APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Srinivasa Ayyangar.

METKUR SUBBA REDDY (SECOND DEFENDANT), APPELLANT,

1927, November 22.

v.

DAMAVARUPU VENKATASUBBA REDDY AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Madras Estates Land Act (I of 1908), ss. 42, 77, 147 and 146—Proceedings for enhancement of rent against registered pattadar—Transferee, not a party thereto—Transferee failing to give notice of transfer to landholder—Suit for rent against transferee under sec. 77—Transferee, whether bound by proceedings under sec. 42—"Defaulter" in sec. 147, meaning of.

The provisions of section 147 of the Madras Estates Land Act apply to proceedings under section 42 of the Act for enhancement of rent instituted against the registered pattadar alone, and such proceedings are binding, in a suit for rent under section 77, on the transferee who was in possession under a transfer from the former at the time of the proceedings but had not given notice under section 146 of the Act and had not been impleaded as a party to the proceedings.

The expression "defaulter" in section 147 aptly describes the registered pattadar, against whom proceedings under section 42 are taken for enhancement of rent on account of excess in the area of the holding.

SECOND APPEAL against the decree of the District Court of Nellore in Appeal Suit No. 383 of 1922, preferred against the decree of the Court of the Revenue Divisional Officer of Kavali in Revenue Suit No. 5 of 1920.

* Second Appeal No. 160 of 1925.

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The material facts appear from the judgment.

M. Patanjali Sastri for appellant.

B. Somayya for respondent.

JUDGMENT.

WALLACE, J. WALLACE, J.—Plaintiff is suing the two defendants under section 77 of the Madras Estates Land Act for rent. He claims rent at an enhanced rate following on an order under section 42. All the proceedings under section 42 were against the registered pattadar, the 1st defendant, and he remained *ex parte*. The second defendant was as a matter of fact at that time in possession of the lands by a deed of transfer from the first defendant, but he was no party to the proceedings under section 42. It is admitted, however, that neither he nor the first defendant had given notice of the transfer to the plaintiff as required by section 146 of the Act. The second defendant contested the suit for rent and claimed that as he was no party to the proceedings for enhancement he is not bound by these, and is entitled now to reopen the question of the propriety of the enhancement. The plaintiff on the other hand contends that by force of section 147 the second defendant is bound by the proceedings which bind his transferor. Second defendant rejoins that section 147 has no application to proceedings under section 42, and that is the sole question for consideration here.

Second defendant's contention is that the wording of the conclusion of section 147 "as if . . . he had been the defaulter" implies that the section is intended to apply only to cases of transfers in which there are "defaulters" in the sense of persons who have not paid their due rent, and that therefore "proceedings" in the section is confined to proceedings for actual recovery of rent and will not therefore apply to proceedings under

section 42. I agree with the lower Appellate Court that the scheme of the Act renders this restricted interpretation untenable. The scope of section 147 obviously is, that one who is a ryot of a landholder shall when he has transferred his holding remain subject to the obligations of the ryot *vis a vis* his landlord, unless both he and the transferee have notified the landlord of the transfer; that is, until the transfer is notified the original owner continues to bear the obligations on the holding. The reason is obvious, viz., to save the landlord from being harassed and bound by all kinds of transfers of which he has not been apprised and to prevent the ryot from evading his obligations by a plea of a transfer to another of which the landlord knows nothing at all. This being the scheme it would be surprising if section 147 restricted the estoppel against the transferee merely to actual suits for rent and not to collateral proceedings also, such as proceedings for determination of the rent. To accede to the second defendant's contention would produce this result that proceedings under section 42 would be open to challenge *ad infinitum* by every one of a succession of transferees, and that one could never say of any proceedings except actual suits for rent that any thing had been finally determined by them. To such a result I should not feel myself constrained to come unless the language of the section gives no other alternative. Now where an order has been passed under section 42 against a registered holder enhancing his rent, I do not think it is a straining of language to say that the word "defaulter" will describe him aptly. He has defaulted in his obligation to his landlord and has come short in his legal duties to him. I would therefore hold that section 147 in terms applies.

In any case it seems to me that the proceedings under section 42 to which the registered holder was a party

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fixed the proper rent at the enhanced rate, and, since for any default in paying that rent the land may be sold, it is difficult to see what advantage the appellant will gain by his present contentions. I would therefore dismiss this appeal with costs.

SRINIVASA AYYANGAR, J.

SRINIVASA AYYANGAR, J.—The point for determination in this second appeal lies in a very narrow compass. The facts are these. The holding of a ryot in an estate having been transferred to the present appellant and no notice of the transfer under section 146 of the Act having been given to the landholder, the landholder filed an application against the transferor under section 42 of the Act for the determination of the excess of rent payable in respect of the holding on the ground of excess in the area. The transferor not having defended the action, a decree was passed in favour of the landholder fixing the excess payable. Subsequently, though it is not clear when notice of the transfer as provided seems to have been given to the landholder, the present suit has been instituted for the recovery of the rent as increased. On the transferee denying his liability to be bound by the decision increasing the rent in a proceeding to which he was not a party, the question has arisen whether, under the terms of section 147 of the Act, the decision in the previous proceeding under section 42 of the Act against the transferor ryot, is binding on the transferee so as to disable him from showing that the decision was wrong, and that having regard to the actual extent of the land he is not liable for the increased rent. Both the Revenue Officer who tried the application and the District Judge of Nellore on appeal concurred in holding that the second defendant-appellant, the transferee ryot, was bound by the decision in the previous case, having reference to the terms of section 147 of the Act.

