APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.

1915. August 18 and 23 and September 1.

SUNDARAM AYYAR AND THREE OTHERS (SONS AND LEGAL REPRESENTATIVES OF THE DEFENDANT), APPELLANTS,

v.

KULATHU AYYAR (PLAINTIFF), RESPONDENT.*

29 M.L.T. 505

Madras Estates Land Act (I of 1908)—Lessee whose term has expired, whether a landholder under the Act— No power to distrain holding after expiry of lease.

The provisions of the Madras Estates Land Act (I of 1908) do not empower a person who was a lessee of an estate to take proceedings after the expiry of his lease to sell the tenant's holding for arrears of rent due for a fasli covered by the period of his lease.

Forbes v. *Maharaj Bahadur Singh* (1914) I.L.R., 41 Calc., 926 (P.C.), referred to.

Per SPENCER, J.—His only remedy is to sue the tenant on his contract for rent.

Per SESHAGIRI AYYAR, J.—(1) A person to whom arrears are due is a landholder, notwithstanding the fact that his estate has terminated.

(2) The law does not give him a first charge on the holding or the crops thereon.

(3) He can distrain the movable property or the trees in the holding of the defaulter.

(4) He is not entitled to attach the holding.

SECOND APPEAL against the decree of D. G. WALLER, the Acting District Judge of Tinnevelly, in Appeal No. 111 of 1913 preferred against the decree of F. L. BRIGSTOCKE, the Revenue Divisional Officer (Sub-Collector) of Sermadevi, in Summary Suit No. 6 of 1912.

The facts of the case appear from the judgment of SESHAGIRI AYYAR, J., at page 1021 *et seq.*

M. D. Devadas, V. S. Govindachari and *V. S. Kallabhiran Ayyangar* for the appellants.

S. Ramaswami Ayyar for the respondent.

SPENCER, J. SPENCER, J.—The question which we have to decide is whether a landholder in Madras who has ceased to be a landholder

* Second Appeal No. 237 of 1914.

can recover rent for the years when he was a landholder by bringing the ryot's holding to sale under the provisions of chapter VI of Madras Act I of 1908. For Bengal it has been decided by the Privy Council with reference to the Bengal Tenancy Act that he cannot: *vide Forbes* v. *Maharaj Bahadur Singh*(1). The Madras Estates Land Act is modelled on the Bengal Tenancy Act. Therefore the above decision must have great weight with us so far as it is based on provisions which have been repeated in the Madras Act. There are, however, several distinctions between the two Acts. In Bengal a landlord must bring a suit and obtain a decree before he can bring to sale the tenant's holding. In Madras he can proceed summarily to attach the holding by notice to the defaulter served through the Collector provided that he has exchanged a patta and muchilika with the ryot or tendered him such a patta as he was bound to accept. Section 5 of Madras Act I of 1908 and section 65 of the Bengal Act VIII of 1885 both declare that the rent shall be a first charge upon the holding. Section 109 of the Madras Act provides for the case of a conflict between the right of a landholder distraining produce and the right of a Civil Court decree-holder by declaring that the landholder's right shall prevail but this does not apply to the case of a landholder selling the ryot's holding. As in Madras he does not occupy the position of a decree-holder there can be no competition from other decree-holders for rateable distribution of the proceeds of the sale.

Section 148, clause (*h*) of the Bengal Tenancy Act, which declares that notwithstanding anything contained in section 232 of the Civil Procedure Code an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest has become and is vested in him does not find place in the Madras Act. Thus one strong argument for the position that the right to sell the holding for arrears is vested in the landholder *qua* landholder is wanting. The Privy Council decision dwells on the anomaly which would arise by two persons, the landlord and the ex-landlord having simultaneously a first charge on the tenure and it goes so far as to class the ex-landlord as an outsider.

(1) (1914) I.L.R., 41 Calc., 926 (P.C.).

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This anomaly would present no real difficulties in Madras. Under section 111 a landholder cannot sell the holding for arrears until the revenue year in which they became due is over and he has under section 112 only one year in which he can take this step. Unless proceedings begun by one landholder were still going on when the succeeding landholder wished to sell the holding for the rent of the following year, there would be no conflict of interests. Even after the sale of the holding, the purchaser would be liable for the rent of the year in which he was in occupation. In case of a dispute between two or more rival claimants to the title of landholder, section 3 (5) provides that the person who shall be deemed to be landholder for the purpose of this Act is the person whom the Collector may recognize or nominate as landholder. Again, when there is an intention to distinguish between landholders in possession and other landholders who have no subsisting interest, the Madras Act speaks distinctly of landholders in possession (*vide* section 200). This may be used as a not very convincing argument that where the word "landholder" occurs in the Act without qualification, it includes persons out of possession.

