APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and Mr. Justice Russell.

CHINNIPAKAM RAJAGOPALACHARI AND ANOTHER (PLAINTIFF AND LEGAL REPRESENTATIVE), APPELLANTS,

1903. October 20. November 16.

v.

LAKSHMIDOSS (DEFENDANT), RESPONDENT.*

Rent Recovery Act (Madras)—VIII of 1865, s. 2—Attachment by landholder of tenant's immoveable property more than one year after rent due—Validity.

An attachment of a tenant's immoveable property, made more than one year after the date when the rent became due as specified in the patta tendered, is not within the time limited by section 2 of the Rent Recovery Act.

Appayasami v. *Subba*, (I.L.R., 13 Mad., 463), dissented from.

SUIT to set aside an attachment. The facts and the question raised are set out (by Sir Subrahmania Ayyar, Officiating C.J., and Boddam, J.) in the following

ORDER OF REFERENCE TO A FULL BENCH.—The question raised in this case is whether an attachment of the plaintiff's immoveable property more than one year from the time when the rent became due as specified in the tendered patta was in time. In the lower Court it was held to be in time on the authority of *Appayasami* v. *Subba*(1). This decision appears to have been followed in *Raja Papamma Row* v. *Duggirala Sembheswara Row*(2).

It is urged before us that the reasoning upon which the decision in *Appayasami* v. *Subba*(1) rests has been greatly weakened by subsequent decisions, viz., *Sriramulu* v. *Sobhanadri Appa Row*(3), *Venkatagiri Rajah* v. *Ramasami*(4), *Kumarasami Pillai* v. *President, District Board of Tanjore*(5), and see also *Sir Ramasami Mudaliar* v. *Annadorai Ayyar*(6).

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* Second Appeal No. 673 of 1901, presented against the decree of A. C. Tate District Judge of Chingleput, in Appeal Suit No. 181 of 1900, presented against the decree of P. Krishna Rao Pantulu, District Munsif of Chingleput, in Original Suit No. 170 of 1900.

(1) I.L.R., 13 Mad., 463.

(2) Second Appeal No. 728 of 1899 (unreported).

(3) I.L.R., 19 Mad., 21.

(4) I.L.R., 21 Mad., 413.

(5) I.L.R., 22 Mad., 248.

(6) I.L.R., 25 Mad., 454.

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Moreover the decision in *Appayasami* v. *Subba*(1) seems hardly consistent with the language of sections 2 and 14 of the Rent Recovery Act.

If the view in *Appayasami* v. *Subba*(1) be strictly followed, it would not be easy to hold that a landlord is entitled to distrain moveable property within the fasli even though the rent had become due. There seems to be hardly any ground for holding that a landlord is not entitled in such circumstances to proceed for arrears due to him against moveable property and section 38 of the Rent Recovery Act would seem to imply that he has such a right.

We therefore refer to a Full Bench the question whether the proceedings against the immoveable property in this case were taken in time within the meaning of section 2 of the Rent Recovery Act.

The case came on for hearing before the Full Bench constituted as above.

P. S. Sivaswami Ayyar for second appellant.

Mr. *M. A. Tirunarayanachariar* and *V. C. Seshachariar* for respondent.

The Court expressed the following

OPINION.—Our answer to the question referred for our opinion is that the attachment of the plaintiff's immoveable property which was made more than one year after the date when the rent became due as specified in the patta tendered, was not within the time limited by section 2 of the Rent Recovery Act VIII of 1865. The decision in *Appayasami* v. *Subba*(1) is in direct conflict with the decision in *Thayamma* v. *Kulandavelu*(2) and we think that the view taken in the latter is correct.

Section 14 makes it perfectly clear that the rent, or any instalment of rent, is deemed an arrear of rent if it is not paid on the date on which it is payable according to the terms of the patta or custom; and it is not the less an arrear which accrued due on that date because the patta had not been tendered prior thereto, the tender being postponed to the end of the fasli or revenue year. Such tender is only a condition precedent to the institution of legal proceedings for the recovery of the arrear of rent. Though coercive process against the land is postponed by section 38 of the

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(1) I.L.R., 13 Mad., 463. (2) I.L.R., 12 Mad., 465.

Act until the expiration of the fasli, yet, under section 2, limitation runs from the date when the rent (or instalment of rent) sought to be recovered became an arrear under section 14.

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We may add that no real hardship results from these provisions of the law as instalments do not in practice fall due during the first few months of the fasli, and the landlord has therefore a reasonably sufficient time after the end of the fasli to take proceedings even in regard to the earliest instalment in arrear.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and Mr. Justice Russell.

PERIASAMI MUDALIAR AND ANOTHER (DEFENDANTS NOS. 3 AND 4), APPELLANTS,

v.

SEETHARAMA CHETTIAR AND TWO OTHERS (PLAINTIFFS), RESPONDENTS.*

1903. August 12, 13. December 7.

Hindu Law—Money due by and decree against father—Execution proceedings after death of judgment-debtor against family property in possession of sons refused—Suit by creditor against sons—Decree obtained—Effect of decree against father as creating debt binding on sons—Limitation Act XV of 1877, sched. II, arts. 52, 120—Limitation for suit against son on original debt or on decree.

Plaintiffs, in 1896, obtained a decree against the father of the present defendants, who died in 1897. Execution of that decree was refused as against the family property in the possession of the defendants. Plaintiffs, in 1899, instituted the present suit against defendants and obtained a decree. Questions having been referred to the Full Bench:

Held, (1) that independently of the debt arising from the original transaction, the decree against the father, by its own force created a debt as against him which his sons, according to the Hindu law, were under an obligation to discharge, unless they showed that the debt was illegal or immoral;

(2) that if the suit had been brought on the original cause of action the article of limitation applicable would have been the same as against the father, namely, article 52; but as the suit had been brought on the cause of action arising from the decree against the father the article applicable was 120.

Observations by Bhashyam Ayyangar, J., on the obligation of a son, under the Hindu law, to discharge debts incurred by his father.

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* Second Appeal No. 49 of 1902, presented against the decree of W. Gopalachariar, Subordinate Judge of Bellary and Salem at Salem, in Appeal Suit No. 186 of 1901, presented against the decree of K. Ramanathayyar, District Munsif of Salem, in Original Suit No. 700 of 1899.