a mortgagee's rights as against the mortgaged property is not a decree for a *debt* within the meaning of section 4 of the Succession Certificate Act (VII of 1889). It would, however, be otherwise with reference to a personl decree for the debt, and this is conceded in the Calcutta and Bombay cases cited. In the present case, a personal decree was prayed for and granted, and the requisition of a certificate as a condition precedent to such a decree is right. We are unable to accept the suggestion made on behalf of the appellants that the decree of the lower Appellate Court warrants the view that the certificate is made a condition even with reference to so much of it as relates to the mortgaged property. The second appeal is therefore dismissed. In the circumstances each party will bear and pay his own costs.

APPELLATE CIVIL.

Before Sir S Subrahmania Ayyar, Officiating Chief Justice, and Mr. Justice Boddam.

1905
July 26.

MUTHUSAMI PILLAI (PLAINTIFF), APPELLANT,

v.

ARUNACHELLAM CHETTIAR AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Rent Recovery Act (Madras) VIII of 1865, *ss.* 1, 38, 39 *-Intermediate landholder tenant for purposes of ss.* 38, 39.

An intermediate landholder liable to pay rent to a superior landlord is a tenant for the purposes of sections 38 and 39 of the Madras Rent Recovery Act VIII of 1865 and the opinion of the Full Bench in *Nallayappa Pillian* v. *Ambalavana Pandara Sannadhi*, (I.L.R., 27 Mad., 465 at p. 470), is not in conflict with this view. The true effect of the reference in section 38 to landholders specified in section 3 is to exclude landholders specified in the second paragraph of section 1 of the Act.

In a suit under sections 40 and 50 of Act VIII of 1865, it is not competent to the Revenue Court to decide the question of damages sustained by the tenant by non-performance by the landlord of covenants in the lease.

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* Second Appeal No 280 of 1904, presented against the decree of H. Moberly, Esq., District Judge of Madura, in Appeal Suit No. 255 of 1903, presented against the decision of J.R. Huggins, Esq., Head Assistant Collector, Ramnad, in Summary Suit No. 16 of 1903.

MUTHUSAMI PILLAI v. ARUNACHELLAM CHETTIAR.

SUIT under sections 40 and 50 of the Madras Rent Recovery Act to set aside an attachment by the defendants for arrears under section 39 of the Act and for damages sustained by the plaintiff owing to the defendants not closing a channel as they were bound to do under the lease. The facts are sufficiently set out in the judgment. The suit was dismissed as likewise the appeal to the District Court.

Plaintiff preferred this second appeal.

K. N. Ayya for appellant.

T. Rangaramanujachariar for first respondent.

JUDGMENT.—The respondent is the manager of the Rameswaram Devastanam. The appellant is the lessee of a village forming part of the endowment of the Devastanam. The respondent proceeded under section 39 of the Rent Recovery Act (Act VIII of 1865) in respect of arrears of rent due for fasli 1311 under the terms of the lease. The legality of the distraint is impeached on behalf of the appellant and in support of his contention reliance is placed on the concluding portion of the opinion of the Full Bench in *Nallayappa Pillian and others* v. *Ambalavana Pandara Sannadhi*(1). No doubt the cases referred to in the passage have been over-ruled by that opinion so far as they proceed on the supposition that the word tenant as defined in section 1 of the Act is applicable to an intermediate landholder who has to pay rent to a superior landholder. We do not however understand this passage to lay down that an intermediate landholder bound to pay rent to a superior landholder, is not a tenant within the meaning of any of the other provisions of the Act as in effect contended for on behalf of the appellant. If that were the meaning of the Full Bench, there was no necessity for the guarded and qualified language used in the opinion, and the opinion itself would have been directly to the effect that intermediate landholders paying rent to superior landholders were not tenants for any purposes whatsoever under the Act. This certainly would have been the case as the prior Full Bench decision [*Lakshminarayana Pantulu* v. *Venkatrayanam*(2)] cited in the later opinion with approval explicitly proceeded on the footing that intermediate landholders, bound to pay rent to superior landholders, were tenants within the meaning of the Act for some purposes though not tenants within the meaning of section 3 thereof. We are

(1) I.L.R., 27 Mad., 465 at p. 470. (2) I.L.R., 21 Mad., 116.

unable therefore to accept the argument that the respondent was altogether disentitled to take proceedings for the recovery of the rent due to the Devastanam under the Act. Nor do we see anything in the language of section 38 or 39 of the enactment to confine the operation of those sections to cases where the tenant proceeded against is a *cultivating* tenant to whom section 3 is applicable. Section 38 no doubt refers to *landholders* referred to in section 3, but the respondent here is undoubtedly such a landholder. The true effect of this reference in section 38 to landholders mentioned in section 3 is to exclude landholders falling under the second paragraph of section 1, namely, all holders of land under ryotwari settlement or in any way subject to the payment of land revenue direct to Government and all other registered holders of land in proprietary right from resorting to the remedy made available by sections 38 and 39.

We think the claim for damages set up by the appellant is not a matter to be considered in this litigation.

The second appeal fails and is dismissed with costs.

APPELLATE CIVIL.

Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and Mr Justice Boddam.

ELUMALAI CHETTIAR (DEFENDANT), APPELLANT,

v.

NATESA MUDALIAR AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1905
July 25.

Rent Recovery Act (Madras) VIII of 1865, s 9—Landlord and tenant—Right to issue putta for unassessed house-site.

It being common in this country to have trees in backyards forming part of unassessed house-sites, such a circumstance does not amount to a conversion of such site enjoyed free of rent into cultivated land for which rent is payable and no patta can be tendered in respect of such lands.

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* Second Appeal No. 46 of 1904, presented against the decree of R. D. Broadfoot, Esq., District Judge of Chingleput, in Appeal Suit No. 17 of 1903, presented against the decision of M.R.Ry. P. Sivarama Ayyar, Deputy Collector of Tiruvallur, in Summary Suit No. 204 of 1902.