

## APPELLATE CIVIL.

Before Mr. Justice Wallis, Mr. Justice Miller and Mr. Justice  
Sankaran-Nair.

SUBRAMANIA CHETTY (FOURTH DEFENDANT), APPELLANT,

v.

1909.  
August 18.

MAHALINGASAMI SIVAN AND OTHERS (PLAINTIFFS AND  
DEFENDANTS NOS. 1 TO 3), RESPONDENTS.\*

*Revenue Recovery Act (Madras) II of 1864, ss. 3, 35—'Defaulter' who is—Defaulter  
means registered pattadar—Contract Act, s. 69.*

Where one person is the real owner of a share in land and another is the registered proprietor of the whole, the latter and not the former is the 'defaulter' within the meaning of the Revenue Recovery Act; and where the latter as mortgagee of a share of the land not owned by the former has paid the arrears of revenue due on the whole land and the former has paid the revenue of his share, he cannot, being himself the defaulter, recover the amount from the former under section 35 of the Revenue Recovery Act.

The latter cannot recover under section 69 of the Contract Act as the former is not bound by law to pay the money which the latter has paid.

APPEAL under section 15 of the Letters Patent from the judgment of Munro, J., dated the 29th October 1908, differing from Pinhey, J., and dismissing Civil Revision Petition No. 50 of 1908.

The facts are sufficiently stated in the judgment of Mr. Justice Pinhey, which is as follows:—

PINHEY, J.—In fashi 1316 the plaintiff who is the registered pattadar, but no longer the real owner of the land in suit, paid in the capacity of mortgagee the balance of land revenue due on the land to release it from attachment.

He sued defendants Nos. 1 to 4, the real owners for the amount so paid under section 35 of Act II of 1864. Defendants Nos. 1 to 3 were *ex parte*. The Subordinate Judge gave a decree as prayed.

On behalf of defendant No. 4 it was proved that he had paid the remaining one-quarter of the revenue due and that he separately enjoyed one-quarter of the land. The respective payments were made on the undermentioned dates: payments by the fourth defendant on the 2nd February, the 11th March and the 19th April 1907; and payment by the plaintiff on the 4th May 1907.

\* Letters Patent Appeal No. 96 of 1908.

WALLIS,  
MILLER  
AND  
SANKARAN-  
NAIR, JJ.  
—  
SUBRAMANIA  
CHIETTY  
v.  
MAHALINGA-  
SAMI  
SIVAN.

It was proved that before the first of these payments, that is, on the 31st December 1906, the fourth defendant had obtained against the plaintiff a decree for separate registry of his one-quarter share of the land. The following facts are also admitted; that defendants Nos. 1 to 4 were members of an undivided family when the land was sold by the plaintiff, the first defendant and also when the first defendant executed a simple mortgage in respect of it back to the plaintiff, that after the execution of this mortgage partition was effected and defendant No. 4 got his separate one-quarter share; that it has recently been held that is, in March 1908 (P) that the mortgage does not bind the fourth defendant.

Under section 35 of Act II of 1864 any sum paid by a *bonâ fide* mortgagee is a *charge on the land* and further constitutes a debt from the defaulter. The question is whether the plaintiff can recover anything from the fourth defendant. I am clearly of opinion that the plaintiff cannot recover. The plaintiff is himself the 'defaulter' within the meaning of Act II of 1864.

It was owing to his opposition and not through any default of the fourth defendant that transfer of registry was not effected. He contested the suit brought by the fourth defendant with the view of securing such transfer and it was while he was acting in contempt of the decree passed in that suit that he made the payment for which he now seeks to make the fourth defendant liable.

On the facts set forth it would in my opinion be clearly inequitable to grant the plaintiff a decree against the fourth defendant. I think it would also be illegal.

Assuming that the plaintiff be regarded as mortgagee and not defaulter, it is only if the fourth defendant is held to be a 'defaulter' within the meaning of Act II of 1864 that the plaintiff can recover the money as a debt.

The authority for the view that the real owner is also a 'defaulter' within the meaning of the Revenue Recovery Act is *Srinivasa Thathachar v. Rama Ayyan*(1).

That decision was one by Muthusami Aiyar and Best, JJ. The question was not then discussed but an earlier decision was accepted as authority. The earlier decision was *Seshagiri v. Pichu*(2) decided by Kernan and Muthusami Aiyar, JJ. A refer-

(1) (1894) I.L.R., 17 Mad., 247.

(2) (1888) I.L.R., 11 Mad., 452.

once to this earlier decision shows that though the two Judges agreed as to the final decision to be arrived at in that case they held in fact diametrically opposite views on the question now in issue. Kernan, J., explicitly stated that the 'defaulter' was the tenant to Government and that "fourth defendant (in that case) the real owner, is not a defaulter."

It was Muthusami Aiyar, J., alone who held that the real owner was also 'a defaulter' within the meaning of the Act.

