

## APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Krishnan.

RAMASAMI GOUNDAN (PETITIONER), PETITIONER,

v.

KALI GOUNDAN (COUNTER-PETITIONER), RESPONDENT.\*

1918,  
October,  
22, 23 and 31.

*Madras Estates Land Act (I of 1908), ss. 131, 193 and 205—Civil Procedure Code (Act V of 1908), sec. 115—Application to Deputy Collector to set aside sale on the thirtieth day—Deputy Collector, absent on leave—Deposit made two days later—Sale set aside by Deputy Collector without notice to purchaser—Revision petitions to District Collector and Board of Revenue, dismissed—Revision petition to High Court, competency of—Discretion in exercise of revisional powers—Absence of notice before setting aside sale, effect of—General Clauses Act (X of 1897), sec. 10.*

An application to set aside a sale held for arrears of rent was made to the Deputy Collector under section 131 of the Madras Estates Land Act and the deposit therein required thereon on the last day allowed by that section; the Deputy Collector being absent on leave, the petitioner was asked by the clerk to come two days later on, which day the Deputy Collector received the deposit and set aside the sale without giving notice to the purchaser. The latter presented petitions to the District Collector and the Board of Revenue respectively to revise the order under section 205 of the Act; the petitions being dismissed, the purchaser filed a revision petition to the High Court. The respondent objected that no revision lay to the High Court and that as the sale was properly set aside, the High Court should not interfere in revision.

*Held*, that the revision petition to the High Court was competent, because section 192 of the Madras Estates Land Act renders section 115 of the Civil Procedure Code applicable to all suits, appeals and other proceedings under the Act, even though section 205 thereof gave a power of revision to the Board of Revenue and the District Collector; but where the petitioner had previously applied to the revenue authorities and failed, the High Court would decline to exercise its discretionary power in revision, unless it was imperatively called upon to do so to prevent miscarriage of justice;

that, as the deposit was not made on the last day owing to the absence of the Deputy Collector and not the default of the petitioner, it was competent to the former to receive the deposit on the next open day under general principles of law embodied in section 10 of the General Clauses Act, and set aside the sale;

*Shooshee Bhushan Radro v. Govind Chunder Roy* (1891) L.L.R., 18 Cal., 231 followed;

that, asuming that the failure to give notice to the purchaser vitiated the whole proceedings, the High Court will not exercise its revisional powers on that ground alone;

\* Civil Revision Petition No. 111 of 1918.

and that the order setting aside the sale was proper as no valid objection was or could be raised by the petitioner even when opportunity was given to him.

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PETITION under section 107 of the Government of India Act to revise the order of E. S. LLOYD, the District Collector of Trichinopoly, in D. Dis. No. 2403, Revenue, of 1917, against the order of D. DIRAVIYA NADAR, the Deputy Collector of Namakkal, in Miscellaneous Petition No. 95, etc., of 1917.

A sale was held under the Madras Estates Land Act for arrears of rent on the 24th April 1917. The tenant applied to the Deputy Collector of Namakkal on the 24th May 1917 under section 131 of the Act to set aside the sale on payment of the arrears for which the sale was held and the other amounts payable to the purchaser under the section. The Deputy Collector was absent on casual leave on that and the next day and the clerk of the Deputy Collector's office asked the petitioner to go over to the office on the 26th May 1917 to make the requisite deposit; on the latter date the petitioner made the deposit of the amount due from him before the Deputy Collector who received the amount and set aside the sale without giving notice to the purchaser. The latter filed a revision petition to the District Collector, as well as another to the Board of Revenue (*vide* judgment of the High Court); the petitions were dismissed. The order of the District Collector was as follows:—

“On the 24th May the last day open to him, the counter-petitioner appeared with the deposit and applied to have the sale set aside. The Divisional Officer was absent on casual leave, the clerk therefore told him to come on the 26th, which he did. In the circumstances, I cannot say that the sale was improperly cancelled even though no notice was given as it ought to have been to the purchaser. I decline to interfere on revision, and dismiss the petition.”

Against this order the petitioner (purchaser) preferred this Civil Revision Petition to the High Court.

