

CHINNA-
THAMBI
MUDALI
v.
SALLA
GURUSAMY
CHETTY.

In the case of *Mahomed Abdul Mennam v. Panduranga Row*(1), this Court expressed their approval of the decisions in *Nibratan Sen v. Jugesh Chundra Bhutta Charjee*(2), and *Komal Chandra Lal v. Gow Chand Adikari*(3), and disagreed with the decision in *Mir Ahmad Hossein v. Mahomed Askari*(4). But in all these cases the complaint had been dismissed on the merits, the order having been made under section 203. In the Full Bench decision of the Calcutta High Court in *Dwarka Nath Munde v. Beni Madhal Banerjee*(5), the Court held that the Magistrate had jurisdiction to rehear a warrant case in which he had discharged the accused person by an order made under section 259. I do not find that this Court has ever declined to accept this view. I agree with this Calcutta decision and with the reasoning upon which it is based.

The case must go back to the Magistrate to be dealt with according to law.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Moore.

1905.
February 13.

PAMULAPATI ANKINUDU (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL
AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Revenue Recovery Act—(Madras Act II of 1864)—Land revenue—Tax levied on person in unauthorized occupation of Government waste land—"Penal assessment"—Illegality of.

Plaintiff and second defendant, who were brothers, built a choultry on their patta land and obtained from Government a piece of the adjoining poramboke

(1) I.L.R., 28 Mad., 255.

(2) I.L.R., 23 Calc., 933.

(3) I.L.R., 24 Calc., 286.

(4) I.L.R., 20 Calc., 726.

(5) I.L.R., 28 Calc., 652.

* Second Appeal No. 166 of 1903, presented against the decree of M.R.Ry. I. L. Narayana Row, Subordinate Judge of Kistna, in Appeal Suit No. 276 of 1902, presented against the decree of M.R.Ry. V. L. Narasimham, District Munsif of Tenali, in Original Suit No. 722 of 1900.

(1) See now Madras Act III of 1905. A search undertaken in consequence of certain observations made while this measure was before the Legislative Council as to the course of decisions in this Court shows that besides the cases reported

land measuring 4 cents upon the condition that it should be used for the purposes of the choultry. The plaintiff subsequently constructed paddy godowns contiguous to the choultry, and in doing so encroached upon a portion of the land granted by Government. The Government thereupon resumed possession of the land, cancelled the grant, and directed the plaintiff and the second defendant to vacate the same. The plaintiff refused to vacate on the ground that he had not encroached upon the land granted by Government. The revenue authorities, thereupon, imposed a penal assessment on him of Rs. 44. In a suit by the plaintiff, *inter alia*, to recover the amount of the tax which he had paid :

Held, that the levy of penal assessment was illegal, and the plaintiff was entitled to recover the amount thereunder.

Madathapu Ramaya v. The Secretary of State for India, (I.L.R., 27 Mad., 386), followed.

Sur to establish plaintiff's right to certain land and to recover, a sum of Rs. 44 collected from the plaintiff by the Government, by way of penal assessment for encroaching upon poramboke land. The facts of the case as stated by the Acting Sub-Judge are as follows :—The plaintiff and second defendant are brothers. They erected a choultry and a travellers' shed about 6 or 7 years ago on their patta land D. No. 725-A. Subsequently, the Government granted a kabala for 4 cents of land from the adjoining poramboke on condition that it should be used for the purposes of the choultry. Three or four years ago, the plaintiff and second defendant divided this plot and erected paddy godowns thereon and stored their paddy therein. They have stored earth on another one cent of the unassigned portion of the poramboke D. No. 724. The Government thereupon

PANULAPATI
ANKINUDU
v.
THE
SECRETARY
OF STATE
FOR INDIA.

in *Muthayya Chetti v. The Secretary of State for India* (I.L.R., 22 Mad., 100) and in *Madathapu Ramaya v. The Secretary of State for India* (I.L.R., 27 Mad., 386), the only other cases in which the question of penal assessment has come before the Court are (i) *Kuttai Muhammad Meera Mohiudeen v. The Secretary of State for India* (S.A. No. 912 of 1901) (unreported) decided shortly before *Madathapu Ramaya v. The Secretary of State for India* (I.L.R., 27 Mad., 386), in which the question of the legality of imposing penal assessment was raised but left undecided, the suit being dismissed as barred by limitation and on the ground that the penal assessment had been paid without compulsion of law; (ii) in the case of *Panulapati Ankinudu v. The Secretary of State for India* (S.A. No. 166 of 1903) reported above which follows *Madathapu Ramaya v. The Secretary of State for India* (I.L.R., 27 Mad., 386); and (iii) *Pedda Maldanna v. The Secretary of State for India* (S.A. No. 1199 of 1902), not reported, in which it was again held that penal assessment paid voluntarily could not be recovered back. Two other cases, *viz.*, *The Collector of Chingleput District v. Kosakram Naidu* (S.A. No. 1352 of 1897) (unreported) and *Boddupalli Jagannadham v. The Secretary of State for India* (I.L.R., 27 Mad., 16), related to the liability of land to ordinary as distinct from penal assessment and did not raise any question of the legality of penal assessment.

PAMULAPATI
ANEKINUDU,
v.
THE
SECRETARY
OF STATE
FOR INDIA.

resumed the 4 cents, cancelling the grant and directed the plaintiff and second defendant to vacate the same. The second defendant promised to give up his personal rights in the southern portion of the godowns and agreed to utilize them for the benefit of the choultry, but the plaintiff stubbornly maintained as he still maintains, that no portion of his godowns stood on the kabala land granted by the Government, and refused to vacate it. The Revenue authorities have, thereupon, charged the land with a 'prohibitory assessment' at Rs. 20 per cent."

The District Munsif passed a decree in favour of the plaintiff for Rs. 34-13-3 on the ground that only a portion of Government land measuring $\frac{1}{2}$ cent had been encroached upon. On appeal by the first defendant, the Subordinate Judge modified the decree of the lower Court in respect of the amount payable by the first defendant. Plaintiff preferred this second appeal.

V. Krishnaswamy Ayyar and K. Subramania Sastri for appellant.

The Government Pleader for first respondent.

JUDGMENT.—Following the decision in *Madathapu Ramaya v. The Secretary of State for India in Council*(1) we must hold that the levy of penal assessment on this land was illegal. We modify the decree of the Subordinate Judge and direct that the plaintiff do recover from the first defendant a sum of Rs. 38-4-4 in addition to the sum already allowed with *interest at 6 per cent*, from this date to date of payment. We make no order as to costs in this appeal.

(1) I.L.R., 27 Mad., 386.