

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Odgers.

1920, Sep-
tember, 13.

SWAMINATHA ODAYAR (PETITIONER), PETITIONER,

v.

SUNDARAM AIYAR (RESPONDENT), RESPONDENT.*

Section 46 (5), Madras Estates Land Act (I of 1918)—Application to Receiver of an estate, for conferring occupancy right, validity of.

An application by a non-occupancy ryot under section 46 of the Madras Estates Land Act, for the acquisition of occupancy right in an estate, can be made only to or against the owner of the estate and not to a Receiver in charge of the estate.

CIVIL REVISION PETITION under section 115, Civil Procedure Code, and section 107, Government of India Act, to revise the orders of J. R. HUGGINS, Collector of Tanjore, in Revision Petition No. 3 of 1919 filed against the order of T. SEKHARA KURUP, Deputy Collector of Kumbakōnam, in Miscellaneous Application No. 31 of 1918.

The facts are given in the Judgment.

K. Raja Ayyar for petitioner.—A Receiver is a "landholder" and also an owner within section 46 (5) of the Madras Estates Land Act. The order appointing the Receiver gives him full powers as owner and to conduct all proceedings under the Act. "Landholder," as defined in section 3, will include even limited owners such as lessees, and usufructuary mortgagees. The use of the word 'owner' in section 46 (5) is to exclude such limited owners; but not a Receiver who has all the powers of an owner and represents the real owner. A Receiver is a 'landholder' entitled to admit a tenant: *Narayanaswami Nayudu v. Subramanyam*(1). Even a limited owner has been regarded as 'owner' within section 7 of the Easements Act: *Koyyamnu v. Kuttiammoo*(2); see also *Manindra Chandra Nandi v. Secretary of State for India* (3). A Receiver in law represents the real owner: *Jagat Tarini Dasi v. Naba Gopal Chaki*(4).

* Civil Revision Petition No. 643 of 1910.

(1) (1916) I.L.R., 39 Mad., 683, 686. (2) (1919) I.L.R., 42 Mad., 567, 575.

(3) (1907) I.L.R., 34 Cal., 257, 273.

(4) (1907) I.L.R., 34 Cal., 305 at 315.

S. Varada Achariyar, for *S. Srinivasa Ayyangar*, for the respondent—A distinction is clearly drawn in section 46 between landholder and owner. Similarly in section 200; and section 46 (5) allows proceedings only against owners and a Receiver is not an owner.

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ABDUR RAHIM, J.—These cases arise out of an application made by certain tenants of the Tanjore Palace Estate which is under the management of a Receiver appointed by the Court for the compulsory acquisition of occupancy rights under section 46 of the Estates Land Act. The Revenue authorities decided against the ryots on the ground that section 46 precludes any application being made under it to a Receiver appointed by the Court as distinguished from the beneficial owner of the property. We have not found it necessary to decide the preliminary objection raised that no revision lies against the orders of the Revenue authorities as on the merits we are clearly of opinion that sub-section (5) of section 46 is a bar to the present application of the ryots in the case. While in the main clauses of that section the word "landholder" alone is used, in clause 5 at the end, the legislature has added :

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"The sums payable under this section for the acquisition of the occupancy right shall be paid to the landholder who is the owner of the estate or part thereof and any application or proceeding under this section shall be made only to or against such landholder"

which means the landholder who is the owner of the estate. Landholder as defined in section 3, clause (5), would include not only the owner of an estate but also persons who are entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent Court or of any provision of law. This definition, therefore, would include a Receiver appointed by the Court as a landholder within the meaning of the Act. Therefore, sub-section (5) to section 46, when it says that any application or proceeding under this section shall be made only to or against such landholder "who is the owner of the estate" clearly intended to exclude persons like a Receiver of the estate from the purview of that section. There is another section brought to our notice by Mr. Varada Achariyar, the learned Vakil for the respondent, in which the same definition is found, namely, section 200.

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It is argued by Mr. Raja Ayyar that a Receiver exercises all or most of the powers of the landholder with reference to the management of the property and therefore in several connexions he has been held to stand in the shoes of the owner. That may very well be, but here we have to consider the express words of a statute which clearly show that the legislature intended to confine these proceedings against persons who are owners of the estate as distinguished from persons who may be entitled to collect the rents of the estate and to do other acts contemplated by the Act as landholder. It is not for us to speculate as to what the object of the legislature was in drawing this distinction and in restricting the rights given to the ryots by section 46 to cases where the owner himself is in management of the property. The frame of this section, like that of several other sections of the Act is somewhat peculiar, but there is no escape from its language which admits of no doubt as to the intentions of the legislature.

The result is that Civil Revision Petitions Nos. 643 and 644 are dismissed with costs.

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ODGERS, J.—I agree. There is no doubt that a Receiver falls within the definition of a landholder in section 3, sub-section (5) of the Madras Estates Land Act; see *Receiver of Ammayanalkannur v. Suppen Chetty* (1). It is equally clear that the meaning of 'landholder' as defined in section 3, sub-section (5), has been restricted by the words in section 46, sub-section (5), for the purposes set forth in that section. Section 46, sub-section (5), is very clear and lays down that any application or proceeding under this section shall be made only to or against such landholder. Such landholder being defined just previously as the person 'who is the owner of the estate or part thereof.' The difficulty in construing this section arises, in my opinion, from the fact that the definition of landholder for the purposes of the section has been relegated to the last sub-section instead of being clearly stated in the first. In view of the clear and unequivocal words of section 46, sub-section (5), no good purpose is served by referring to decisions under other Acts in which the word 'owner' has been held not to mean necessarily a beneficial owner, as for instance section 7 of the Easements Act. The construction I put upon sub-section (5) of

(1) (1907) I.L.R., 30 Mad., 505.

section 46 of the Madras Estates Land Act is further strengthened by the distinction drawn between a landholder who is an owner and a landholder who is not an owner in section 200 of the same Act.

I therefore think that the decisions of the Revenue authorities are right and that the Civil Revision Petitions Nos. 643 and 644 must be dismissed with costs.

N.R.

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AIYAR.
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APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice
Sadasiva Ayyar.*

RAJA OF RAMNAD (PLAINTIFF), APPELLANT,

1920,
October 20.

v.

PONNUSAMI TEVAR AND ANOTHER (DEPENDANTS),
RESPONDENTS.*

Limitation Act (IX of 1908), ss. 6, 10—Receipt of interest by a mortgagee from a trustee knowing mortgage to be in breach of trust—Suit by beneficiary for such interest against mortgagee—Applicability of section 10 to such suit—Cause of action for beneficiary to recover such interest—No new cause of action on beneficiary attaining majority.

Interest received by a mortgagee from a trustee in respect of a mortgage executed by the latter in breach of trust to the knowledge of the mortgagee is not 'property' vested in the mortgagee 'in trust for any specific purpose' within section 10 of the Limitation Act. If on the dates of payment of interest the beneficiary be a minor, his cause of action to recover the same arises from such dates and if he sues for the recovery of such interest after attaining majority he is bound to sue within the time limited by section 6 of the Act; and he does not get a fresh cause of action on attaining majority.

APPEAL against the decree of T. SRINIVASA AYYANGAR, Subordinate Judge of the Temporary Subordinate Court of Rāmnād at Madura, in Original Suit No. 9 of 1917.

This is a suit instituted by the present Raja of Rāmnād to recover a sum of Rs. 81,174 and odd being the sum alleged to have been paid by the late Diwan, Trustee of the Rāmnād

* Appeal No. 143 of 1918.