

## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Moore.*

NARAYANA RAJA (PLAINTIFF), APPELLANT,

v.

RAMACHANDRA RAJA AND TWO OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1902.  
October 3, 7.

*Revenue Recovery Act (Madras)—II of 1864, ss. 5, 25, 44—Sale of property of a defaulter for arrears of revenue—Regulation XXVI of 1802, s. 3—Register of transfer—Act I of 1890, s. 6 (3) (4)—“Entire estate” of defaulter—Lands held under different pattahs—Sale of land comprised in one pattah—No arrears of revenue due—Subsequent sale of same land for arrears of revenue due on other land held under different pattah—Validity.*

First defendant held lands under two separate pattahs, in two different villages. The land situated in one of the villages was, in 1897, sold at a court sale in execution of a decree, and was purchased by plaintiff. At the date of this sale no arrears of revenue were due in respect of any of first defendant's lands situate in either village. At a date subsequent to plaintiff's purchase at the court sale, the same land was again sold to second defendant, for arrears of revenue. These arrears were not due in respect of the land which was sold, but had accrued due on the other land belonging to first defendant, which was situated in the other village and comprised in the other pattah. Plaintiff had not applied to the Collector of the District for a transfer of the pattah of the lands which he had purchased at the court sale. Plaintiff now sued for a declaration that the sale to second defendant for arrears of revenue was invalid:

*Held*, that plaintiff was entitled to the declaration.

*Per Moore, J.*—Inasmuch as plaintiff had failed to obtain a transfer of pattah into his own name after his purchase, the transfer by court sale from first defendant to plaintiff would not, under section 3 of Regulation XXVI of 1802, have relieved first defendant or the land from liability for land revenue due by first defendant in respect of those particular lands. But these lands were not liable for revenue due by first defendant in respect of land situated in the other village. Having regard to section 6 (3) (4) of Act I of 1890, the “movable and immovable property of a defaulter” referred to in section 5 of Act II of 1865, must be taken to mean the interest of the defaulter in the land. Inasmuch as the interest of the first defendant in the lands in question had already been sold to plaintiff, practically nothing remained to be sold to the second defendant at the subsequent revenue sale.

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\* Second Appeal No. 819 of 1900, presented against the decree of J. Howatson, District Judge of Tinnevely, in Appeal Suit No. 242 of 1899, presented against the decree of S. Ramasamy Ayyangar, District Munsif of Srivilliputtur, in Original Suit No. 686 of 1898.

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*Per DAVIES, J.*—The land which plaintiff had bought at the court sale was not liable to be sold under the Revenue Recovery Act, because, at the time of sale, there were no arrears of revenue due upon it, and it then ceased to form part of the defaulter's property. The land which, under sections 3, 4, 5 and 25 of the Revenue Recovery Act, is liable to be sold for arrears of revenue, must either be the land upon which the revenue is due, or land which is the property of the defaulter. The land in question was of neither description. The term "entire estates" as used in section 3 of Regulation XXVI of 1802, when used with reference to a single person, must be read as meaning the "entire estate" and, before section 3 of the Regulation can apply, the "estate" must be such as had "revenue due to Government" upon it. A pattah represents an entire estate, and land held under another pattah forms another estate.

STIR for a declaration that a sale of land for arrears of revenue was invalid. The plaint set forth that the land in question, which had originally belonged to first defendant and others, was situated in the village of Alagapuri; that plaintiff had purchased it at a court sale held in execution of the decree in Original Suit No. 140 of 1896; that he had obtained delivery of the land and had been in possession ever since. It also alleged that there were no arrears of revenue due for fasli 1306 by first defendant in respect of pattah No. 191, which comprised the land in question, but that the land had, notwithstanding, been sold by Government for the arrears of revenue due in respect of other lands in first defendant's holding under pattah No. 292 in the village of Sammandhapuram. This sale was to second defendant. Defendants Nos. 1 and 2 remained *ex parte*, third defendant alone defending the suit. By his written statement this defendant pleaded that the sale of the land by Government for the recovery of the arrears of revenue due from the registered holder was legal under the provisions of the Revenue Recovery Act (II of 1864), even though the arrears had accrued in respect of other lands in his holding. It was also pleaded that plaintiff had had an opportunity to pay the arrears, as one having an interest in the land, and that he had no cause of action against the Secretary of State. Before the District Munsif it was not denied that first defendant was the holder of the two separate pattahs referred to in the plaint, and it was conceded that no arrears were due under pattah No. 191, which comprised the land in question, situated in Alagapuri village, and that the arrears to recover which the land had been sold were due in respect of pattah No. 292 situated in Sammandhapuram village. The District Munsif held that the arrears of revenue, though relating to lands in a different village held under a different pattah, was a first

charge on the land in question, and that, in consequence, the sale to second defendant was good as against plaintiff. He dismissed the suit, and the District Judge, on appeal, upheld that decision.

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Plaintiff preferred this second appeal.

*R. Subrahmania Ayyar* for appellant.

*The Acting Government Pleader* for third respondent.

