

APPELLATE CIVIL.

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

1920,
February 2.

VENKATA LAKSHMAMMA GARU (PLAINTIFF), APPELLANT,

v.

SEETAYYA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Madras Estates Land Act (I of 1908), ss. 5 and 132—Decree for rent—Transfer of execution of decree to a Civil Court—Landholder's right of first charge on holding—Decree-holder ceasing to be landholder at the time of execution, effect of, on first charge.

A landholder's right to enforce in execution a decree for rent passed under the Madras Estates Land Act as a first charge upon the tenant's holding is available only if the decree is executed in a Revenue Court and not when its execution is transferred to a Civil Court.

Held further by SADASIVA AYYAR, J.—The landholder is entitled to claim the first charge for rent only if he continues to be landlord at the time the claim for rent is sought to be enforced. *Forbes v. Maharaj Bahadur Singh*, (1914) I.L.R., 41 Cal., 926 (P.C.), followed.

SECOND APPEAL against the decree of RAJABAM RAO, Temporary Subordinate Judge of Rajahmundry, in Appeal No. 172 of 1917, preferred against the decree of K. PURUSHOTHAM PANTULU, District Munsif of Amalapur, in Original Suit No. 256 of 1916.

The facts are given in the first three paragraphs of the Judgment of SADASIVA AYYAR, J.

K. Ramamurti, for *P. Narayanamurti*, for the appellant.

N. Rama Rao for the respondent.

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SADASIVA AYYAR, J.—The plaintiff is the appellant. In paragraph 3 of the plaint it is said that plaintiff was the proprietor of the village of Guttinadevi. The contesting first defendant says, in paragraph 7 of the written statement, that the plaintiff's right as the proprietor of this village had been sold in Court auction to Nyapathi Subba Rao and therefore the plaintiff could not claim prior charge for any rent due to him, as he does in the plaint. Though the question was not made the subject of any issue, it seems not to have been denied that the property had been sold to Nyapathi Subba Rao. But there seems to have been a question before the lower Appellate Court as to

* Second Appeal No. 1354 of 1918.

whether the purchase was prior to the bringing of the summary suit No. 219 of 1913 by the plaintiff in the Revenue Court against the second defendant for rent or subsequent to that suit. Whether it was prior or subsequent to it, it has been held by the Privy Council in *Forbes v. Maharaj Bahadur Singh*(1) that if the remedy provided by law in favour of the landlord to claim prior charge for rent is sought to be enforced, he is entitled to do so only when the relationship of landlord and tenant exists at the time "the remedy provided by the law is sought to be enforced."

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As this suit is based, in my opinion, solely on the alleged existence of the prior statutory charge created by section 5 of the Madras Estates Land Act in the landlord's favour, and of his right in consequence to bring the holding to sale to enforce that first charge as against all other claims, the suit has to be dismissed on the short ground that the charge (even if it existed before) ceased to exist when the plaintiff lost his estate.

As, however, other questions of law were argued at some length I shall express my opinion on those questions. Before considering those questions, some of the facts have to be stated. One Akula Ammanna was the ryot of the holding (for the rent due on which the plaintiff obtained his decree in the suit of 1913) till at least 1908. Ammanna sold it then to the second defendant by means of a registered sale-deed. The first defendant contends that that sale-deed was a nominal transaction and that Akula Ammanna continued to be the tenant of the holding even after 1908. In execution of the money decree passed against Akula Ammanna in Small Cause Suit No. 3 of 1910 the holding was attached as the property of Ammanna and was purchased by the first defendant. The first defendant obtained possession of the property through Court. Then the plaintiff had his money decree transferred to the District Munsif's Court of Cocanada from the Revenue Court and attached the holding. The first defendant, on the strength of his purchase in Court auction and possession thereunder, put in a claim petition and the claim was allowed and the attachment was raised. Hence the present suit was brought to declare the plaintiff's right to have the property sold by virtue of his alleged prior charge for the

(1) (1914) I.L.R., 141 Calc., 926 (P.C.).

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money under the rent decree. The Lower Courts dismissed the suit on the ground that under Order XXXIV, rule 14, read with rule 15, of the Civil Procedure Code, the plaintiff can enforce his prior charge only by obtaining a decree for sale in a suit for sale brought on that charge.

The appellant's learned vakil, Mr. Ramamurti, relied upon certain observations in *Suramma v. Suryanarayana Jagapathirazu*(1) for his contention that Order XXXIV, rule 14, Civil Procedure Code, does not apply at all to the charge created by section 5 of the Estates Land Act. Section 100 of the Transfer of Property Act says :

"Where an immoveable property of one person is by act of parties or operation of law made security for the payment of money to another and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property."