There can be no doubt that the solution of the question depends entirely on a construction of that section. The matter would also appear to be *res integra*, because not only have the vakils on both sides not been able to refer to any previous decision on the question but they also intimated that they have not been able to find any.

Both the lower Courts having held the second defendant-appellant to be barred by the previous decision, on behalf of the appellant it was argued by Mr. Patanjali Sastri that they were wrong. His argument may be briefly summarized thus. The operative part of section 147 of the Act is to the effect that all acts and proceedings taken against the transferor shall be valid and effectual, if such acts and proceedings had been commenced or had against the transferee and he had been the defaulter. When the section refers to the transferee as if he had been the defaulter, it follows that the original transferor against whom the act or proceeding was commenced or had must have been a person capable of being accurately referred to as a defaulter; or in other words, the acts and proceedings against the original transferor must have been with reference to the transferor as a defaulter. No doubt having regard to the wording, it must be conceded that there is considerable force in such a contention. But Mr. Patanjali Sastri went on further and argued that a defaulter is a person who has made default in the payment of rent and that therefore the acts and proceedings which will bar the transferee, if had against the transferor, must have been proceedings against the transferor in his capacity as a defaulter or in other words in his character as a ryot who had made default in the payment of rent.

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From this the further contention was advanced that an application under section 42 for the purpose of the alteration of the rent, in view of the actual extent of the area, cannot be properly described as an act or proceeding against a defaulter and therefore section 147 could not possibly be held to apply.

This argument is only calculated to show, what had often been pointed out by learned Judges of this Court, that many portions of the Estates Land Act are framed and worded very loosely and unhappily and often very inaccurately. But as the words "and he had been the defaulter" are there in the section, effect should be given to those words in the section, it seems difficult to escape from the argument that if it should be well founded, it would have the effect of narrowing down and limiting considerably the scope of the general words in the first part of the section. It is difficult to understand why the legislature thought it necessary to add these words at all at the end of the section. And in fact the argument of Mr. Patanjali Sastri would seem to indicate that as no other purpose can be regarded as served by those words than that of limiting the section to cases of defaulters as contended for, the contention must be upheld. But it seems to me that having regard to the provision in section 42 that the ryot is liable for the additional rent if there should be excess in the area, apart altogether from the procedure prescribed in the proviso in clause 2 of that section, a reference to a ryot who disputes such liability as a defaulter is not so inapt as to lead to the scope of the section being confined by any necessary implication as contended for. A defaulter is a person who had defaulted or committed a default and a default is merely the non-fulfilment of an obligation according to its strict terms. If so, it is difficult to see why a person

who fails to pay the additional rent though in occupation of an excess of area should not be properly referred to as a defaulter. Further the person being described as a defaulter only in regard to acts and proceedings against the transferor and therefore by necessary implication by the landholder, it follows that the reference to a person as a defaulter would not be to his being a defaulter so adjudicated but only so alleged in the act or proceeding under reference. It must be conceded and indeed it was conceded by Mr. Patanjali Sastri for the appellant that if we hold the expression "defaulter" as not inapt or inaccurate with reference to a transferor ryot in respect of an application by a landholder under section 42, then the contention for the appellant in this case must fail, at any rate so far as the question in this second appeal is concerned.

It is also possible that in adding those words at the end of the section the legislature merely intended to provide against a possible contention that the transferee in certain cases could not be regarded as a defaulter within the meaning of certain sections of the Act.

It is also possible that the true intention of the legislature in adding those words was merely to provide that the transferee shall also be deemed to have been the defaulter in all such cases where a default is necessary before an act or proceeding can be commenced or had.

It seems to us perfectly clear that the lower Appellate Court was right in assuming that the true policy of the legislature in enacting Chapter IX of the Act and especially section 146 therein was to save the landholders from the necessity at their own risk of going about and finding in the case of every ryot whether or not he had made transfers of the holding, before taking any act or proceeding. If such should be

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recognized to be the general policy of the Act itself, it seems to me that construing section 147 in the manner contended for by the appellant merely by reason of the addition of the few words at the end of the section, would be to defeat such clear and declared policy of the Act itself.

One is also unable to understand why if the true intention of the legislature was as argued for the appellant the legislature should not have made the meaning clear in the first part of the section itself by use of apt language without being driven to the necessity of enacting a provision generally and then narrowing its scope and curtailing it considerably by the mere tacking on of a few words at the end.

I am therefore unable to accept the contention on behalf of the appellant and hold that the lower Appellate Court was wrong in the view taken by it. If section 147 applies also to an application under section 42, then no other question arises and it must be held that the decision of the lower Appellate Court in granting a decree in favour of the respondent was right. The Second Appeal must therefore be dismissed with costs.

K.R.