

WACHARAN.
PATTER
v.
APPU PATER.

In my opinion the Court fee ought in such a case to be computed according to the principal money expressed to be secured by the mortgage. In *Konna Parikar v. Karunakara*(1), it is distinctly said that the suit was to redeem the land and to recover arrears of rent. On that basis the judgment proceeds. *Subramanya Bharatengal v. Kunnan*(2) seems exactly in point.

I would answer the reference by holding that the fee must be computed on the amount of the mortgage.

BEST, J.—The suit is not for redemption and rent, but for redemption on payment of the kanom amount, the arrears of rent due from the kanomdar being deducted.

I am of opinion that the Court fee payable must be calculated on the kanom amount.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

TIRUNARASIMHA CHARI.*

Criminal Procedure Code—Act X of 1882, ss. 144, 435, 476—Enquiry before issue of an order under s. 144—Judicial proceeding—False evidence.

A Magistrate, making an enquiry before issue of an order under Criminal Procedure Code, section 144, is acting in a stage of a judicial proceeding and has, therefore, jurisdiction to take action under section 476, if he is of opinion that false evidence has been given before him.

PETITION under Criminal Procedure Code, sections 435 and 439, praying the High Court to revise an order of the Taluq Magistrate of Madurantakam, dated the 15th May 1895.

By the order in question the Taluq Magistrate directed the prosecution of the petitioner for offences under Indian Penal Code, sections 181, 193. The offences in question were charged to have been committed in the course of an enquiry held under Criminal Procedure Code, section 144.

(1) I.L.R., 16 Mad., 328. (2) Civil Revision Petition No. 387 of 1889 (unreported).

* Criminal Revision Case No. 321 of 1895.

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

Mr. *H. G. Wedderburn* for petitioner.

The Government Pleader and Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

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JUDGMENT:—On April 27th, 1895, an order was issued by the Taluq Magistrate of Madurantakam under section 144 of the Criminal Procedure Code, forbidding the erection of a stone-cut Vadagalai namam over the entrance of an Odayavar shrine in a certain temple, on the ground that such erection would lead to a riot. The Magistrate took proceedings in the first place on the report of the Village Munsif, which was followed by a police report and a petition from various persons. Before passing the order, he took a deposition from the dharmakartha, Tirunarasimha Chari, and several others.

There is no question as to the jurisdiction of the Magistrate to pass the order, and under section 435, Criminal Procedure Code, his proceedings are not subject to revision by the High Court. But after the issue of the order, viz., on May 15th, 1895, the Magistrate under section 476, Criminal Procedure Code, directed the prosecution of the trustee Tirunarasimha Chari for giving false evidence (sections 181 and 193 of the Indian Penal Code), the alleged false evidence being that the trustee had sworn the namam was an old one, whereas in truth it was an entirely new one. The District Magistrate refused to interfere with this order, and the first question for determination is whether the deposition was taken by the Taluq Magistrate "in the course of a judicial proceeding," as, if not, the Magistrate had no jurisdiction to act under section 476, Criminal Procedure Code.

Under the old Procedure Code X of 1872, similar orders for the prevention of local nuisances were expressly declared to be not judicial proceedings, (sections 518, 520), and were therefore not revisable under section 297. See *Ramanuja Jeeyarsvami v. Ramanuja Jeeyar*(1). Section 144 of the present Code corresponds to section 518, Act X of 1872, and though section 520 was not re-enacted as a separate section in the corresponding chapter, its purport is repeated in the third clause of section 435 of the present Code. In making this provision the Legislature had no

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doubt in view the fact that there might be emergencies in which it was essential for the prompt preservation of the public peace to debar the interference of the High Court, but orders passed under section 144, have only a temporary duration.

The difficulty arises from the variation in language between section 297 of the old Code and section 435 of the present Code. Under the old Code powers of revision were granted to the High Court in judicial proceedings only, and the enacting of section 520 would seem to imply that, but for that section orders under section 518 would be "judicial proceedings": section 435 of the present Code enables the High Court to call for the record of "any proceeding before any inferior Criminal Court," and, therefore, orders under section 144 would certainly be subject to revision, were it not for the proviso in the third clause of the section. Under section 4 of the present Code "judicial proceeding" is defined to be "any proceeding in the course of which evidence is "or may be legally taken." It seems to us impossible to deny that a Magistrate acting under section 144 may legally take evidence before issuing an order. He may, it is true, act on information received or on his own knowledge, without taking evidence, but the proviso in the third clause which in certain cases authorizes the Magistrate to pass an order *ex-parte* seems to contemplate that ordinarily an order under the section should not be made, without an opportunity being afforded to the person against whom it is proposed to make it, to show cause why it should not be passed. (See *In the matter of Harimohan Malo*(1) and *Queen v. Ram Chandra Mookerjee*(2). This necessarily implies the power to take evidence before coming to a decision, though a Magistrate is empowered to act upon what is not legal evidence in cases of special urgency.

From this it would appear that both under the old Code and under the present Code these urgent orders were regarded as in their nature "judicial proceedings," the only difference being that, whereas under the old Code, section 520, somewhat inaccurately declared them to be not judicial proceedings for the purpose of ousting the High Court's powers of revision under section 297, the present Code equally bars the High Court's jurisdiction without making an illogical declaration.

(1) 1 B.L.R. (A. Cr.), 20.

(2) 5 B.L.R., 131.

For these reasons we come to the conclusion that a Magistrate, making an enquiry before issue of an order under section 144, is acting in a stage of a judicial proceeding, and has therefore jurisdiction to take action under section 476, if he is of opinion that false evidence has been given before him.

We are not prepared to hold that the Taluq Magistrate was bound to make any further preliminary enquiry, and as he had jurisdiction, we cannot set aside his complaint, nor will we now express any opinion as to the defence that may be raised at the trial.

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APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Best.

SRIRAMULU AND OTHERS (RESPONDENTS), APPELLANTS,

v.

SOBHANADRI APPA RAU (PETITIONER), RESPONDENTS.*

1894.
August 17,
28.

Limitation Act—Act XV of 1877, sched. II, art. 110—Rent Recovery Act (Madras)—Act VIII of 1865, ss. 7, 9, 10—Suit to recover arrears of rent—Proceedings in Revenue Court to enforce acceptance of patta tendered—Time from which period of limitation is computed.

In a suit for rent for a period which had expired more than three years before the date of the plaint, it appeared that proceedings had taken place in a Revenue Court under Rent Recovery Act (Madras), 1865, to enforce acceptance by the defendant of the patta tendered by the landlord. These proceedings had terminated on appeal in favour of the landlord less than three years before the institution of this suit:

Held, that the period of limitation applicable to the suit was not computable from the date of the termination of the proceedings under the Rent Recovery Act and that the suit was barred by limitation. *Sobhanadri Appa Rau v. Chalamanna* (I.L.R., 17 Mad., 225) overruled.

APPEAL under Letters Patent, section 15, against the judgment of Muttusami Ayyar, J., pronounced on civil revision petition No. 51 of 1892, which was presented under Provincial Small Cause Courts Act, section 25, praying the High Court to revise the decree of M. B. Sundara Rau, Subordinate Judge of Ellore, in small cause suit No. 323 of 1891.

Suit to recover rent due on land of which the defendant was a tenant of the plaintiff. The rent was claimed in respect of

* Letters Patent Appeals Nos. 10 to 14 of 1894.