

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Miller.

PERIAKARUPPA PILLAI (PLAINTIFF), APPELLANT,

v.

1907
September 3.

THE MANAGER OF THE LESSEES OF THE SIVAGANGA
ZAMINDARI (DEFENDANT), RESPONDENT.*

*Landlord and Tenant—Distraint for larger amount than what is due not void,
but will be good for amount actually due.*

An attachment under the Rent Recovery Act by the landlord for a larger amount than is actually due is not, when the patta claiming the larger amount is not altered by the Court, altogether invalid, but will hold good for the amount actually due.

It may be different in the case of actual sale because by a sale the property of the tenant passes away from the tenant altogether, while in the case of an excessive attachment the aggrieved tenant can apply to the Collector for redress.

Pichu Ayyangar v. Oliver, (I. L. R., 26 Mad., 260), distinguished.

Ramachandra v. Narayanasawmy, (I. L. R., 10 Mad., 229), followed.

SUMMARY suit under section 18 of the Rent Recovery Act to set aside a distraint for arrears.

The plaintiff was a tenant of the village of Tirubhuvanam in the Sivaganga zamindari and the defendant was the manager of the lessees.

A patta for the fasli was tendered but, owing to the absence of the plaintiff, it was not personally served on him. Demand was made for rent in accordance with the terms of the patta, and the rent not being paid, the defendant attached the plaintiff's properties under the Rent Recovery Act.

The plaintiff now sued to set aside the attachment on the ground that the rent claimed for plantain and other cultivation was excessive.

The Head Assistant Collector found that several items of rent claimed in the patta and for which the properties were attached were excessive and he passed an order as follows :—

* Second Appeal No. 472 of 1906, presented against the decree of J. Hewetson, Esq., District Judge of Madura, in appeal Suit No. 316 of 1905, presented against the decision of A. Thompson, Esq., Head Assistant Collector of Ramnad Division, in Summary Suit No. 221 of 1904.

“*Issue XIII*—is whether the demand was correct and proper? This depends on whether the patta was correct so far as it agrees with it and whether there are valid reasons so far as it does not agree and there is agreement except as regards interest which may rightly be charged. Modification required in the patta have already been indicated and the demand must be brought into accordance therewith. The distraint will hold good for the amount so ascertained.”

On appeal the District Judge modified some findings and directed that the attachment was to hold good for the amount determined according to his modified findings.

Plaintiff appealed to the High Court.

T. Rangachariar for appellant.

The Hon. The Advocate-General and the Hon. Mr. P. S. *Siraswami Ayyar* for respondent.

JUDGMENT.—The only substantial ground of appeal argued before us is that as the Courts found that the attachment was for a larger sum than the sum actually due as rent it ought to be set aside as invalid. In support of this contention the appellant relies on the decision reported in *Pichuvayengar v. Oliver*(1). But in that case it was a sale that was set aside on the ground that if the proper amount only had been demanded the tenant might have been able to pay it and thus obviate the sale altogether, though unable to pay the larger sum demanded. In the present case there was no sale, but only an attachment. The effect of a sale and of an attachment are very different. By the latter the tenant's property is merely taken as security for the sum due by him and if aggrieved by an excessive attachment he can apply to the Collector for redress. In the case of a sale the property of the tenant passes from him altogether. For these reasons we think that the case in *Pichuvayengar v. Oliver*(1) can be distinguished from the present case. The present case is, moreover, in fact concluded by the express authority of the case of *Ramchandra v. Narayanasami*(2) where it was held that “there is no reason why the attachment should not hold good for the amount of such kists as may be recoverable under the Act.” A similar view was taken in the case in *Bhupatirazu v. Ramasami*(3). These decisions

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(1) I. L. R., 26 Mad., 260.

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

(3) I. L. R., 23 Mad., 268.

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have not been overruled (so far as the present matter is concerned) by the cases reported in *Shanmuga Mudaly v. Palnati Kuppu Chetty*(1) or *Nallayappa Pillian v. Ambalavana Pandara Sqr-nadhi*(2) relied on by the appellant's vakil. The case reported in *Vama Dava Desikar v. Murugesar Mudali*(3) which is also relied on by him is not on all fours with the present case, for in that case the patta had been altered. In the present case the patta has not been altered by the Courts. It has only been found that the calculation of the rent due under the patta was wrong and the attachment has been held good only to the extent of the rent found to be due on a correct calculation. We therefore dismiss the second appeal with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

SAMBASIVA MUDALIAR (RESPONDENT-APPELLANT),

APPELLANT,

v.

PANCHANADA PILLAI (PETITIONER-RESPONDENT),

RESPONDENT.*

Limitation Act—Act XV of 1877, sch. II, arts. 178, 179—Madras Revenue Recovery Act—Act VIII of 1865, ss. 36, 38, 40—Applications under s. 40 of the Revenue Recovery Act to Civil Courts are for purposes of Limitation governed by art. 178 of sch. II of the Limitation Act.

Where the purchaser of immovable property sold under section 36 of the Revenue Recovery Act, obtains a certificate as provided by section 38 of the Act and applies to a Civil Court for delivery of possession under section 40 of the Act, such application, for purposes of limitation is governed by article 178 and not 179, of the Limitation Act, and will be time barred if not presented within three years from the time when the right to apply accrues.

The effect of section 40 of the Revenue Recovery Act is to place the purchaser in the position of a decree-holder for the purpose of putting the machinery of the Court in motion to give effect to the certificate of the

(1) I. L. R., 25 Mad., 613.

(2) I. L. R., 27 Mad., 465.

(3) I. L. R., 29 Mad., 75.

* Civil Miscellaneous Second Appeal No. 85 of 1906, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 332 of 1906, presented against the order of M. H. Ry. C. V. Visvanathasastri, District Munsif of Kumbakonam, in Original Suit No. 2780 of 1905.