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owner so as to subject him to the liability of having the land included in the lease separately registered and separately assessed. I may also add that a decision to the same effect has already been given by this Court by Mr. Justice MILLER and Mr. Justice MUNRO in an unreported case—*Sanyasi Naidu* v. *Maharaja of Bobbili Samastanam*(1).

WALLIS, OFFG. C.J., AND KUMARASWAMI SASTRIYAR, J.

In the result the appeal fails and is dismissed with costs. No order as to costs of the Secretary of State.

K.R.

## APPELLATE CIVIL.

*Before Mr. Justice Sankaran Nair and Mr. Justice Spencer.*

1914, August 3 and 7.

P. ALWAR CHETTY (PLAINTIFF), APPELLANT,

*v*

P. CHIDAMBARA MUDALI AND SIX OTHERS (DEFENDANTS), RESPONDENTS.*

*Administrator-General's Act (II of 1874), ss. 20, 52 and 54—Grant of Letters of Administration to the Administrator-General—Vesting of the estate in him—Sale by him of lands for his commission without sanction of Court, validity of.*

A grant of Letters of Administration under section 20 of Administrator-General's Act to the Administrator-General in respect of the estate of a deceased Hindu vests the estate in the Administrator-General and enables him to dispose of immoveable property without the consent of the Court.

The administration cannot be treated as closed until every act necessary for its completion has been done. Hence, a sale by the Administrator-General of some immoveable property of the deceased, for the purpose of realising the commission due to him under the Act, is a valid sale in the course of administration and it takes precedence over a prior sale effected by the heir of the deceased.

APPEAL from the judgment and decree of WHITE, C.J., in Civil Suit No. 144 of 1915.

The following facts are taken from the judgment of SPENCER, J.:—

"Upon the death of one Rajamanicka Mudali, the father "of the first defendant, the Administrator-General was directed "by an order of Mr. Justice BODDAM upon a petition presented to "him on the Original Side, to take out Letters of Administration

(1) Appeal No. 141 of 1905.

* Original Side Appeal No. 61 of 1906.

"to the estate of the deceased. Accordingly, Letters of Administration, which are Exhibit Y, were granted to the Administrator-General on the 28th March 1899. The first defendant is said to have attained his majority on November 19, 1904. On the same day he mortgaged a house belonging to the estate of his deceased father in favour of the third defendant; and on the 26th April 1905 he sold the same house to the plaintiff for Rs. 2,500. Subsequently, in July 1905 the Administrator-General at the first defendant's request sold this house to the second defendant for Rs. 2,300 in order to recover the commission due to him for the administration of the estate, and a sale-deed was executed on the first August 1905 to that defendant."

The plaintiff, as purchaser of the house from the first defendant brought this suit to recover the same or in the alternative to recover the purchase money. He got a decree for Rs. 2,500 as against the first defendant; but his suit was dismissed as against the defendants Nos. 2 and 3 and the Administrator-General who was the fourth defendant in the case. The plaintiff preferred this appeal against all the four defendants.

*C. K. Mahadeva Ayyar* for the appellant.

*C. Venkatasubbaramayya* for the respondents Nos. 6 and 7.

*V. Viswanadha Sastriyar* for the third respondent.

*W. Barton* for the fourth respondent.

SPENCER, J.—This is an appeal from a judgment of the learned CHIEF JUSTICE sitting as a single Judge on the Original Side of the High Court. SPENCER, J.

Upon the death of one Rajamanicka Mudali, the father of the first defendant, the Administrator-General was directed by an order of Mr. Justice BODDAM upon a petition presented to him on the Original Side, to take out Letters of Administration to the estate of the deceased. Accordingly, Letters of Administration, which are Exhibit Y, were granted to the Administrator-General on the 28th March 1899. The first defendant is said to have attained his majority on November 19, 1904. On the same day he mortgaged a house belonging to the estate of his deceased father in favour of the third defendant; and on the 26th April 1905 he sold the same house to the plaintiff for Rs. 2,500. Subsequently, in July 1905 the Administrator-General at the first defendant's request sold this house to the

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second defendant for Rs. 2,300 in order to recover the commission due to him for the administration of the estate, and a sale-deed was executed on the 1st August 1905 to that defendant. The plaintiff brought this suit for a declaration that the sale by the Administrator-General to the second defendant was invalid; but this contention was found against him and the suit was dismissed. He now appeals.