*K. V. Sesha Ayyangar* for the petitioner.

*L. S. Veeraraghava Ayyar* for the respondent.

AYLING, J.—This petition arises out of an order of the Deputy Collector of Namakkal under section 131, Madras Estates Land Act, setting aside a sale for arrears of rent.

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The preliminary objection is taken that this Court has no power to revise such an order. I do not think this objection can be upheld. It is true that section 205 of the Act (read with the Schedule, part B, No. 19) gives a power of revision to the Board of Revenue or the District Collector in the case of such an order; and in the present case, petitioner has invoked the interference of both the authorities named without success. But section 192 renders section 115 of the present Code of Civil Procedure (old section 622) applicable to all suits, appeals and other proceedings under the Madras Estates Land Act. It may seem undesirable that the power of revising the same order should vest in two authorities so different in their constitution and ordinary procedure as this Court and the Board of Revenue; and one may wonder whether such a result was deliberately intended by the Legislature or arrived at by inadvertence. Nevertheless we have to interpret the Act as it stands. It is impossible to say that the grant of the power of revision to this Court is inconsistent with the grant of similar power to the Collector and Board of Revenue; and I think it must be held that section 192 vests this Court with the power of revision, which petitioner invokes.

Its exercise is, of course, always discretionary; and where, as in the present case, the petitioner has previously applied to the revenue authorities under section 205 without success, I think this Court might reasonably decline to exercise it unless imperatively called upon to do so to prevent a miscarriage of justice.

The facts of the case are clearly set forth in the order of the District Collector, declining to interfere, which runs thus:

“On the 24th May, the last day open to him, the counter-petitioner appeared with the deposit and applied to have the sale set aside. The Divisional Officer was absent on casual leave. The clerk therefore told him to come on the 26th, which he did. In the circumstances, I cannot say that the sale was im properly cancelled even though no notice was given as it ought to have been to the purchaser. I decline to interfere on revision, and dismiss the petition.”

Petitioner's main contention is that the deposit of the amount by the defaulting ryot, within the period of 30 days from the sale, is a condition precedent to the passing of an order setting

aside the sale; and that unless it is strictly complied with, no matter what the circumstances may be, an order setting aside the sale is *ultra vires* and illegal. The admitted failure to give notice to the auction purchaser before passing the order is also said to be an infringement of Order XXI, rule 92, and to equally invalidate the order.

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As regards the first objection, however strict the wording of section 131 may seem to be, and although section 5, Indian Limitation Act, is not in terms applicable, authority is not wanting for a more reasonable and liberal interpretation of the section. *Shooshee Bhushan Rudro v. Govind Chunder Roy*(1) was a precisely similar case to the present one under the Bengal Tenancy Act; the learned Judges held that, on general principles, when a fixed period is given to do a certain act, and the person bound to perform it is, from no act of his own, but from some act or order of the Court, prevented from carrying it out, he gets the advantage of the next open day. This ruling was followed and the same principle applied in other cases in the same Court (vide *Peary Mohun Aich v. Ananda Charan Biswas*(2), and by a Bench of this in *Sambasiva Chari v. Ramasami Reddi*(3) to a case under the Rent Recovery Act. It has been embodied as a salutary rule in section 10 of the General Clauses Act as regards cases where the Court or office is actually closed. In the present case it may be said that the office or Court of the Deputy Collector was not closed on the last day of performance, but only the presiding officer, the Deputy Collector himself, was absent on leave. This makes no difference. In consequence of his absence, respondent found it just as impossible to get his deposit received, as if the office or Court had been shut up, and his failure to perform the act required of him within the time specified was equally occasioned by the act of the Court and by no act of his own.

I find nothing inconsistent with this in *Chundi Charan Mandal v. Banke Behary Lal Mandal*(4). In that case it was not shown that the judgment-debtor's failure to deposit the full amount within the prescribed period was due to any act or mistake of the Court; and the learned Judges are at pains to make it clear

(1) (1891) I.L.R., 18 Calc., 231.

(2) (1891) I.L.R., 18 Calc., 631.

(3) (1899) I.L.R., 22 Mad., 179.

