

VENKATA
PAPAYYA
RAO
v.
VENKATA
SUBBAYYA.

SUIT to eject a tenant under section 10 of the Rent Recovery Act. The Head Assistant Collector held that plaintiff had failed to prove wilful default on the part of the defendants, and dismissed the suit. Plaintiff appealed to the District Judge who, allowed a preliminary objection that no appeal lay, and dismissed the appeal.

Plaintiff preferred this second appeal.

Sivasami Ayyar for appellant.

K. Subrahmania Sastri for respondent.

JUDGMENT.—We are prepared to follow the decision of this Court in *Narasimhaswami v. Lakshmanma*(1), and we think no valid distinction can be drawn between a case where an order for ejection is made on an application under section 10 of the Rent Recovery Act, and a case where the Collector dismisses an application for ejection made under that section. In substance, the order of the Head Assistant Collector in the present case amounts to an adjudication that the plaintiff failed to prove default on the part of the defendant. This, in our opinion, is a "judgment" within the meaning of section 69 of the Act.

The decree of the District Judge must be set aside and the case remanded to him to be dealt with according to law.

Costs of the appeal will abide the result.

APPELLATE CIVIL.

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

SIR RAMASAMI MUDALIAR (PLAINTIFF), APPELLANT,

v.

ANNADORAI AYYAR (DEFENDANT), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, s. 10—Purchase at Court sale of former tenant's interest in land—Liability of purchaser for rent as from date of confirmation of sale.

Defendant had purchased at a Court sale the interest of a former tenant in certain land in a zamindari. The sale was confirmed on 31st March 1900, and

(1) I.L.R., 22 Mad., 436.

* Second Appeal No. 3 of 1901 against the decree of A. C. Tate, Acting District Judge of Chingleput, in Appeal Suit No. 180 of 1900, reversing the decision of P. Sivarama Ayyar, Deputy Collector of Trivellore, in Summary Suit No. 571 of 1900.

possession was given to defendant, on 11th May 1900. The landlord now sued to enforce the acceptance by defendant of patta for fasli 1309, being the year commencing on 1st July 1899 and ending on 30th June 1900. By the terms of the muchalkas which had been executed by the former tenant, rent was payable in four equal instalments on 1st October, 1st February, 1st April and 1st May:

Held, that the defendant was liable for the instalments which fell due subsequently to the confirmation of sale, namely, on 1st April and 1st May 1900. Also, that it was immaterial, (in regard to his liability for rent), when he recovered actual possession of the land.

SUIT to enforce acceptance of patta. Plaintiff, the zamindar of Egattur, sued to enforce the acceptance by defendant of patta in respect of certain land in the zamindari for fasli 1309—namely, for the year commencing on 1st July 1899 and ending on 30th June 1900. Defendant had purchased the right, title and interest of a former tenant in the land at a Court sale, which had only been confirmed on 31st March 1900, and he had been put in possession on 11th May 1900. By the terms of the muchalkas which had been executed by the previous tenant, rent was payable in four equal instalments, on 1st October, 1st February, 1st April and 1st May. Defendant contended that he was not plaintiff's tenant for the year 1st July 1899—30th June 1900, within the meaning of the Rent Recovery Act, as he had only acquired possession of the land after the cultivating season was over, and that the real tenant was his predecessor, who had cultivated the land and removed the crops.

The Deputy Collector held that plaintiff was entitled to tender the patta, and defendant was bound to accept it.

Defendant appealed to the District Judge, who reversed the decision, being of opinion that as defendant had only been in possession of the land (which was an agricultural holding) from 11th June to 30th June 1900, it would be inequitable to regard him as having been plaintiff's tenant for the year 1st July 1899—30th June 1900, and liable to pay rent for that year. He held that defendant was not bound to accept the patta.

Plaintiff preferred this second appeal.

Venkatasubba Ayyar and *Narayana Sastri* for appellant.

Mr. W. Barton for respondent.

JUDGMENT.—Under section 316 of the Civil Procedure Code the title to the land in the occupancy of the former tenant vested in the purchaser at the Court sale on the date on which the sale was confirmed, that is, on the 31st March 1900. From that date

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he became the tenant of the landlord and bound to pay rent according to the customary instalments (section 55, (5) (d) of the Transfer of Property Act). Two of those instalments for the then current fasli had previously fallen due and it is clear that for neither of these instalments was the defendant liable. Two instalments fell due after that date, viz., on the 1st April and on the 1st May, and for those instalments the defendant was liable and was therefore a tenant within the definition of that word in the Rent Recovery Act. He was therefore bound to accept a patta for that fasli. The patta tendered to him made him liable for all four instalments. This he was not bound to accept. The patta, in order to be a proper one, should have limited his liability for rent to the two instalments which he was alone bound in law to pay. The patta tendered is accordingly modified by adding the following clause: "The tenant is liable to pay only the instalments of rent which fell due on the 1st April and 1st May 1900. We direct the tenant to accept the patta as thus modified and to execute a corresponding muchalka. Each party will bear his own costs throughout." We may add that in respect of the two instalments which became due before the 31st March the landlord might, before the end of the fasli, have tendered another patta to the former tenant, who was the owner up to that date, his liability for rent being limited to the first two instalments.

The date on which the new tenant (the purchaser in the Court auction) recovered actual possession from the former tenant, subsequent to the confirmation of sale, is immaterial in regard to his liability to pay rent accruing due subsequent to the confirmation of sale.