The appellant's pleader, in his arguments, has raised the following questions: (1) Was the sale by the Administrator-General after the first defendant attained majority and without the orders of the Court a good and valid sale? (2) Did the property vest in the Administrator-General by virtue of the Letters of Administration? and (3) Did the property vest in any other members of the family?

The last point may be briefly disposed of by pointing out that if the property passed by survivorship to any person other than first defendant, the plaintiff who claims to derive title from the first defendant will be out of Court.

The answer to the first question must depend on the answer to be given to another question which is, what powers does the Administrator-General possess when dealing with the estates of Hindus administered by him under Act II of 1874? Section 17 of this Act empowers a Court to pass such an order as Exhibit X purports to be, directing the Administrator-General to apply for Letters of Administration of the effects of any person including Hindus who die leaving assets within the local limits of the ordinary original civil jurisdiction of the High Court in the Presidency towns. Section 18 provides that, in cases where danger is apprehended of such property being wasted before the legal successor can be ascertained, the Court may authorise the Administrator-General to collect and take possession of such property and hold it according to the orders and directions of the Court, and thereupon the Administrator-General shall be entitled to collect and take possession of such property and, if necessary, to maintain a suit for the recovery thereof. This section is not a section under which Letters of Administration are granted, because it expressly refers to the contingency of Letters being afterwards granted. The section under which Letters of Administration are granted is section 20, and this section contains no words to the effect that the Administrator-

General must act "under the orders and directions of the Court." In the absence of any words to the contrary, it may be presumed that after receiving the Letters of Administration he would exercise his ordinary powers as Administrator-General. In *In the Goods of Hari Das Dutt*(1), it was held by HARINGTON, J., that an Administrator-General holding an estate under section 18 of the Administrator-General's Act pending the grant of Letters of Administration would not be in any better position than a private administrator. In *Lalchand Ramdayal* v. *Gumtibai*(2), there is an observation at page 153, that an Administrator-General who has obtained a fiat for Letters of Administration would have no higher authority over, or estate in, the deceased's property than any ordinary administrator would have over, or in the property of a deceased Hindu whatever that authority or estate might be. The Act itself does not define the powers of the Administrator-General. But under the Charter of 1800 this High Court was invested with power to grant Letters of Administration in such manner and form as was at that time in use, or might hereafter be in use, in the Diocese of London and to do all other things whatsoever needful and necessary on that behalf. (See Morley's Digest, volume II, page 619).

This leads us to the second question whether the estate vested in the Administrator-General by virtue of the grant of the Letters of Administration. The learned CHIEF JUSTICE has held that it did, notwithstanding the fact that no vesting section is to be found in the Administrator-General's Act. Section 179 of the Indian Succession Act and section 4 of the Probate and Administration Act expressly provide that the executor or administrator of a deceased person is his legal representative for all purposes and all the property of the deceased person vests in him as such. Before these sections can be applied, it must be considered whether the Administrator-General's Act is a self-contained Act, or whether it must be read subject to the provisions of either of these two Acts so far as they can be applied to the circumstances of the particular case. By section 2 of the Hindu Wills Act XXI of 1870, section 179 of the Indian Succession Act was applied to the wills of Hindus in the towns

(1) (1906) 11 C.W.N., 193. (2) (1871) 8 Bom. H.C.R., 140 (O.C.J.).

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of Bombay and Madras and was again repealed by section 154 of the Probate and Administration Act. The result of this is that, so far as the wills of Hindus are concerned, section 179 which vests the estate of a deceased Hindu in his administrator does not apply, although certain other sections of the Indian Succession Act do apply to wills of Hindus; but the present case, being a case of intestacy, will not be governed by the Hindu Wills Act (XXI of 1870).

Again if the Administrator-General's Act has to be read subject to the provisions of the Probate and Administration Act, section 4 which vests the property in the administrator will apply; and also section 90, which restricts the power of an administrator to dispose of property by way of sale or mortgage without the previous permission of the Court, must be applied. In the Succession Act there is no restriction such as is contained in section 90 of the Probate and Administration Act, and therefore if the cases of Hindus dying intestate ought to be governed by the Succession Act, there can be no doubt that the estate of the deceased is vested in the administrator and that he has full powers to dispose of it in such manner as may appear to him proper. With reference to the Charter which gives powers similar to those in use in the Diocese of London, it may be observed that the office of Administrator-General in this country corresponds to that of the Public Trustee in England, and the powers of a Public Trustee when dealing with small estates of a capital value not exceeding £1,000, include such powers as arise from the fact that after he declares in writing signed and sealed by him, that he takes over the administration of the estate, the estate excepting copyhold and stock vests in him as if it were transferred to him by a vesting order under the Trustee Act. The learned CHIEF JUSTICE has observed in this connection that according to the practice of the English Court of Probate the Administrator would have power to deal with everything that is covered by the grant without obtaining the special sanction of the Court. Although the Administrator-General's Act does not, in express words, state that all the properties over which the Administrator-General has obtained Letters of Administration vest in him, section 33 contemplates the fact that estates may be vested in the Administrator-General by virtue of Letters of Administration. In the absence of any words of limitation in this Act, I feel no

