APPELLATE CIVIL—FULL BENCH.

Before Mr. Victor Murray Coutts Trotter, Chief Justice, Mr. Justice Ramesam and Mr. Justice Wallace.

1924, April 7.

SYED OOMER SAHIB (RESPONDENT—PLAINTIFF), PETITIONER,

v.

GOPAUL (APPLICANT—DEFENDANT), RESPONDENT.*

Madras City Tenants' Protection Act (III of 1922), sec. 9—Tenant against whom a decree for ejectment had been passed but not executed on the date of the Act, whether entitled to apply under sec. 9.

Held, by the Full Bench :—A tenant against whom a decree in ejectment had been passed but not executed at the date of the commencement of the Madras City Tenants' Protection Act (III of 1922) is "a tenant against whom a suit in ejectment has been instituted" within the meaning of section 9 of the Act; hence he is entitled to apply under the section for an order directing the landlord to sell the land to him. *Latifa Bi* v. *Mottai Ammal* (1923) I.L.R., 46 Mad., 836, overruled.

PETITION under section 115 of Act V of 1908, praying the High Court to revise the order of K. PANDALAI, Small Cause Judge of Madras, in Miscellaneous Petition No. 170 of 1922, in Ejectment Suit No. 125 of 1921. The facts are given in the Order of Reference of JACKSON, J.

This petition coming on for hearing on Tuesday, the 26th day of February 1924, the Court (JACKSON, J.) made the following

ORDER OF REFERENCE TO A FULL BENCH.

Defendant in Ejectment Suit No. 125 of 1921, Court of Small Causes, Madras, applied under section 9

* Civil Revision Petition No. 21 of 1923.

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of the Madras City Tenants' Protection Act, III of 1922, for an order directing plaintiff to sell the land in the suit. The lower Court ordered accordingly and plaintiff seeks to revise its order.

The point for determination is whether at the date when the Act came into force, defendant could be described in the words of section 9, as

> "a tenant against whom a suit in ejectment has been instituted."

He was undoubtedly a tenant and plaintiff had instituted an ejectment suit against him in 1921. In November 1921 an order was made by consent by which the defendant was to vacate by January 1922, but the order remained unexecuted when the Act came into force. Plaintiff contends that this order terminated the suit so far as section 9 is concerned, and defendant maintains that it did not. I think that the plain reading of the section clearly supports the defendant. He is a tenant against whom a suit has been instituted, and whether that suit has been decreed or not, it can still be described as instituted. The second portion of the sentence in section 9 may make this still clearer :

> "against whom a suit has been instituted or proceeding under section 41, Presidency Small Cause Courts Act, 1882, taken."

If a landlord has applied under section 41, and the Court has proceeded to grant an order to a bailiff, the tenant is none the less one against whom the landlord has taken proceedings under section 41. He is not one against whom the landlord has not taken proceedings because there happens to be a bailiff's order ; nor is the tenant one against whom a suit has not been instituted because there happens to be a decree. A decree as defined in section 2 (2), Civil Procedure Code, conclusively

determines the rights of the parties with regard to all matters in controversy in the suit. But such conclusive determination is not opposed to the ordinary sense of the word "institute." "Institute" means (Oxford Concise Dictionary) "establish, found, set on foot"; the original Latin meaning being "set up," and of course an institution is essentially something that has been established. No doubt in the Civil Procedure Code (Order IV, rule 1) "institute" is treated as synonymous with "commence" but it has never to my knowledge been used as entirely excluding the idea of completion. One cannot say that "instituted" essentially means "begun but not completed." Section 9 really provides that any tenant whose ejectment was contemplated, but who was not ejected at the time when the Act came into force, can enjoy its benefit. Apart from the language, there would be no sense in discriminating between suits in which decrees had and suits in which decrees had not been passed. The important point was whether the tenant had or had not been ejected.

The petitioner seeks to fortify this finding by arguments based on the other portions of section 9, but I am not sure that they have much weight. There is a provision that the tenant may apply to the Court fifteen days after the service on him of summons, and this, it is argued, must refer to suits pending at the time of the Act coming into force. But if the section had no retrospective effect at all, and only referred to suits filed after the Act, there would necessarily be summons, and this passage may well be confined to such summonses.

So too in regard to sub-clause (3)

"any decree that may have been passed but which has not been executed, shall be vacated."

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This again could apply to suits filed after the passing of the Act. A tenant who is defendant in such a suit may have applied under sub-clause (1), have made default and had his application dismissed under sub-clause (2), may then have had the suit decreed against him, may have had his default excused, may have paid the price under sub-clause (3) and the decree which was passed but held in abeyance shall then be vacated. Therefore, I do not think that the mention of "decree" in sub-clause (3) necessarily implies that suits decreed, but not excuted are referred to in sub-clause (1); but since I find on other grounds that such suits are undoubtedly within the terms of sub-clause (1), probably the decrees in such suits are those which were mainly in view when sub-clause (3) was drafted.

Accordingly I should find no difficulty in supporting the judgment now sought to be revised; only my attention has been called to the ruling in *Latifa Bi* v. *Mottai Ammal*(1):—

> "The general frame of the Act including section 10, makes it clear that section 9 was not intended to enable tenants to apply for sale of the land to them under this section after the ejectment suit to which they were parties, had been decreed."

