

contested Shanmugam's claim did all he could to effectuate the fraud, and failed, only because Shanmugam was, fortunately for him, able to frustrate the attempt to injure him. For these reasons we dismiss the second appeal with costs.

MUTHU-
BAMAN
CHETTY
v.
KRISHNA
PILLAI.

APPELLATE CIVIL.

Before Sir, S. Subrahmaniam Ayyar, Officiating Chief Justice,
and Mr. Justice Sankaran Nair.

VAMA DAVA DESIKAR (DEFENDANT), APPELLANT,
v.
MURUGESA MUDALI (PLAINTIFF), RESPONDENT.*

1905
July 11.

Rent Recovery Act (Madras) VIII of 1865.-Limitation for suits under s. 40.-Right of attachment when rent is payable in kind.-Validity of attachment for arrears due under patta altered subsequently.

Section 40 of the Madras Rent Recovery Act must be read with section 51. The word "month" in the former was intended to be equivalent to the 30 days in the latter and suits under section 40 are within time if presented within 30 days.

Attachment proceedings under the Act may be taken when rent is payable in kind.

Where a patta under which an attachment was made, is altered on appeal subsequently, the attachment cannot be upheld even to the extent of the rent in arrears under the altered patta.

Ramachandra v. Narayanasami, (I.L.R., 10 Mad., 229), not followed.

THE plaintiffs in these suits were tenants of the defendant. The defendant filed summary suits against the plaintiffs and obtained decrees directing the plaintiffs to accept varam pattas. On appeal by the plaintiffs it was held that the defendant was entitled only to money rent. Before the appeals were decided, the defendant, under the decrees directing varam pattas, instituted attachment proceedings under the Rent Recovery Act and notice of such attachment was served on the plaintiffs on 31st January 1903 according to the defendant and on 1st February 1903 according to the plaintiffs. The present suits were presented by the plaintiffs

*Second Appeals Nos. 2435 to 2441 of 1903, presented against the decrees of A. C. Tate, Esq., District Judge of Chingleput, in Appeal Suits Nos. 128 to 134 of 1903, presented against the decision of H. L. Braidwood, Esq., Sub-Collector of Chingleput, in Summary Suit Nos. 10 to 12, 14, 15, 18 and 20 of 1903 respectively,

VAMA DAVA
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MUDALI.

under section 40 of the Act on 2nd March 1903 to set aside the attachment, *i.e.*, on the 30th day, according to the defendant's contention, after the attachment. The substantial questions were, whether the suits were barred by limitation and whether the attachments were valid to any extent.

The Head Assistant Collector decided that the suits were not barred but upheld the attachments. On appeal the District Judge also held that the suits were not barred but reversed the decrees on the ground that no attachment proceedings lay in the case of rent in kind.

Defendant preferred these second appeals.

V. Krishnaswami Ayyar for appellant.

The Hon. Mr. *L. A. Govindaragava Ayyar* for *P. R. Sundara Ayyar* for respondent.

JUDGMENT.—The District Judge is in error in holding that the attachment proceedings cannot be taken where the rent is payable in kind. The appeals however fail on other ground. We agree with the District Judge in holding that an appeal by way of a summary suit presented against an attachment under section 40 of the Rent Recovery Act (Act VIII of 1855) is within time if presented within 30 days. No doubt in section 40 the word used is "month." But that section must be read with section 51 which lays down that summary suits under the Act must be presented within 30 days. We think that the reasonable construction is to hold that the term month in section 40 was intended to be an equivalent to the period of 30 days as provided for in respect of all summary suits in section 51. It was next urged for the appellant that the attachment should be upheld to the extent of the rent actually in arrear in accordance with the pattas now upheld. This contention cannot be accepted. Under the recent Full Bench ruling the appellant has to tender a patta according to the final decision before he can proceed to enforce the terms of the tenancy. Therefore the ruling in *Ramachandra v. Narayanasami*(1) (assuming it has not been overruled by the Full Bench ruling referred to) cannot be held to apply. We must accordingly dismiss these second appeals with costs.

(1) I.L.R., 10 Mad., 229.