I will now consider whether there are any other indications within the four corners of the Act that landholders have as in Bengal no right to proceed against their ryot's holding unless their interest as landholder subsists at the time.

It is provided in section 53 that the remedy of landholders against the ryot's movables and holdings under chapter IV of the Act is only available to those landholders who have exchanged a patta and muchilika with their ryots or have tendered them such a patta as they were bound to accept or there must be a valid patta or muchilika continuing in force. Can it be said that a valid patta or muchilika continues in force between a ryot and a landholder who has ceased to have any subsisting interest in the estate? If the answer is "no" but he is a person who has exchanged or tendered a patta under the first part of section 53, we must then look to section 52 and we find this section declaring that no ryot shall be bound to accept a patta for a period of more than one revenue year and that pattas and muchilikas accepted or exchanged for any revenue year remain in force only until the commencement of the revenue year for which fresh pattas are accepted or exchanged.

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Under the old Act (VIII of 1865) it was recognized by the Privy Council in *Ramaswami* v. *Bhaskarasami*(1) that there must be a subsisting relation of landlord and tenant for the exchange of pattas and muchilikas.

The result therefore is that distraint and sale are remedies open only to landholders who have at the time of exercising this power a valid patta in force between themselves and their ryots. I am aware that in his commentary on the Act Mr. V. Ramadas takes a different view but the illustration which he gives to make the matter clear begs the whole question.

Again in section 3 (5) a landholder is defined as a person owning an estate or part thereof and it is doubtful if he can lay claim to be called such a landholder merely because at some previous date he has owned an estate. If, as in this case, he is a lessee and comes within the description of a person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner, there can be no reason for imputing to the legislature an intention to create in favour of such persons rights of greater extent and duration than those which are declared to belong to owners who are landholders in their own right.

I am therefore of opinion that the lower Courts were right in their conclusions that as the defendant was not the lessee for fasli 1322 he could not attach the plaintiff's lands for the arrears of fasli 1321. In such cases the only remedy left to the ex-landholder is the right of suing upon his contract for rent.

This Second Appeal is dismissed with costs. The Memorandum of Objections is also dismissed with costs.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—Vagaikulam is an inam village belonging to the Vyasaraya mutt. The defendant had a lease of it from the mutt for ten years up to the end of fasli 1321. His son became the lessee in fasli 1322. The plaintiff who is a ryot of the village is alleged to have made default in the payment of rent for fasli 1321. In or about September 1912, the defendant attached the plaintiff's holding for the arrears. This suit is to raise the said attachment. The only question for decision is whether the defendant who had ceased to be the lessee from July 1912 can attach the plaintiff's holding for the rent due

(1) (1879) I.L.R., 2 Mad., 67 at p. 73 (P.C.).

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to him while he was the lessee. There is no question that the defendant was a landholder up to the end of fasli 1321 : see *Perraju Garu* v. *Subbarayadu*(1). It is also undisputed that the lessee who succeeded the defendant was a landholder at the time when the attachment was made. After hearing the matter argued very fully on both sides and having regard to the grounds of the decision in *Forbes* v. *Maharaj Bahadur Singh*(2), I have though not without hesitation come to the conclusion that the defendant had no right to enforce the attachment of the plaintiff's holding in September 1912. The reasoning of the Judicial Committee in *Forbes* v. *Maharaj Bahadur Singh*(2) applies to this case, although as I shall presently show the provisions of the Act which the Privy Council had to construe differ in some material respects from the Estates Land Act. The definition of "landholder" would apply in my opinion to the defendant. The somewhat hypercritical comments of the learned vakil for the respondent on the language of section 3 (5) have not convinced me to the contrary. He laid stress upon the phrase "owning an estate" and argued that it predicates a subsisting interest at the time of the attachment. The next clause "entitled to collect the rents" would certainly apply to the man whose lease had expired but to whom arrears were still due. I do not think that the word "owning" was intended to negative the rights of persons who owned the estate at the time the arrears fell due. Another argument which belongs to the same category is the distinction sought to be made between *rent* and *arrears* of rent. I am of opinion that the defendant was a landholder when he attached the holding. One has only to look at section 200 of the Act to see that the legislature in Madras contemplated the existence of landholders with co-ordinate or mutually exclusive rights. It is different in Bengal. The definition of "landlord" (it is not landholder) is that he is "a person immediately under whom a tenant holds. This would undoubtedly exclude the defendant in Bengal. So far as I am able to see there can be but one landlord at a time in Bengal, although there may be a proprietor and a landlord. There is no provision in the Bengal Tenancy Act corresponding to section 200 of our Act which limits the power of the

(1) (1913) I.L.R., 36 Mad., 126. (2) (1914) I.L.R., 41 Calc., 926 (P.C.).

landholder in possession. Consequently the observation of the Judicial Committee in *Forbes* v. *Maharaj Bahadur Singh*(1) that there can be but one landlord cannot apply to conditions which obtain in Madras.