I am unable to understand why the charge created by statute for rent under the Madras Estates Land Act, at least in cases where rent is payable in money, does not fall under section 100 of the Transfer of Property Act. Reliance is placed by the learned Judges, in their judgments in *Suramma v. Suryanarayana Jagapathirazu*(1), on certain decisions of the Calcutta High Court. I might at once state that those decisions were based upon the construction of the provisions of the Bengal Tenancy Act, especially section 65 of that Act. But there are several differences between the provisions of that Act and those of the Madras Estates Land Act. Section 5 of the Bengal Tenancy Act as stated by their Lordships of the Privy Council in *Forbes v. Maharaj Bahadur Singh*(2) is not a "happily worded section".

I shall deal shortly with these Calcutta decisions. In *Fotiook Chunder Dey Sircar v. Foley*(3) there was no question of enforcing any prior charge. The landlord got a money decree for rent and he attached other properties of the judgment-debtor, that is, the properties other than the holding on which the rent had become due. The only question there was whether though he obtained a money decree merely he ought to be deemed as having also obtained a mortgage decree for the sale of the holding, and whether he should first bring to sale the holding and should not be

(1) (1919) I.L.R., 42 Mad., 114. (2) (1914) I.L.R., 41 Cal., 926 (P.C.).

(3) (1886) I.L.R., 15 Cal., 492.

allowed to proceed against the other properties of his tenant in execution of the mere money decree for rent. The Court held that section 68 of Act IV of 1882 had no application and the landlord could execute his money decree by attaching and bringing to sale other properties. Having decided the direct point involved, the learned Judges proceeded thus :

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“This we think is a sufficient and complete answer to Dr. Banerjee's argument. But we are not prepared to admit that the ‘charge’ referred to in section 65 of the Bengal Tenancy Act, 1885, is such a charge as is defined by section 100 of the Transfer of Property Act.”

Where the difference lies, the learned Judges do not point out. On this vague *obiter dictum* I do not think it is possible to hold that Order XXXIV, rule 14, is not applicable where the charge for rent is sought to be enforced. The next case referred to is *Srimati Moharanees Dasya v. Harendra Lal Roy*(1). I do not find any reference made to *Fotick Chunder Dey Sircar v. Foley*(2) in the judgment in this case, but it seems to have been referred to only in the judgment of the Subordinate Judge who first decided the case. The only relevant observation in *Srimati Moharanees Dasya v. Harendra Lal Roy*(1) is that there is no strict analogy between a charge for rent and a mortgage charge, because money due for rent is both a personal debt and a first charge on the land in respect of which it is due, and the landlord can enforce his decree either by selling the land in some cases or by selling other properties. I cannot say that this case has any bearing on the question whether when a Civil Court is asked in execution to enforce the charge Order XXXIV, rule 14, is applicable. As regards *Tariniprosad Roy v. Narayan Kumari Debi*(3), this also is a decision on the point whether the landlord can pursue his personal remedy against the tenant without first having the holding sold. In the case in *Royzuddi Sheik v. Kabi Nath Mookerjee*(4) the question was whether when a regular mortgage deed, or a regular bond creating a charge, is taken for the arrears of rent, the charge under the Bengal Tenancy Act still existed. MOOKERJEE, J., says :

“The present suit is in no sense a suit to enforce the original rent charge. It is in substance as it is in form, a suit to enforce the

(1) (1896) 1 C.W.N., 458.

(2) (1886) I.L.R., 15 Calc., 492.

(3) (1890) I.L.R., 17 Calc., 301.

(4) (1905) I.L.R., 33 Calc., 985.

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rights of the plaintiff under the instalment bond by which in lieu of the original liability, a new liability was substituted. Besides, if the plaintiff had sued to enforce the rent charge, his claim would be barred by limitation."

That ground was sufficient for the disposal of the case and it was not necessary to consider at all the nature of the charge referred to in section 65 of the Bengal Tenancy Act. But as an *obiter dictum* again the learned Judge remarks that as decided in *Fortick Chunder Dey Sircar v. Foley*(1),

"The charge referred to in section 65 of the Bengal Tenancy Act is not such a charge as that defined by section 100 of the Transfer of Property Act, and does not require to be enforced in the same manner."

I shall lastly refer to *Gopinath Mahapatra v. Kashinath Beg*(2), also referred to in *Suramma v. Suryanarayana Jagapathirazu*(3). That case was decided not only under section 65 of the Bengal Tenancy Act, but also under section 167 of that Act under which the purchaser in execution of a rent decree has got the right to apply to the Collector to annul all prior encumbrances. But the question relating to the necessity of bringing a suit as prescribed under Order XXXIV, rule 14, was not decided in that case nor was it necessary to decide it.