Section 10 lays down that in cases of compensation for tenants' buildings and trees (sections 4, 5) and in cases of fixing a reasonable rent (sections 6, 8) if at the time of the Act coming into force, suits in regard to such matters are pending, or are decreed but are awaiting execution, the Act may nevertheless be applied.

There is no mention of section 9, and therefore it has been held that the Act was intended to apply retrospectively only to such cases as are described in section 10.

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(1) (1923) I.L.R., 46 Mad., 836.

But if section 10 were intended to be a general clause covering every case, the cases contemplated in section 9 even as interpreted in this ruling would certainly be mentioned under the first alternative in section 10 "which are pending." The section would run "sections 4, 5, 6, 8 and 9 shall apply to suits . . . which are pending and in which decrees have not been passed, and sections 4, 5, 6 and 8 to suits which are pending and in which decrees have been passed but not executed." The more probable explanation seems to be that section 9 is a code in itself; and is not in any way affected by section 10. I should have hesitated to put forward this view in face of the clear ruling in *Latifa Bi* v. *Mottai Ammal*(1) but I see that this has been held by SCHWABE, C.J., in a case hitherto unreported—C.C.C.A. Nos. 51—57 of 1921, 17th December 1923 [since reported, see *Kanniappa Chettiar* v. *Ramachandraiyar*(2)].

In these circumstances, I refer the case to the Hon'ble the Chief Justice for reference to a Full Bench.

The point for reference is whether a tenant against whom a decree has been passed but not executed is a tenant entitled to apply for sale under section 9, Madras City Tenants' Protection Act, III of 1922.

ON THIS REFERENCE

K. V. Sesha Ayyangar (with *R. V. Seshagiri Rao*) for petitioner.—The Act is not expressly or by implication retrospective. Section 9 of the Act, under which the tenant applies, gives the right only to such tenants as against whom "a suit in ejectment has been instituted," i.e., tenants in pending cases and not those against whom a decree in ejectment had been passed. In such cases the suit must be deemed to have terminated. Section 4

(1) (1923) I.L.R., 46 Mad., 836. (2) (1924) 46 M.L.J., 407.

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gives an option to a landlord while no such option is given in section 9; and section 9 cannot be applied so as to take away proprietary rights. I rely on *Latifa Bi* v. *Mottai Ammal*(1). *Kanniappa Chettiar* v. *Ramachandraiyar*(2) is distinguishable as a pending case. All the sections of the Act must be read together and not section 9 alone. Section 9 must be construed with reference to section 10. At any rate clause (3) of section 9 is ambiguous.

T. L. Venkatarama Ayyar (with *P. Sankaranarayana*) for respondent was not called upon.

OPINION.

COUTTS TROTTER, C.J.

COUTTS TROTTER, C.J.—In this case (Civil Revision Petition No. 21 of 1923) the defendant in Ejectment Suit No. 125 of 1921 in the Small Cause Court applied under section 9 of the Madras Act III of 1922 for an order directing the plaintiff to sell the land in the suit. The sole question is whether at the time the Act came into force the defendant can be described as "a tenant against whom a suit in ejectment has been instituted." It is not contended that those words can bear the extreme meaning that any tenant against whom a suit in ejectment had ever been instituted—a suit which might have been brought to a completion by execution and ejectment—is within these words of section 9; but it is contended that it applies to a case where the suit in ejectment has resulted in judgment but has not been executed or completed by the process of ejectment. It seems to me that that contention is right and that the tenant intended by the section is a person who is threatened with ejectment as the result of legal proceedings instituted against him but has not, in pursuance of those proceedings, been

(1) (1923) I.L.R., 46 Mad., 836. (2) (1924) 46 M.L.J., 407.

actually ejected. It seems to me immaterial whether or no the proceedings resulted in a decree which might lead, but has not led, to an actual ejectment of the tenant. This is in accordance with the view expressed by the late Chief Justice and my brother WALLACE in [*Kanniappa Chettiar* v. *Ramachandraiyar*(1)] and I agree with them in thinking that the case of *Latifa Bi* v. *Mottai Ammal*(2) was wrongly decided. The answer to the reference will therefore be in the affirmative.

RAMESAM, J.—I agree.

WALLACE, J.—I agree.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Victor Murray Coutts Trotter, Chief Justice, Mr. Justice Ramesam and Mr. Justice Wallace.

MANICKAM PILLAI (SIXTH DEFENDANT), PETITIONER,

v.

MAHUDUM BATHUMMAL AND SIX OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 1 TO 5 AND 7), RESPONDENTS.*

1924, April 11.

Civil Procedure Code, O. IX, r. 9, and O. III, r. 4 (2)—"Appearance" of pleader—Pleader stating "no instructions" to Court—Withdrawal of vakalat with leave of Court.

Held, by the Full Bench:—When a pleader engaged in a case reports that he has no instructions, whether after he has asked for an adjournment and been refused or not, he must be deemed not to have appeared in the case thereafter, even if there be no formal withdrawal in writing of the vakalat—*Radha Kishan* v. *The Collector of Jaunpur*, (1901) I.L.R., 23 All., 220 (P.C.), followed.

Held further, that the Court must be deemed to have given its leave within the meaning of Order III, rule 4 (2), Civil Procedure Code, to the pleader to withdraw his vakalat when it does not object to such withdrawal.

(1) (1924) 46 M.L.J., 407. (2) (1923) I.L.R., 46 Mad., 836.

* Civil Revision Petition No. 899 of 1922.