MOORE, J.—No evidence has been placed on record in this case, but it is admitted that the first defendant had lands in two separate villages, Alagapuri and Sanmandhapuram for which he held separate pattahs. It is further admitted that no arrears of revenue were due on the lands in Alagapuri at the date of either the court sale or the sale on account of arrears of revenue of those lands. The acting Government Pleader further states that, although the information at his disposal is not such as to enable him to make any positive statement as to the facts, he is prepared to admit, for the purpose of argument, that at the date of the court sale no arrears on account of land revenue were due by the first defendant in any village.

The lands entered in the pattah held by the first defendant in Alagapuri village were, on the 25th June 1897, sold in execution of the decree in Original Suit No. 140 of 1896 on the file of the District Munsif of Srivilliputtur and purchased by the plaintiff. Subsequently, in November or December 1897, the same land was sold on account of arrears of revenue due by the first defendant and purchased by the second defendant. The plaintiff sues for a declaration that this sale is invalid. Both the lower Courts have decided against him and he has consequently filed this second appeal here. It is not alleged that the plaintiff, on the strength of the sale certificate granted to him, applied to the Collector for transfer of the pattah for the lands in Alagapuri to his name. Section 3, Regulation XXVI of 1802, lays down that no transfer of land which is not registered shall exempt the person in whose name the entire estates are registered from paying the revenue due to Government from such land. From this provision of law it is clear that, as pointed out by Collett, J., in *Mangamma v. Timmapaiya*(1) (a decision under this Regulation), as against Government and for the purpose of exemption from liability to revenue, a transfer without change of registry is not valid. It

(1) 3 M.H.C.R., 131, at p. 136.

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follows therefore that the transfer by court sale of the lands in Alagapuri from the first defendant to the plaintiff did not relieve the first defendant or the lands from liability on account of land revenue due by him for those lands inasmuch as there was no change of registry regarding them in the Collector's office.

The further question, however, that has to be considered is whether the lands in Alagapuri village which had been bought at a court sale by the plaintiff remained liable on account of revenue arrears due by the first defendant not on them but on other lands in a different village. Section 5, Act II of 1864 (Madras), no doubt provides that all the movable and immovable property of a defaulter, wherever it is to be found, can be proceeded against, in order to recover arrears of land revenue due by him; but the question to be decided is whether, after the purchase of the Alagapuri lands in court sale by the plaintiff, they can be held to have remained the property of the defaulter. At the hearing of this second appeal I was inclined to hold that, as the pattah of the Alagapuri lands had not been transferred, they still remained the property of the pattahdar in so far, at all events, as liability for Government revenue was concerned, but having since then considered the provisions of section 6, sub-sections (3) and (4) of Act I of 1890, I am of opinion that this view is incorrect, and that all that was sold at the revenue sale at which the second defendant was the purchaser was the interest of the defaulter in the land and that interest was then, in consequence of the prior sale at Court auction and purchase by the first defendant, practically nothing.

The decrees of both the lower Courts should be reversed and the plaintiff given a decree as prayed for with costs throughout.

DAVIES, J.—My view is that the land the plaintiff had bought in the court sale was not liable to be sold under the Revenue Recovery Act, because at the time of sale (1) there were no arrears of revenue due upon it, and (2) it then ceased to form part of the defaulter's property. Reading sections 3, 4, 5 and 25 of the Act together it seems to me clear that the land which is liable to be sold for arrears of revenue must either be the land upon which the revenue is due or that it must be land which is the property of the defaulter. It is admitted that the land sold in this case did not comply with either of these conditions. Section 3 of Regulation XXVI of 1802, which runs as follows: "Transfers of land made by individual persons without being so registered in the registers

of the Collectors shall not be valid in the Courts of *Adulat*; 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," has been relied on, in this Court, in support of the judgments of the Courts below. The construction now wished to be placed upon that section is that the words "entire estates" mean all the estates of the individual, but they will not, in my opinion, bear that interpretation. The plural "estates" has reference to the plural "persons" and when used with reference to one person must be read in the singular, "estate". Now the word "estate" means the "land" (the words are also used as synonymous in section 25 of the Act), and the land must be such land as had "revenue due to Government" upon it, before section 3 of the Regulation can be made applicable to it. The land bought by the plaintiff was held by the first defendant, the defaulter, under a separate pattah in another village and had no connexion whatever with the revenue which was due to Government. A pattah represents a whole or entire estate, as held by this Court in *Secretary of State for India v. Narayanan*(1). Land held under another pattah must therefore be deemed to form another estate. In no case has it been held that a holding means all holdings from Government under different pattahs in different places. So that what the plaintiff bought was a separate estate distinct from that on which revenue was due; and as no revenue was due on that estate, the plaintiff's purchase was not subject to the payment of revenue due on other land, on (as it would appear) the fiction that what the plaintiff purchased was still the defaulter's property, when in fact it was not. I therefore agree with my learned colleague in reversing the decrees of both the lower Courts and decreeing the plaintiff's claim with costs throughout.

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(1) I.L.E., 8 Mad., 131.