APPELLATE CIVIL.

Before Mr. Justice Srinivasa Ayyangar and Mr. Justice Reilly.

1927, August 5.

VENKAYALA SUBBARAYUDU (FOURTH DEFENDANT), APPELLANT,

v.

KOLLURI VENKATARATNAM (PLAINTIFF), RESPONDENT.*

Madras Estates Land Act (I of 1908), ss. 5, 125, 132 and 111 to 114 and 201—Decree for rent passed by a Revenue Court—Transfer to a Civil Court for execution—Sale by Civil Court of holding—Mortgage of holding by ryot—Sale by Civil Court, whether free from mortgage—ss. 125 and 135 whether applicable to such auction sales by Civil Courts.

Section 125 of the Madras Estates Land Act applies only to sales for arrears of rent held under sections 111 to 114 of the Act; and section 132 applies in terms only to sales by Revenue Courts in execution of decrees for arrears of rent, and does not extend to sales held by Civil Courts in execution of decrees passed by Revenue Courts and transferred to Civil Courts for execution.

Where therefore a decree for arrears of rent passed by a Revenue Court under the Act was transferred to a Civil Court for execution, and the property included in the holding in respect of which arrears had accrued was sold by the Civil Court, the sale is not free from any encumbrances created by the ryot on such property. *Venkatalakshmamma* v. *Seetayya*, (1920) I.L.R., 43 Mad., 786, followed.

SECOND APPEAL against the decree of the Court of the Subordinate Judge of Rajahmundry in Appeal Suit No. 197 of 1923, preferred against the District Munsif of Amalapuram in Original Suit No. 60 of 1922.

The material facts appear from the judgment. The plaintiff sues for sale on a mortgage executed by the

* Second Appeal No. 978 of 1924.

defendants 1 to 3 on 26th November 1919. The fourth defendant was a purchaser in execution of a decree for rent passed by a Revenue Court and transferred to a Civil Court for execution of the decree. The property was sold by the Civil Court in auction and purchased by the 4th Defendant on 22nd July 1921. The latter contended that his purchase was free from the plaintiff's mortgage under sections 125 and 132 of the Madras Estates Land Act. Both the lower Courts overruled the contention of the fourth defendant. He preferred this second appeal.

G. Lakshmanna and *A. Satyanarayana* for appellant.

P. Somasundaram for respondents.

JUDGMENT.

SRINIVASA AYYANGAR, J.—The only point raised and argued in this Second Appeal is one of some difficulty, but after carefully considering the point and the arguments advanced by the learned gentlemen on both sides I have come to the conclusion ultimately without any hesitation that the appeal should be dismissed.

The fourth defendant is the appellant in this Court. The plaintiff instituted the action from which this appeal has arisen as mortgagee for an ordinary mortgage decree. Defendants 1 to 3 did not defend that suit and allowed the case to proceed *ex parte*. The defence that was set up by the fourth defendant was that item No. 3 in the plaint, with which alone we are concerned in this Second Appeal, was part of an estate governed by the Estates Land Act and that for the arrears of rent due in respect of the holding the landholder had obtained a decree in a Revenue Court, had it transferred to a Civil Court and brought the holding for sale and that he (the fourth defendant) became the purchaser. His contention is that on such sale, according

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to the true construction of the various sections in the Estates Lands Act, the purchase by him has been free of the encumbrance created by the mortgage in favour of the plaintiff. Both the lower Courts found against the fourth defendant-appellant on this contention and gave a decree to the plaintiff and hence this Second Appeal by him.

Mr. Lakshmanna, the learned vakil for the appellant, has argued strenuously before us that, according to the proper construction of the various sections, to which I shall presently advert, in the Estates Land Act, there could be no difference with regard to the effect between sales held by Revenue Courts and sales held by Civil Courts. The material sections are these. Section 5 is the section which creates a charge in favour of the land-holder for the rent payable in respect of the holding. Under section 77 the land-holder is authorised for arrears of rent to institute a suit or distrain certain kinds of property such as movable property. Section 111 and the following sections under the heading of "Sales of holding" enable the land-holder by following the prescribed procedure to effect a sale of the holding for the arrears of rent. Section 125 prescribes that, when a holding is sold for arrears due in respect thereof, the sale shall be free of all encumbrances, and section 132 extends the provisions of Chapter VI of the Act, as far as may be, to execution by Revenue Courts. Section 201 in the Act prescribes that a decree or order for payment of money passed by a Revenue Court may be transferred only to a Civil Court for execution. These are the only relevant provisions which have to be considered with the arguments advanced.

