

APPELLATE CIVIL.

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

VIRARAGHAVA AYYANGAR (DEFENDANT), APPELLANT,

1901.
November 1.

v.

KANAGAVALLI AMMAL (PLAINTIFF), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, ss. 15, 17, 18—Statement of place in which distrained property is kept—"The property is with the distrainer"—Sufficiency—Maintainability of suit.

In a suit instituted under section 18 of the Rent Recovery Act to set aside a distraint on the ground that it had been illegally carried out, plaintiff complained that the authority to distrain did not contain the particulars required by section 15 of the Act. The property, which consisted of some small jewels, was described as being "with the distrainer":

Held, that with regard to property of this description the statement was sufficient.

Whether the failure to state the place where property which has been distrained is kept is a ground for a suit under section 18 of the Rent Recovery Act to set aside the distraint.—*Quære*.

SUIT under section 18 of the Rent Recovery Act, to set aside a distraint. The Deputy Collector found that there were no grounds to set it aside and dismissed the suit. Plaintiff appealed to the District Judge who said:—"There are several grounds of appeal, but it is unnecessary to consider more than one, the allegation that the distraint was made illegally. Under section 15, Act VIII of 1865, the distrainer is bound to furnish the defaulter with a copy of his authority to distrain, with various particulars, among others, the name of the place in which the distrained property is kept. This was not done in the present case, the entry in the copy given to the plaintiff being 'The property is with distrainer'. I am of opinion that this is a material irregularity. The defaulter is entitled to know the actual place in which the property is kept, and a statement that it is with the distrainer, gives no information on the subject. The distraint was therefore illegal, and the plaintiff is entitled to have it set aside." He reversed the judgment of the lower Court.

Defendant preferred this second appeal.

* Second Appeal No. 109 of 1901 against the decree of G. W. Elphinstone, Acting District Judge of Trichinopoly, in Appeal Suit No. 113 of 1899, reversing the decree of P. Dorasami, Deputy Collector of Ariyalur, in Summary Suit No. 1 of 1899.

VIRARAGHAVA
 AYYANGAR
 v.
 KANAGAVALLI
 AMMAL.

Sundara Ayyar and *K. Srinivasa Ayyangar* for appellant.

V. Krishnasami Ayyar for respondent.

JUDGMENT.—We doubt whether the failure to state the place where the distrained property is kept can ever be a ground for a suit under section 18 of the Rent Recovery Act to set aside the distraint. The appropriate remedy seems rather to be, under section 17 of the Rent Recovery Act, to apply to the Collector for an order to restore the distrained property to the owner, if such omission was a material irregularity. However that may be, we are satisfied that, in the present case, in which the property distrained consisted of some small jewels, the statement that they were “with the distrainer” was a sufficient statement of the place where they were kept, within the meaning of section 15 of the Act. It is difficult to see what more information the plaintiff could have required for any practical purpose. Moreover, this objection was not taken before the Deputy Collector or even in the grounds of appeal to the District Judge, a fact which shows clearly enough that it was of no real materiality in the eyes even of the plaintiff.

As the District Judge decided the appeal on this preliminary point, we set aside his decree and remand the appeal for disposal according to law. Costs in this Court will abide and follow the result.

APPELLATE CIVIL.

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

SURYANARAYANAMURTI AND ANOTHER (DEFENDANTS

Nos. 2 AND 3), APPELLANTS,

v.

TAMMANNA AND ANOTHER (PLAINTIFF AND DEFENDANT No. 1),
 RESPONDENTS.*

Specific Relief Act—Act I of 1877, s. 42—Suit for declaration of invalidity of will on ground that it bequeathed family property—No claim for partition—Maintainability—Hindu Law—Existence of leases over family property no bar to partition.

Plaintiff sued his brother, his sister and his brother's son, for a declaration of invalidity of a will which purported to have been executed by his late father, by which certain property had been bequeathed to one of the defendants. Plaintiff

* Appeal No. 96 of 1900 against the decree of C. G. Kuppussami Ayyar, Subordinate Judge of Occanada, in Original Suit No. 61 of 1898,