

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Boddam.

VELAGALETI RAMAKRISHNAYYA (PLAINTIFF), APPELLANT,

v.

SURANENI PAPAYYA APPA ROW AND ANOTHER (DEPENDANTS),
RESPONDENTS.*

1903.
September
18.

Rent Recovery Act—(Madras) Act VIII of 1865, s. 49—Summary suit for damages for wrongful distraint—No proper patta tendered—Jurisdiction of Summary Court.

A tenant sued his landlords summarily under section 49 of the (Madras) Rent Recovery Act for cancellation of a distraint and for restoration of the property distrained or its value. It appeared that there were three landlords who owned the village and that the patta had been tendered by only two of them for their shares, and was consequently not a proper one :

Held, that the defendants were landlords who, had they tendered a proper patta, would have been entitled to distrain under the Act. The fact that the patta which had been tendered was not a proper one did not cause the proceeding taken by them under the provisions of the Act to be a proceeding not taken under colour of the Act :

Held, also, that the suit was one for damages.

Suit by a tenant, under the (Madras) Rent Recovery Act, for cancellation of a distraint and for restoration of property distrained or its value. The village belonged to three brothers, but patta had been tendered by only two of them, in respect of their shares. The Head Assistant Collector held and the District Judge agreed that the patta which had been tendered was not a proper one. The Head Assistant Collector assessed the damages at Rs. 350, being the value of grain which had been distrained. The landholders appealed to the District Judge, who considered that the suit was not one for damages but was for specific property or its value. He also held that owing to the fact that there was no tender of a proper patta, the proceeding of the defendants in seizing plaintiff's property could not be said to be proceedings taken under colour of the Act. He held that the defendants had no right to distrain and that the award of damages under section 49 of the Act was wrong,

* Second Appeal No. 953 of 1902, presented against the decree of J. H. Mauro, District Judge of Kistna at Masulipatam, in Appeal Suit No. 569 of 1901, presented against the decision of N. Ashe, Head Assistant Collector of Kistna, in Summary Suit No. 92 of 1901.

as the plaintiff's claim for the recovery of his property or its value by in the Civil Court.

Plaintiff preferred this appeal.

P. R. Sundara Ayyar for appellant.

P. S. Sivaswami Ayyar for respondents.

JUDGMENT.—We are unable to follow the District Judge when he says that this attachment was not a proceeding taken under colour of the Act (Madras Act VIII of 1865). The defendants are landlords who, had they tendered a proper patta, would have been entitled to distrain under the Act. The fact that the patta tendered was improper does not cause the proceeding taken by them under the provisions of the Act to be a proceeding not taken under colour of the Act. We are also unable to agree with the District Judge that the suit was not for damages (*Pamru Sanyasi v. Zamindar of Jayapur*(1)).

Whether a suit is for the return of specific moveable property or for damages is a question which must depend upon the averments and frame of the plaint in each case.

In this case the property attached was grain not capable of identification and that is a circumstance which goes far to show that the suit is not for the return of specific property, whilst the nature of the articles to which *Raja Goundan v. Rangaya Goundan*(2) refers was such as to show that the proper conclusion was that that suit was for the return of specific property.

We must, therefore, reverse the decree of the District Judge and restore that of the Head Assistant Collector with costs in this and in the lower Appellate Court.

VELAGALETI
RAMAKRISH-
NAYYA

2.
SURANENI
PAPAYYA
APPA ROW.

(1) I.L.B., 25 Mad., 540.

(2) I.L.R., 20 Mad., 449.