In this case there is no doubt that the land was part of an estate and therefore governed by the provisions

of the Estates Land Act. For the purpose of this argument it may be assumed, because it has not been questioned on either side, that the decree obtained by the land-holder in the Revenue Court was in respect of arrears of rent due for the very holding in suit. Some time after this decree was obtained in the Revenue Court, the decree would appear to have been transferred to the District Munsif's Court at Amalapur for execution and it was at the sale held by that Court that item No. 3 was purchased by the fourth defendant. First, taking into consideration, section 125, what it says is that "when a holding or part of a holding is sold for arrears due in respect thereof, the purchaser shall take subject to any right or interest which the ryot has created therein with the land-holder's permission in writing registered and subject also to any encumbrances created before the passing of that Act." It may be observed before proceeding further that this is a somewhat curiously worded section. It does not expressly state that the sale shall be regarded as free of other encumbrances not referred to in the section. However, that appears to be the natural implication in the section and in any case that is the manner in which the section has been construed and no question had been raised before us with regard to that construction. The expression in that section being, "When a holding is sold for arrears due in respect thereof," before the immunity referred to in the section can be claimed or be regarded as attracted, it must be shown that the sale was for arrears due. If that expression had not been used elsewhere in the Act, it may be permissible to regard any sale which comes to be effected whether by a Revenue Court or by a Civil Court, in respect of an obligation which ultimately arose with reference to arrears of rent as a sale for arrears of rent. But

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there is in the Act, under the subdivision entitled "Sale of ryots' holding," sections 111, 112 and the following, where the land-holder is authorized by following the prescribed procedure to bring the holding to sale directly for non-payment of rent due or for arrears of rent in respect of it. Primarily therefore when in section 125, the legislature speaks of sales of holding for arrears of rent, it must be taken that the reference in that section is only to the sale of the ryots' holding as prescribed in the Act in section 111 and the following sections. A sale, albeit in execution of a decree obtained in a Revenue Court, cannot strictly or properly be stated to be a sale for arrears of rent. In legal parlance it would be correctly described as a sale in execution of a decree of a Revenue Court, or, if the decree was made by a Civil Court, in execution of such a decree. If on the other hand the legislature had intended that though the sale may be in execution of a decree the same result should follow, namely, that the sale should be regarded as free from certain encumbrances created by the ryot, the legislature would have had no difficulty in making its meaning clear by the use of apt language. They had merely to say: "Any sale for arrears of rent or in execution of decrees obtained for arrears of rent." But this is not the language employed and therefore when in section 125, the legislature speaks of sales for arrears of rent and sales of holding at the instance of the land-holder for arrears of rent is specifically provided for by a direct procedure, the proper construction, it seems to me, would be to hold that the immunity provided in section 125 arises only when the sale is under that subdivision, namely under sections 111, 112 and so on. Non-payment of the arrears due is the breach of the obligation on which, according to the relative sections the penalty follows, namely, the

liability of the holding to be sold. But in the case of execution of a decree, the breach of obligation is not the non-payment of arrears but the non-satisfaction of the decree. Thus it follows that sale for arrears of rent is not the same thing as sale in execution of a decree. Then if in the Act there were no section like section 132 extending the provisions of the chapter to sales by Revenue Courts, it would follow that, even when the holding is brought to sale in execution of a decree by a Revenue Court the immunity or the freedom from encumbrance provided in section 125 cannot be secured for the purchaser. When, in section 132 we find that the provisions of Chapter VI are, so far as they may be, extended only to execution by Revenue Courts, thereby deliberately excluding execution by Civil Courts, it cannot be a proper construction to hold that the provision applies to sales by all Courts including Civil Courts. At first I experienced no small difficulty in finding out what possible reason the legislature might have had in excluding any reference to civil Courts from section 132, what reason the legislature could have had for applying the provisions of Chapter VI only to sales by Revenue Courts. But it must be borne in mind that in section 201, the provision is that, when decrees for money are required to be transferred they can only be transferred to Civil Courts. If it is not a decree for money it follows that the Revenue Court itself might be in a position to carry out execution of the decree of the Revenue Court, whether it is the same Revenue Court or some other Revenue Court. When however, a decree-holder seeks a transfer of the decree to a Civil Court, we must take it that he wants it only because he cannot get the Revenue Court to execute it in the manner in which he wishes the Civil Court to execute it—it may be in respect of the person of the judgment-debtor who is

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not within the jurisdiction of the Revenue Court or it may be in respect of the movable or immovable property of the judgment-debtor not within the jurisdiction of the Revenue Court. If, however, it was the object of the decree-holder to proceed to recover the amount of the decree by the sale of the very holding, for the non-payment of arrears of rent due in respect of which the decree was obtained there can be no reason whatever why he should not obtain that relief in the Revenue Court itself. It was probably having reference to this that the legislature prescribed that, when decrees for money are sought to be transferred they could only be transferred to Civil Courts. The necessary implication from it would appear to be that, when the decrees are so transferred to Civil Courts they are intended to be executed merely as money decrees. Again if through the instrumentality of the Revenue Court itself the decree-holder could have obtained the relief, by way of sale of the ryots' holding, there was no reason why he should get the decree transferred to the Civil Court; and whenever he does so it may, therefore, be taken that such transfer was obtained by him merely because the manner in which he wished the decree to be executed was such that the Revenue Court which passed the decree could not grant such execution and such execution could only be granted by the Civil Courts. It seems to me, therefore, possible that that was the reason why in section 132 the legislature while extending the provisions of the chapter to sales by Revenue Courts did not extend them to sales by Civil Courts.