It seems to me that to hold that on the expiry of the lease, the lessee has no right of distraint would render nugatory the provision of the Act. Sections 77 and 111 make it clear that distraint proceedings should be commenced only if the rent due during the "next preceding twelve months" remains unpaid. These sections do not impose the further restriction that at the time of the distraint the distrainer must be the sole landholder. As proceedings of this kind are prohibited during the year that rent falls due it seems to me that the legislature contemplated action being taken by the person who had the estate when the arrears fell due. On the other hand the Bengal Legislature confers the right to distrain only on the person in whom the estate vests at the time. Section 148 (*h*) prohibits an assignee of a decree from distraining unless the estate itself is transferred to him. There is no corresponding provision in the Madras Act. I do not think that the fact that in Bengal distraint proceedings have to be taken after decree in a Civil Court affects the question. My conclusion upon this portion of the case is that the defendant was entitled to distrain.

The third question is "could he distrain the plaintiff's holding." It is here that the *ratio decidendi* of the Privy Council decision affects the defendant. In the Madras Act there is a provision for the landholder distraining the general movable property of the defaulter (see section 77). In section 121 of the Bengal Tenancy Act which correspond to section 77, this power is not given. In Madras (*a*) the holding, (*b*) the crops on the holding, (*c*) the ordinary movable property of the tenant and (*d*) the trees on the holding subject to specified exceptions can be distrained. In Bengal the distraint can only be with reference to (*a*) and (*b*). Therefore if in the present case the defendants had distrained the movable property or the trees, I would have held that the proceedings were not illegal. Both the landholders have the right to distrain these properties. In the case of the holding itself section 5 of the Madras Act and

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section 65 of the Bengal Tenancy Act give the landholder or the landlord, as the case may be, a first charge for the rent due. In Madras the first charge extends to the crops on the holding as well, but although in Bengal the crops can be distrained the rent is not made a first charge on them. This right of first charge must be taken to have been given only to the landholder who has a subsisting interest: see *Ramaswami* v. *Bhaskarasami*(1). There would certainly arise a conflict of interest in the case of the holding being attached by two persons. The lessee that has passed out may not take action until the very end of the second year. The lessee in possession may commence proceedings in the beginning of his second year. As some time must elapse before the holding is brought to sale the question will have to be dealt with whether both or either of them had the right to attach and whose rights should take precedence. It was argued that this dispute can be settled by the Collector under the second clause of section 3 (5) of the Estates Land Act. I think the clause would only enable the Collector to recognize one of two claimants as the landholder. It would not authorize him to decide the question of priority regarding the rights of two landholders. The Judicial Committee in the Calcutta case point out in more than one place that the right to distrain the holding is dependent upon the rights of first charge. It is also pointed out that to acquire the right which the section gives not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure must have the landlord's interests vested in him. Again we have this strong expression of opinion: "In whose decree and on whose application is the tenure to be sold?" The question admits of only one answer that it is the existing landlord alone who can execute the decree, the ex-landlord is an outsider and whilst he can execute his decree against the debtor as a money decree, he has no remedy against the tenure itself. The expression "existing landlord" and "ex-landlord" may not be appropriate to designate the position of the two landholders in Madras, but there is no doubt that the Judicial Committee have clearly and emphatically laid down that a holding can be sold only by the landlord who has a subsisting interest in the estate. The

(1) (1879) I.L.R., 2 Mad., 67 (P.C.).

language of section 127 of the Estates Land Act is in favour of this position. Under clause (*c*) if the holding is sold, the person to whom the arrears were due in the previous fasli gets no portion of it. The arrears payable in clause (*b*) will go to the attaching landholder and not to the person whose interest has ceased. I must therefore conclude that the holding can be attached only by the landholder who has the estate still in his possession.

As I have discussed the sections at some length, I may restate my conclusions thus :—

(1) A person to whom arrears are due is a landholder notwithstanding the fact that his estate has terminated.

(2) The law does not give him a first charge on the holding.

(3) He can distrain the movable property or the trees on the holding of the defaulter.

(4) He is not entitled to attach the holding. These propositions will reconcile the provisions of the Estates Land Act with the decision of the Judicial Committee in *Forbes* v. *Maharaj Bahadur Singh*(1). The Second Appeal must be dismissed with costs. The Memorandum of Objections must also be dismissed with costs.

N.R.

(1) (1914) I.L.R., 41 Calc., 926 (P.C.).