PHILLIPS, J., however mentions in his judgment in *Suramma v. Suryanarayana Jagapathirazu*(3) two other considerations as to why section 100 of the Transfer of Property Act cannot include a charge for rent under section 5 of the Estate Act. He says :

"It may also be noted that where rent is payable in kind the charge for arrears of rent cannot come within the definition of section 100 which refers only to payment of money and it would be most anomalous that a charge created by statute should be a charge within the meaning of section 100 in some cases but not so in others."

With the greatest respect, I do not see why if a particular charge falls within the words of section 100 it should not be a charge under that section because another kind of charge created by the same statute does not fall within the section. Further, even rent payable in kind becomes really payable in money

(1) (1886) I.L.R., 15 Cal., 492.

(2) (1909) 9 C.L.J., 234.

(3) (1918) I.L.R., 42 Mad., 114.

whenever the rent is sued for and a decree in the alternative for the value of the rent payable in kind is asked for and granted. So far, therefore, as the judgments in *Suramma v. Suryanarayana Jagapathirazu*(1) held that section 100 of Act IV of 1882 and consequently Order XXXIV, rule 14, Civil Procedure Code, would not apply to the enforcement of a charge for rent even payable in money, I respectfully differ from them. But it was argued that under section 132, read with section 125, of the Madras Estates Land Act where the property is sold for arrears of rent due on it, the purchaser takes it free of all encumbrances except those created before the Act came into force. That is, I take it, the main ground of the judgments in *Suramma v. Suryanarayana Jagapathirazu*(1) and I agree with the judgments in that respect, provided of course that the sale was one conducted by a Revenue Court in execution of its decree as expressly restricted by the provisions of section 132. But in this case the decree had been transferred to the Cocanada District Munsif's Court and that Court has under section 42, Civil Procedure Code, power to execute it only in the same manner as if it was a decree passed for money itself and it cannot exercise the powers conferred by the Revenue Court by section 132 of the Madras Estates Land Act. (In the Calcutta cases there is nothing to show that the executions and sales in execution in question were held in any other Court than a Revenue Court.) In the result the Second Appeal fails and is dismissed with costs.

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SPENCER, J.—The suit land belonged to one Akula Ammanna who sold his holding by a private sale to second defendant. The first defendant purchased the property at an auction held in execution of a decree in Small Cause Suit No. 3 of 1910 obtained by a third party against Akula Ammanna. SPENCER, J.

The plaintiff brought a suit (Rent Suit No. 219 of 1913) in a Revenue Court as a landholder to recover arrears of rent from second defendant and obtained a personal decree for payment of Rs. 137-8-6 with interest. When, in execution of this decree, he attached the holding, the first defendant preferred a claim under Order XXI, rule 58, Civil Procedure Code, and it was allowed.

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The plaintiff now sues to establish his right to recover by sale of the land the amount of rent decreed to him, relying not on the weakness of the first defendant's title as auction purchaser but on the strength of his own title based on section 5 of the Madras Estates Land Act, which provides that the rent due upon ryoti land shall be a first charge upon the holding.

The plaintiff's decree for rent was transferred to a Civil Court (viz., the Court of the District Munsif of Cocanada) for execution, and it is there that the plaintiff sought to enforce his statutory charge and was defeated. Now, under the Madras Estates Land Act it is in exercise of the right to a charge conferred by section 5 that the landholder can bring the ryot's holding to sale under section 111. This he can do either summarily by an application to the Collector, or under section 132 when he has obtained a decree for arrears of rent and executes it in a Revenue Court. But if a money decree passed by a Revenue Court is transferred to a Civil Court, under section 201 for execution, the power to execute it under the provisions of Chapter VI does not go with it to the executing Court, as those powers are peculiar to Collectors, as may be seen from Part B of the schedule to the Act, serial No. 18, and from the words of section 132, which run thus :

"The provisions of this chapter shall be applicable as far as may be, to the execution by a Revenue Court of any decree for arrears of rent."

If a decree for rent is transferred to a Civil Court for execution the provisions of the Civil Procedure Code at once become applicable to the execution proceedings, and the Court executing the decree passed by another Court transferred to it for execution has no authority to go behind the decree and enforce a charge which is not declared in the decree to be executed ; nor can the Civil Court assume powers which by law have been definitely conferred on Revenue Courts only. This in my opinion is the short answer to the plaintiff's present claim.

I think that the suit was rightly dismissed by the Courts below and that the Second Appeal should now be dismissed with costs.

N.B.