(4) (1899) I.L.R., 26 Calc., 449 (F.B.).

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that, if it had been, their decision might (not to say, would) have been different. In another case quoted, *Bibi Sharifun v. Mahomed Habibuddin*(1), there is nothing to indicate that the failure to deposit within the prescribed time was due to any act of the Court, and the learned Judge whose judgment is relied on (MOOKERJEE, J.), had subscribed to the general principle laid down in *Shooshee Bhushan Kudro v. Govind, Chunder Roy*(2)—*Vide* his judgment in *Mahomed Akbar Zaman Khan v. Sukhdeo Pande* (3).

Appellant's vakil drew our attention to Government Notification No. 145, Revenue, dated 27th March 1912, under which a deposit under section 181 is allowed to be paid into any sub-treasury; and suggested that, as this alternative course was open to him, respondent should not be allowed the benefit of the general principle. The course prescribed by the Act is payment to the Collector; and we are in no position to say that when respondent found the latter's office closed against him, he was in a position to avail himself of the alternative course.

In my opinion it was competent to the Deputy Collector to set aside the sale in the circumstances, although the deposit was not made within the prescribed time.

Coming to the second point, whether failure to give notice is a mere irregularity, or vitiates the whole proceedings is open to argument. But taking the view most favourable to appellant, I should not be prepared to exercise our revisionary powers in this case on that ground alone. If the objection were allowed, our only course would be to set aside the Deputy Collector's order, and remand the application for disposal after due notice to appellant. But we have now had the advantage of hearing the case fully argued in all its aspects; and it is clear that appellant could bring forward no tenable objection to the setting aside of the sale, and that the Deputy Collector's order was a perfectly just, reasonable and proper one (apart from the omission to give prior notice). To remand the case in such circumstances would be futile.

I would dismiss the petition with costs.

KRISHNAN, J.

KRISHNAN, J.—I agree and have nothing further to add except that I have already dealt with the revisional power of

(1) (1911) 13 C.L.J., 535.

(2) (1891) I.L.R., 18 Cal., 231.

(3) (1911) 13 C.L.J., 467.

the High Court in my judgment in *Paramaswamy Aiyangar v. Alamelu Natchiar Ammal*(1), which may be referred to.

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*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.*

JAMPANA SOMADU (FIRST DEFENDANT), APPELLANT,

v.

1918,  
October 24  
28 and 31.

ZAMINDAR OF MIRZAPURAM AND ANOTHER (PLAINTIFFS),  
RESPONDENTS.\*

*Madras Estates Land Act (I of 1908), ss. 153 and 157—Suit in Revenue Court to eject non-occupancy ryot of 'old waste' on expiry of registered lease for more than five years granted before the Estates Land Act—Jurisdiction—Mesne profits, jurisdiction of Revenue Court to grant.*

A suit is maintainable in a Revenue Court under sections 153 and 157 of Madras Estates Land Act to eject a non-occupancy ryot of 'old waste' on the expiry of the term of a registered lease for more than five years though granted before the commencement of the Estates Land Act.

*Atchutaraju v. Rajah F. G. Krishnayachandralu Vuru* (1915) I.L.R., 38 Mad., 193, not followed.

A Revenue Court can award mesne profits against persons in unlawful possession of lands holding over beyond the period of their lease.

SECOND APPEAL against the decree of E. P. KENHAM-WALSH, the Acting District Judge of Kistna, in Appeal No. 134 of 1915, preferred against the decree of M. VENKANNA NAYUDU, Suits Deputy Collector, Kistna, in Suit No. 1158 of 1914.

This was a suit by a landholder under section 153, clause (e) of the Estates Land Act to eject the defendants from certain 'old waste' lands which were leased to them for a term of ten years (1903 to 1912) under a registered deed, but which they failed to vacate on the expiry of the term of the lease. Plaintiff also prayed for recovery of arrears of rent for fasli 1322 (1912) and mesne profits for fasli 1323 (1913) onwards. Defendants contended

(1) (1919) I.L.R., 42 Mad., 73.

\* Second Appeal No. 1569 of 1917.