There is in my opinion nothing in Act II of 1864 to justify this view, and a different and I think, more correct pronouncement was recently made by Subramania Ayyar, J., in *Boja Sellappa Reddy v. Fridhachala Reddy*(1). At page 38 the learned Judge makes the following observation: "Where land is assessed to revenue the owner thereof cannot by virtue of his ownership alone be held as compellable to pay the revenue. The right of the Government to proceed for the recovery of revenue is regulated by the Revenue Recovery Act. The property of the landholder, that is, the registered holder as well as the land on which the arrear is due may be seized, and sold, and such holder may also be arrested and confined. But as against an owner of land who is not the registered holder, the same remedies are not available and neither his property, other than the land in regard to which the arrear accrued, nor his person can be proceeded against. No doubt if the land liable for the revenue is sold in due course of legal process the unregistered owner's right to the land would be lost. But that shows nothing more than that it would be to his interest to pay up the arrears of revenue consequently, such arrears cannot be said to be what the owner is bound by law to pay within the meaning of section 69 of the Indian Contract Act."

From this more recent exposition of the law it is clear that the real owner cannot be a 'defaulter' for he is not bound by law to pay at all and he cannot be made personally liable under Act II of 1864.

Now section 5 of Act II of 1864 expressly makes the defaulter personally liable to Government and several subsequent sections declare how the liability may be enforced. I can scarcely regard that interpretation of a statute as satisfactory which postulates the existence of a second class of 'defaulters' to whom

WALLIS,  
MILLER  
AND  
SANKARAN-  
NAIR, JJ.  
—  
SUBRAMANIA  
CHETTY  
v.  
MAMALINGA-  
SAMI  
SIVAN.

WALLIS,  
MILLER  
AND  
SANKARAN-  
NAIB, JJ.  
—  
SUBRAMANIA  
GHETTY  
v.  
MAHALINGA-  
SAMI  
SIVAN.

several of the most important sections of the Act cannot be applied.

On the grounds of policy also it is clear that the framers of Act II of 1864 did not intend that the real owner should be considered a 'defaulter.'

The maintenance of correct registers by the Collector is essential for the proper collection of land revenue with a minimum of trouble to all concerned. To ensure this result it is necessary that a transfer of real ownership should be promptly followed by a transfer of patta. The view that the word 'defaulter' refers to the registered landholder and to him alone is calculated to encourage such prompt transfer of registry. The view adopted in *Seshagiri v. Pichu*(1) has the opposite effect. If the registered owner and the real owner are equally defaulters and equally liable, a transfer of registry becomes almost superfluous and a waste of time.

The present case affords an illustration of the evils resulting from the decision in *Seshagiri v. Pichu*(1). If the plaintiff is regarded as the defaulter and the fourth defendant as merely one having an interest in the land, the fourth defendant is entitled to recover from the plaintiff the whole sum he paid to save the land from attachment. If the plaintiff had known this he would have insisted on a prompt transfer of registry instead of opposing the fourth defendant's application for transfer and forcing him to file a suit to obtain it. In my view the plaintiff is the only defaulter and he cannot excuse himself from liability on the plea that he is also a mortgagee.

In my opinion the decree of the Subordinate Judge should be modified by exonerating the fourth defendant and this petition should be allowed with costs throughout.

Under section 575, Civil Procedure Code, the revision petition is dismissed with costs.

Munro, J., having delivered a judgment, differing from Pinhey, J., the revision petition was dismissed.

Appellant appealed under clause 15 of Letters Patent.

*T. V. Seshagiri Ayyar* for appellant.

The respondents were not represented.

JUDGMENT.—We agree with Mr. Justice Pinhey that the fourth defendant in this case is not a defaulter within the meaning of the

(1) (1888) I.L.R., 11 Mad., 452.

Revenue Recovery Act, 1864. The word is not defined in that Act, but reading it along with Regulation XXVI of 1802 we think the term 'defaulter' applies only to the registered pattadar. Regulation XXVI of 1802, section 3, provides: "Transfers of land made by individual persons, without being so registered in the registers of the Collectors, shall not be valid in the Court of Adalat; and such transfers of land being unregistered, shall not exempt the persons in whose names the entire estates are registered from paying the revenue due to Government from such lands." The effect of this section is that unregistered transfers are invalid against Government, although valid as between private parties (*Manyamma v. Timmapaiya*(1)), and so the registered pattadar remains the landholder within the meaning of the Revenue Recovery Act and the person liable to pay the revenue under section 3, and becomes a defaulter within the meaning of the Act if he does not so pay. The suit therefore fails in so far as it is based on section 35 of the Act. The respondent then seeks to support the judgment on the ground that the case is covered by section 69, Indian Contract Act. He contends that although he may not be the mortgagee of the share the appellant obtained on partition, he is the mortgagee of the shares of the other defendants. In that case the appellant is not bound by law to pay the revenue which the plaintiff has paid and this contention fails.

The appeal is allowed and the order of this Court and the decree of the Subordinate Judge's Court are reversed so far as the fourth defendant-appellant is concerned, and the suit is dismissed as against him with costs throughout.

WALLIS,  
MILLER  
AND  
SANKARAN-  
NAIR, JJ.  
—  
SUBRAMANIA  
CHETTY  
2.  
MAHALINGA-  
SAMI  
SIVAN.

---

(1) (1866) 3 M.H.C.R., 134.

---