APPELLATE CIVIL.

Before Mr. Justice Miller and Mr. Justice Sadasiva Ayyar.

1913. September 19 and 25.

THE MANAGER TO THE LESSEES OF THE SIVAGANGA ZAMINDARY (PLAINTIFF), APPELLANT,

v.

CHIDAMBARAM CHETTI AND SIX OTHERS (DEFENDANTS AND LEGAL REPRESENTATIVE OF THE SECOND DEFENDANT), RESPONDENTS.*

Madras Estates Land Act (I of 1908), sec. 42, cl. 1(a) and (b), and 2—Enhancement or alteration of rent—Lease-deed—Provision as to payment of rent on excess of area of lands found on measurement—No enhancement or alteration of rent—Previous order of Collector not required—Bengal Tenancy Act (VIII of 1885), ss. 52 and 188.

The proviso found in clause 2 of section 42 of the Madras Estates Land Act (I of 1908), which requires the order of a Collector before an enhancement of rent can be allowed, does not apply to the claim of a land-holder who sues to recover arrears of *tirva* due under a lease-deed which contained a provision for payment of tirva at a specified rate on the excess lands found on measurement over the area specified in the lease-deed.

It is only where the landlord wants to enhance the rent, basing his claim on the right granted and declared by section 42, clauses 1 (*a*) and (*b*), that he should obtain, under clause 2, the order of the Collector for such alteration of rent before he could claim the altered rent.

Dintarini Dasi v. *L.P.D. Broughton* (1896) 3 C.W.N., 225 and *Ram Chunder Chuckrabutty* v. *Giridhur Dutt* (1892) I.L.R., 19 Calc., 755, followed.

SECOND APPEAL against the decree of F. B. EVANS, District Judge of Ramnad, in Appeal No. 551 of 1911 presented against the decree of S. V. KALLAPIRAN PILLAI, Special Deputy Collector of Ramnad, in Summary Suit No. 1559 of 1910.

The facts appear from the judgment of High Court.

The Hon'ble Mr. *F. H. M. Corbett, Advocate-General* and *T. R. Venkatarama Sastriar* for the appellant.

V. Visvanadha Sastriar for the first respondent.

The judgment of the Court was delivered by

MILLER AND SADASIVA AYYAR, JJ.

SADASIVA AYYAR, J.—The plaintiffs are the lessees of the Sivaganga Zamindari and they are the appellants before us. They are the landlords under the Estates Land Act. In 1899, a

* Second Appeal No. 163 of 1912.

registered rent deed was executed by the defendants in favour of the plaintiffs. The terms of that agreement were that the defendants should pay assessment on the area of a certain holding at the rate of Rs. 11 per sei in respect of ayan lands in three villages leased to the defendants. The term of the lease has not yet expired. Under that same registered deed, the defendants agreed to pay assessment at Rs. 8 per sei on the ayan lands in a fourth village also leased under the same deed. The area of the leased lands in the three former villages was given in the deed as 19-3-15 seis. The area of the land in the fourth village was given as 2-11-4. In paragraph 6 of the said lease deed, however a provision was inserted, viz., that in case the areas of the lands should, on measurement, be found to be more than the areas mentioned above, the defendants should be liable to pay tirva at the rate of Rs. 27-8-0 per sei on the excess so found from three years prior to the date on which such excess area was discovered. The plaintiff's allegations are that the plaintiff's Inspector discovered an excess of 2-3-15 seis in one of the first three villages and 0-0-4 sei in the fourth village in June 1909 and that on this total area of 2-4-3 the defendants are liable to pay excess assessment at Rs. 27-8-0 per sei from fasli 1315, including the current fasli of the plaint, namely fasli 1319. The suit was brought on the 27th May 1910.

Several defences were raised by the defendants. It is necessary however, for the purposes of this Second Appeal to notice only one of them, viz., that contained in paragraph 4 of the written statement. The contention in that paragraph is that according to clause 2 of section 42 of the Estates Land Act the plaintiffs are not entitled to file a suit in respect of arrears for the excess measurement until the Collector had decided, on application by the plaintiffs, what such excess area was. The lower Courts accepted this contention and dismissed the suit without going into the other issues raised by the pleadings. We think that the decisions of the Lower Courts cannot be upheld. Section 42 of the Estates Land Act corresponds to section 52 of the Bengal Tenancy Act. Though section 52 of Bengal Tenancy Act does not contain the provision contained in the proviso to clause 2 of section 42 of the Madras Estates Land Act, section 188 of the Bengal Tenancy Act imposes another condition before a claim by a landlord under that Act

THE MANAGER TO THE LESSEES OF THE SIVAGANGA ZAMINDARI v. CHIDAMBARAM CHETTI.

MILLER AND SADASIVA AYYAR, JJ.

for an enhancement of rent can be recognised, *i.e.*, that in the case of joint landlords all must act together. In *Dintarini Dasi* v. *L. P. D. Broughton*(1) the learned Judges had to deal with a case similar to the present. The term of the lease there was "that the landlords were at liberty to measure the lands of the tenant and, if the area of the land be found greater in quantity than 150 bighas, its then estimated area, the tenant would pay rent at the rate of 10 annas per bigha on the area so found." The question was whether a suit brought by the landlord for enhancement on this contract was a suit brought in respect of a right granted or declared *by the Act* in the landlord's favour and it was decided in the negative. The same question had been similarly decided in *Ram Chunder Chuckrabutty* v. *Giridhur Dutt*(2). It was only where the landlord wants to enhance the rent, basing his claim on the right granted and declared by section 42, clauses 1 (*a*) and (*b*), that he should obtain under clause 2 the order of the Collector for such alteration of rent before he could claim the altered rent. As observed in *Dintarini Dasi* v. *L. P. D. Broughton*(1). "The plaintiff does not seek in this suit under the provisions of section 52 of the (Bengal) Tenancy Act" (section 42 of the Madras Estates Land Act) "to alter the rent of the defendant. He says the rent has automatically been altered by the provisions of the defendant's lease on the land being measured and found to exceed 150 *bighas* in area." Applying this principle, it seems to us the proviso found in clause (2) of section 42, which requires the order of a Collector before enhancement of rent can be allowed, does not apply to the claim of the plaintiff in this case. On similar grounds the learned Judges in the Calcutta case held that the condition in section 188 of the Bengal Tenancy Act that all the landlords should act together did not apply to a suit brought for enhancement based on contract and not on section 52. The decree of the lower Courts will therefore be reversed and the suit remanded for decision on the other issues raised in the case. Costs will be costs in the cause.

(1) (1896) 3 C.W.N., 225, at p. 226. (2) (1892) I.L.R., 19 Calc., 755.