 TO 10), RESPONDENTS.\*

*Transfer of Property Act—Act IV of 1882, s. 36—Suit by sub-mortgagee—  
 Decree for sale.*

A sub-mortgagee is entitled to a decree for the sale of the original mortgagor's interest in cases and in circumstances which would have entitled the original mortgagee on the date of the sub-mortgage to claim such relief.

APPEAL against the decree of P. Narayanasami Ayyar, Subordinate Judge of Madura (East), in original suit No. 14 of 1893.

The plaintiff was the trustee of a temple, and he sued to enforce his mortgage right on certain property which originally belonged to defendants Nos. 2 and 3 jointly. On the 9th of August 1886, those defendants, respectively, borrowed Rs. 3,000 and Rs. 4,825 from defendant No. 1 on the security of the land under a

\* Appeal No. 13 of 1896.