

MUTHU
RAMA-
KRISHNA
NAICKEN

MARIMUTHU
GOUNDAN.

AYLING, J.

suit, and pass a decree in accordance with law. The costs hitherto incurred will abide the result.

AYLING, J.—I agree.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ayling.

S. CHIDAMBARAM PILLAI (PLAINTIFF), PETITIONER,

v.

MUTHAMMAL AND ANOTHER (DEFENDANTS NOS. 1 AND 3),
RESPONDENTS.*

1914.
March 17.

*Estates Land Act (Madras Act I of 1908), sec. 111, et seq.—Sale of holding under—
Suit for declaration of its invalidity—Cognisable in a Civil Court.*

A suit for a declaration that the sale of a holding under section 111, *et seq.*, of the Madras Estates Land Act was void in consequence of the landholder's failure to apply for sale within forty-five days as prescribed by section 115 of the Act, is maintainable in a Civil Court.

Gouse Mohideen Sahib v. Muthialu Chettiar (1914) M.W.N., 55, followed.

Dorasamy Pillai v. Muthusamy Maccpan (1904) I.L.R., 27 Mad., 94 and *Zemindar of Ettayapuram v. Sankarappa Reddiar* (1904) I.L.R., 27 Mad., 488, referred to.

Section 189 of the Act commented on.

PETITION under section 115 of Act V of 1908 praying the High Court to revise the order of D. G. WALLER, the Acting District Judge of Tinnevely, in Civil Miscellaneous Appeal No. 2 of 1913, preferred against the order of N. SUNDARAM AYYAR, the District Munsif of Ambasamudram, in Original Suit No. 5 of 1911.

The plaintiff sued in the Court of the District Munsif of Ambasamudram for a declaration that the sale of his holding was invalid and liable to be set aside on the ground that the application for sale was made more than 45 days after the posting of intimation of service as required by section 113 of the Estates Land Act. The District Munsif held that even if such a suit lay under the Act, it was exclusively triable by the Revenue Court and that he had no jurisdiction to try the same and returned

* Civil Revision Petition No. 454 of 1913.

the plaintiff for presentation to the proper Court. The plaintiffs appealed against the above order and the lower Appellate Court agreeing with the view of the Court of First Instance dismissed the appeal. Plaintiff preferred this Appeal.

S. Ramaswami Ayyar for the petitioner.

The Honourable Mr. *L. A. Govindaraghava Ayyar* and *L. S. Viraraghava Ayyar* for the respondents.

JUDGMENT.—Petitioner sued for a declaration that a sale of his holding held under section 111 *et seq.* of the Madras Estates Land Act was legally void and liable to be set aside in consequence of the landholder's failure to apply to the Collector for sale within the period of forty-five days prescribed by section 115.

The Munsif held that he had no jurisdiction to try the suit and dismissed it. The District Judge on appeal took the same view.

It seems clear that a suit of this nature is maintainable in a Civil Court, in the absence of any statutory bar—*vide Dorasamy Pillai v. Muthusamy Mooppan*(1) and *Zemindar of Ettayapuram v. Sankarappa Reddiar*(2). Respondent relies on section 189 of the Estates Land Act. This makes it clear that a suit for damages sustained in consequence of the alleged illegality would lie in a Revenue and not in a Civil Court which is also specifically laid down in section 213 (3). But a suit for declaration like the present one is not one of those set forth in the schedule to the Act. It may seem anomalous to give the jurisdiction to award damages for the illegality to the Revenue Court which ordered the sale, and the jurisdiction of setting it aside to the Civil tribunal. But if the view taken by the lower Court is correct, then in spite of the mandatory directions of section 115, an order of a Collector for sale which was passed, without jurisdiction, must stand, and cannot be questioned; for, admittedly, no suit to set aside the sale will lie in a Revenue Court.

The only doubt that occurs to my mind arises out of the curious wording of section 189. The Civil Court is forbidden to take cognisance not of any suit or applications of the nature specified in the schedule but "if any dispute or matter in respect of which such suit or application might be brought or made." Section 109 of the Bengal Tenancy Act may be referred to for

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(1) (1904) I.L.R., 27 Mad., 94.

(2) (1904) I.L.R., 27 Mad., 483.

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comparison. It is arguable that the words of section 189 bear a more extended meaning and exclude from the cognisance of a Civil Court not only the suits described in the schedule, but all suits arising out of a dispute or matter in respect of which such suits might be brought. I should be loth to place such an interpretation on the sections, which might have wide and possibly undesirable consequences without some authority or very strong grounds for holding that this was the meaning intended to be conveyed thereby. No authority has been quoted and indeed the point was not taken by respondent's *vakil* until after I had suggested it; and in a recent case of a similar nature *Gouse Mookhideen Sahib v. Muthialu Chettiar* (1), the learned Judges appear to have felt no difficulty in the matter. I therefore, though not without some hesitation, prefer to follow the more restricted interpretation of the section which was (by implication) applied in that case. On this view I must hold that the jurisdiction of the Civil Court in the matter of the present suit was not ousted.

The decrees of the lower Court are set aside. The Munsif will restore the suit to his file and dispose of it according to law.

The costs will be costs in the cause.

S.V.

APPELLATE CRIMINAL.

Before Mr. Justice Wallis and Mr. Justice Sadasiva Ayyar.

Re NARAYANA NADAN (ACCUSED), PETITIONER.*

1914.
March
16 and 18.

Criminal Procedure Code (Act V of 1898), sec. 195—Sanction for false complaint, appeal against—Police report based on a judgment of Court, sufficient legal basis for grant of sanction.

Though a Court should not accord a sanction to prosecute, under section 195, Criminal Procedure Code (Act V of 1898), for bringing a false complaint, merely on the strength of a police report, yet if the report is based upon a judgment of the Court in a counter-case brought against the complainant, in connection with the same matter wherein his defence which was exactly the same as his complaint, was found to be false, such report is sufficient legal material for the Court to accord its sanction for false complaint.

(1) (1914) M.W.N., 55.

* Criminal Miscellaneous Petition No. 428 of 1913.