jurisdiction and his decree must be reversed and that of the Additional District Munsif restored with costs.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar.

1912. September 26 and October 2.

S. APPALANARASIMHULU AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

M. SANYASI AND THREE OTHERS (DEFENDANTS), RESPONDENTS.*

Madras Estates Land Act (I of 1908)—Inamdar and ryot—Suit for rent in a Revenue Court—Revenue Court, jurisdiction of—Landholder under section 3, clause (5)—Estate—Section 3, clauses (2) (d) and (e)—Section 189 and schedule A, No. 8—"Landholders" wider than "owner of an estate."

An inamdar of a portion of a village, where the inam consists only of some of the lands in a village granted by a Zamindar after the permanent settlement, is a landholder under section 3, clause (5) of the Madras Estates Land Act, though the inam may not be an estate under section 3, clauses (2) (*d*) and (*e*) of the said Act.

A suit brought by such an inamdar for arrears of rent against a ryot is cognisable by a Revenue Court under the said Act.

The test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders under the Act.

The term "landholder" is wider than the expression "the owner of an estate," and includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer.

SECOND APPEAL against the decree and judgment of A. L. HANNAY, the District Judge of Vizagapatam, in Appeal No. 272 of 1910, presented against the order of P. C. DUTT, the Sub-Collector of Parvatipuram in J. Dis. No. 679 of 1910.

The plaintiffs brought this suit in the Court of the Sub-Collector of Parvatipuram for arrears of rent against the defendants who were the ryots of the suit lands. The plaintiffs claimed to be the inamdars of the suit lands which were admitted to be a *darimilla* inam, *i.e.*, an inam subsequent to the permanent

* Second Appeal No. 1218 of 1911.

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settlement of lands in a village in the Sangam Valasa Zamindari. The lower Courts rejected the plaint on the ground that the Revenue Court had no jurisdiction to entertain the suit, holding that the lands were not an estate within the meaning of section 3, clause 2 of the Estates Land Act. The plaintiffs preferred this Second Appeal to the High Court.

B. Narasimheswara Sarma for the appellants.

P. Narayanamurthi for the respondents.

SUNDARA AYYAR AND SADASIVA AYYAR, JJ.

The JUDGMENT of the Court was delivered by SUNDARA AYYAR, J.—The question for decision in this case is whether the Sub-Collector was right in holding that the Revenue Court had no jurisdiction to entertain the suit which was one for rent against a ryot by the proprietor of certain inam lands in a village in the Sangam Valasa Zamindari. The inam was admittedly one granted by the Zamindar subsequent to the permanent settlement. The view taken by the Sub-Collector and by the District Judge on appeal is that the plaintiffs are not landholders within the definition of that word in section 3, clause (5) of the Estates Land Act, and a suit for rent by them is therefore not one coming within the purview of section 189, and No. 8 of schedule A of the Act. The reason given by the lower Courts is that the land in question is a minor inam and therefore not an "estate" as defined by clause (2) of section 3. It has evidently been assumed by them that the plaintiffs cannot be landholders if the land is not an "estate." The definition of an "Estate" includes specifically two classes of inams by sub-clauses (*d*) and (*e*). Sub-clause (*d*) refers to a village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof provided the grant has been made, confirmed, or recognised by the British Government, or any separated part of such village. Sub-clause (*e*) relates to any portion consisting of one or more villages (of an estate) which is held on a permanent under-tenure. The inam in question consists only of some lands in a village and not of a village or of one or more villages of the "estate" of Sangam Valasa and is clearly therefore not an estate within the definition of that word. The fact that the inam was granted subsequently would not necessarily show that it is not an estate if it consisted of one or more villages, as sub-clause (*e*) would include an inam granted by a Zamindar provided it consists of one or more

villages, for it would then be a portion of the Zamindar's estate held on a permanent under-tenure. Sub-clause (*d*) relates to a village which has ceased to be part of a zamindari, and sub-clause (*e*) relates to an inam which being granted by the proprietor of the zamindari and held under him has not ceased to be a portion of the zamindari. Although it is clear that the land in question is not an estate that is not sufficient to show that the suit is not cognisable by the Revenue Court. For the test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders. That word is defined as follows in clause (5) of section 3. "Landholder" means a person holding an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of a transfer from the owner or his predecessor in title, or of any order of a competent Court, or of any provision of law. The plaintiff is undoubtedly a person entitled to collect rents of a portion of the estate of Sangam Valasa. There is no reason why the holder of an under-tenure should not be held to be a person entitled to collect rents of a portion of the estate out of which the under-tenure is carved. The under-tenure holder if he is liable to pay kattubadi to the Zamindar is such a person holding under him and entitled to collect the rents of a portion of the zamindari as a lessee or a usufructuary mortgagee of the whole or of a portion of the zamindari. If the tenure holder is not bound to make any payment to the Zamindar for his tenure he will then be a person owning a part of the estate and as such would come within the meaning of landholder. It is clear that the term "landholder" is wider than "the owner of an estate." No doubt the word "rent" is defined as "whatever is lawfully payable in money, in kind, or both," to a landholder for the use or occupation of land in *his* estate for the purpose of agriculture," but the expression "his estate" cannot be taken to involve that only what is payable to the owner of the estate can be regarded as rent for the definition would then exclude what is payable to a lessee or a usufructuary mortgagee. The definition of landholder clearly includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer. The plaintiffs by reason of the transfer of the lands in question from the Zamindar as an under-tenure are persons entitled to collect the rent of the land. They must therefore be

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held to be landholders and the suit for rent by them against the defendants is one cognizable by the Sub-Collector. This view is in accordance with the judgment of ABDUR RAHIM, J., in *Suryanarayana* v. *Ballayya*(1), who upheld the view taken by the Subordinate Court of Cocanada although no reasons are stated in the judgment.

The decrees of the lower Courts must therefore be reversed and the suit remanded to the Court of First Instance for disposal according to law. No objection to jurisdiction was raised by the defendants. In the circumstances all costs up to date must abide the result of the trial.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Sadasiva Ayyar.

1912. May 3, September 24 and October 2.

B. GOVINDAPPA (PLAINTIFF), APPELLANT,

v.

B. HANUMANTHAPPA (FIRST DEFENDANT), RESPONDENT.*

Assignee of a money-decree of the Original Court—Decree reversed in appeal—Assignee not a party to the appeal—Money realised by assignee in execution—Application by judgment-debtor for restitution—Objection by assignee to application—Suit by judgment-debtor against assignee—Fraud and collusion between judgment-debtor and original decree-holder, effect of—Civil Procedure Code (Act XIV of 1882), sec. 583—lis pendens.

A judgment-debtor, from whom the assignee of a money-decree has realised the decree-amount in execution, is entitled to recover it back from him when the decree is afterwards reversed in appeal even if the assignee of the original decree was not brought on the record in the appeal.

Neither the fact that the assignment was made before the appeal was filed nor the fact that the judgment-debtor had knowledge of the assignment before he lodged his appeal makes any difference.

Where the decree of the Appellate Court was the result of fraud and collusion between the judgment-debtor and the original decree-holder, it is possible that such a plea if made and proved would be a sufficient answer to a suit by the judgment-debtor against the assignee of the decree.

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(1) Civil Revision Petition No. 895 of 1910.

* Second Appeal No. 187 of 1911.