doubt that the learned CHIEF JUSTICE was right in holding that the estate of Rajamanicka Mudali vested in the Administrator-General. It has further been argued that in any case the Administrator-General had no authority to dispose of immoveables. Although in *Kadumbinee Dossee* v. *Koylash Kaminee Dossee*(1) it was considered that Letters of Administration applied only to moveables, section 23 (*a*) has been introduced subsequently by Act IX of 1881 and makes it clear that there is no distinction to be made in India between real property and personalty, by declaring that Letters of Administration shall have effect over all the property and estates, moveable or immoveable, of the deceased throughout the Presidency.

A further difficulty has arisen in this case owing to the provisions of section 90 of the Probate and Administration Act having been embodied in the Letters of Administration (Exhibit Y) granted to the Administrator-General and printed on the reverse of the same. It appears from enquiries that we have caused to be made that it is the practice on the Original Side to print section 90 of the Probate and Administration Act on the last page of all Letters of Administration whenever they are granted under that Act. Whether this section, which restricts the power of the administrator to mortgage, or transfer by sale, the property of which he takes control, was added to the grant in this particular case by design or accident cannot now be ascertained. But in either case section 149 of the Probate and Administration Act destroys the effect of this addition. This section declares that "Nothing contained in this Act shall affect the rights, duties, and privileges, of the Administrator-General of Bengal, Madras or Bombay." Section 52 of the Administrator-General's Act permits Administrator-Generals of Bombay and Madras to retain a commission of 5 per cent. upon the amount or value of the assets which they collect and distribute in the due course of administration.

The administration cannot be treated as closed until every act necessary for its completion has been done, and such was not the case here as may be seen from Exhibit T, dated 18th August 1905. It therefore, appears that the Administrator-General had not, in the present case, been divested of his powers at the time

(1) (1877) I.L.R., 2 Calc., 431.

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when the sale to the second defendant was made, and therefore that he was acting within the scope of his authority in conducting the sale. In this view of the case, the plaintiff's appeal fails and must be dismissed.

The second and fourth respondents' costs (1 set) will be borne by the estate. Appellant will bear his own costs.

The third defendant, who took a mortgage of the suit house from first defendant, supports the plaintiff in this appeal and pleads that even if the legal estate was not divested by the first sale, yet the beneficial interest had already passed to him to the knowledge of the Administrator-General and that he is entitled to retain it in spite of the second sale.

In regard to this contention I am of opinion that the third defendant's case must stand or fall with the decision of the question of the property being vested in the Administrator-General at the time when first defendant entered into transactions with plaintiff and the third defendant.

The third defendant will bear his own costs of this appeal.

SANKARAN NAIR, J.

SANKARAN NAIR, J.—I agree.

*Messrs. Short Bewes & Co.* for the fourth respondent.

N.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Seshagiri Ayyar.*

1914. August 19, 20 and 25.

C. RAGHUNATHA ROW SAHIB (FIRST DEFENDANT), APPELLANT,

*v.*

VELLAMOONJI GOUNDAN (PLAINTIFF), RESPONDENT.*

(*Madras*) *Estates Land Act* (*I of* 1908), *sec.* 53 (2)—*Distraint for a higher rent than legally due, good for the amount legally due.*

Section 53 (2) of the (Madras) Estates Land Act (I of 1908) enables a Collector, in a suit to set aside a distraint, to uphold the distraint to the extent of the amount legally due to the landlord by the tenant under the patta tendered by the landlord. The application of the clause is not confined to the enforcibility of the proper amount of rent, in suits for rent, only.

SECOND APPEAL against the decree of L. G. MOORE, the District Judge of North Arcot, in Appeal No. 200 of 1912,

* Second Appeal No. 2600 of 1912.