

## APPELLATE CIVIL.

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

PALANIYANDI PILLAI AND ANOTHER (PLAINTIFFS),  
APPELLANTS,

1905.  
July 2d.

v.

VEERAMMAL (FIRST DEFENDANT'S REPRESENTATIVE),  
RESPONDENT.\*

*Succession Certificate Act VII of 1889, s 4—Certificate not necessary in so far as the decree is made enforceable against mortgaged property, but necessary so far as the decree imposes personal liability.*

A decree for the enforcement of a mortgagee's rights as against the mortgaged property is not a decree for a 'debt' within the meaning of section 4 of Act VII of 1889; but it would be otherwise with reference to a personal decree for the debt, and a certificate will be a condition precedent to such a personal decree.

*Fateh Chand v. Muhammad Bakhsh*, (I.L.R., 16 All., 259), not followed.

SUIT by the plaintiffs as the heirs of one Akilandammal to recover the amount due on a mortgage bond executed by the first defendant in favour of Akilandammal. The plaintiffs had applied for a certificate under Act VII of 1889 to collect the debts due to Akilandammal which was dismissed on the opposition of the first defendant. The first defendant pleaded *inter alia* that the suit was not sustainable without a certificate under section 4 of Act VII of 1889. The District Munsif held that under the circumstances the suit was maintainable without a certificate and passed a decree containing an order for sale, and a personal decree against the first defendant for any balance that may remain after the sale.

The District Judge, on appeal, held that a certificate was necessary. The material portion of his judgment was as follows:—

The respondent's vakil relies upon the ruling of the Calcutta High Court in *Baid Nath Das v. Shamanand Das* (1), in which it was held that, when a decree was made for sale of property for the

\* Second Appeal No. 501 of 1903, presented against the decree of L.G. Moore, Esq., District Judge of Trichinopoly, in Appeal Suit No. 6 of 1902, presented against the decree of M.R.Ry. S. Ramasami Ayyangar, District Munsif of Kulittalai, in Original Suit No. 186 of 1901.

(1) I.L.R., 22 Calc., 143 at p. 146.

PALANI-  
YANDI  
PILLAI  
v  
VEER-  
AMMAL.

amount due under a *mortgage* bond but personal relief was not granted, this was not a decree against the debtor for payment of his debt within the meaning of section 4 of the Succession Certificate Act VII of 1899. The same point was considered by a Full Bench of the Allahabad High Court in the case of *Fateh Chand v. Muhammad Bakhsh* (1) and it was decided that section 4 of Act VII of 1889 did apply to suits for sale on a mortgage under section 88 of the Transfer of Property Act. It was pointed out "that a mortgagee who brings his suit for sale is bringing his suit against his debtor, and the decree which he seeks in that suit is a decree for payment of his debt by sale of the mortgaged property" and "that a mortgagor needs as much protection as any other debtor when sued for a debt by a person claiming to be entitled to the effects of his deceased creditor." I think that, in the absence of a definite ruling by the Madras High Court on the point which would be binding upon me, I am bound to follow the Full Bench ruling of the Allahabad High Court.

The plaintiffs preferred this second appeal.

*T. Rungachariar* for appellants.

*V. Purushothama Ayyar* for the Hon'ble. Mr. P. S. Sivaswami Ayyar for respondent.

JUDGMENT.—If in the present case the suit had been merely for an order for sale of the mortgaged property we should, following *Baid Nath Das v. Shamanand Das* (2), *Mahomed Yusuf v. Abdur Rahim Bepari* (3) and *Nan Chand v. Yenawa* (4), hold that no succession certificate would be necessary as pointed out on behalf of the appellants in *Ammanna v. Gurumurthi* (5); the inclination of the learned Judges who decided that case was in favour of the view that a decree for foreclosure need not be conditional upon the production of a certificate. *Fateh Chand v. Muhammad Bakhsh* (1), which dissents from the above view, distinguishes the case in *Ammanna v. Gurumurthi* (5) on the ground that the relief prayed for in the latter was foreclosure. This distinction would seem to be open to doubt for reasons stated by Dr. Ghose at pages 87 and 88 of his work on the 'Law of Mortgage' (3rd edition). In our opinion the better conclusion is that, irrespective of the actual description of relief granted, a decree for the enforcement of

(1) I.L.R., 16 All., 259.

(2) I.L.R., 26 Calc., 839.

(3) I.L.R., 16 Mad., 64.

(4) I.L.R., 22 Calc., 143 at p. 146.

(5) I.L.R., 28 Bom., 630.

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 personal 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.

PALANI-  
YANDI  
PILLAI  
v.  
VEER-  
AMMAL.

### APPELLATE CIVIL.

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

MUTHUSAMI PILLAI (PLAINTIFF), APPELLANT,

v.

ABUNACHELLAM CHETTIAR AND ANOTHER (DEPENDANTS),  
RESPONDENTS.\*

1905  
July 26.

*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. Ambalavanth 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.

\* 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.