The learned vakil for the appellant has drawn our attention to several cases in connexion with the argument. *Suramma* v. *Suryanarayana Jagapathiraju*(1), was

(1) (1919) I.L.R., 42 Mad., 114.

referred to and relied upon. That was a case in which the property was sold by a Revenue Court in execution, and PHILLIPS and KUMARASWAMI SASTRI, JJ., held that on such sale the property passed free of all encumbrances according to section 125 of the Act. In *Venkatalakshmamma* v. *Seetayya*(1), which was a case somewhat like the present, there was a transfer of a decree passed by a Revenue Court to a Civil Court and the question arose whether on such a sale under the provisions of section 125 of the Act the sale was free of encumbrances. The learned Judges, SADASIVA AYYAR and SPENCER, JJ., held that, when the sale is by the civil Court the provisions would not apply. In a later case *Kotayya* v. *Kotappa*(2), PHILLIPS, J., sitting as a single Judge has said that there is no reason why the legislature should be deemed to have made any difference between sales by Revenue Courts and by Civil Courts. But that question did not arise for decision in that case because the case before the learned Judge was one for contribution and what was claimed was that on payment by one of the co-sharers of the rent in respect of the land for which the land-holder had a charge the person making the payment obtains by subrogation a similar charge. The decision of that question did not necessarily involve the determination of the question whether or not the sale by a Civil Court should be regarded as free of encumbrances or not. The case of *Venkatalakshmamma* v. *Seetayya*(1) is direct authority in favour of the respondent in this case. Mr. Lakshmanna for the appellant really argued that the decision of the learned Judges in that case is wrong and tried to persuade us to take a contrary view and if necessary to refer the case to a Full Bench. We are not satisfied that the judgment is wrong. On the

(1) (1925) I.L.R., 48 Mad., 786. (2) (1925) 49 M.L.J., 117.

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other hand, having regard to the various sections to which we have adverted and also what may be supposed to be the intention of the legislature in making the various provisions, it seems to us that the opinion of the learned Judges in that case is right. It is not correct to say, as PHILLIPS, J., seems to have thought in the case in *Kotayya* v. *Kotappa*(1), that the opinion of the learned Judges was a mere *obiter dictum*. It was really necessary for the purpose of the decision of the case; at any rate SPENCER, J., based his decision on no other ground. Mr. Lakshmanna also referred to section 42 of the Civil Procedure Code, but we do not see the bearing that section has on the question before us. If a decree, when transferred to a Civil Court, should, according to the provisions of that section, be executed as if it were a decree passed by itself, then it comes to this, that there is only a decree for money which must be executed like all other decrees for money passed by Civil Courts only by the sale of the right, title and interest of the judgment-debtor at the time of the attachment. It is, therefore, unnecessary to refer to or discuss any of the cases cited with regard to this point.

In the result, I am satisfied that both the lower Courts are correct in the conclusion they arrived at. The Second Appeal is, therefore, dismissed with costs.

REILLY, J.

REILLY, J.—Defendant 4, who is the appellant before us, bought a ryot's holding at a Court-sale held in a District Munsif's Court in execution of a money decree of a Revenue Court for arrears of rent. He contends that his purchase was under section 125 of the Madras Estates Land Act free from encumbrances and in particular free from the mortgage on which the plaintiff sues. Section 125 of that Act provides in

(1) (1925) 49 M.L.J., 117.

effect, though in a rather back-handed way, that, when a ryot's holding is sold for arrears in respect of it, the sale is free from encumbrances with certain specified exceptions. I agree that "sold for arrears" in that section means sold under sections 111 to 124 of the Act. But the provisions of section 125 and the consequent limited freedom from encumbrances have been made applicable by section 152 of the Act to the execution by Revenue Courts of decrees for arrears of rent. In *Suramma* v. *Suryanarayana Jagapathiraju*(1) it was decided therefore that a sale in a Revenue Court in execution of a decree for arrears of rent made by that Court was free from encumbrances, and in that respect the decision was followed by SADASIVA AYYAR, J. in *Venkatalashmamma* v. *Seetayya*(2). But there is nothing in the Act to make the provisions of section 125 applicable even to that kind of decree when it is executed in a Civil Court, and, as was decided in *Venkatalakshmamma* v. *Seetayya*(2), a sale in execution of a decree so transferred to a District Munsif's Court is not under the provisions of the Act free from encumbrances. I agree therefore that Defendant 4's appeal must fail. But I may add that I do not in any way dissent from the actual decision of PHILLIPS, J. in *Kotayya* v. *Kotappa*(3), to the effect that the charge for rent given by section 5 of the Act can in proper circumstances be enforced by a suit in a Civil Court.

K.R.

(1) (1919) I.L.R., 42 Mad., 114. (2) (1920) I.L.R., 43 Mad., 786.
(3) (1925) 49 M.L.J., 117.