

APPELLATE CIVIL.

*Before Mr. Justice Wallace and Mr. Justice
Anantakrishna Ayyar.*

1923,
December 3. MEENAKSHI AMMAL AND OTHERS (L.Rs. OF FIRST PLAINTIFF
AND PARTY APPELLANT IN THE HIGH COURT), APPELLANTS,

2.

A. RANGASWAMI AYYAR AND ANOTHER (DEFENDANT AND
SECOND PLAINTIFF), RESPONDENTS.*

*Madras Estates Land Act (I of 1908), sec. 112—Agreement to
sell by landholder—Proceedings under sec. 112 started by
landholder after the agreement but before execution of sale
deed by him—Notices issued to Collector but not served on
ryots prior to sale—Competency of landholder to sustain
proceedings under the section.*

Where a landholder, after he had agreed to sell his interest in the property to another but before a sale deed therefor was executed, started proceedings, under section 112 of the Madras Estates Land Act, for the recovery of arrears of rent and sent notices to the Collector as contemplated by the section, *Held* that the proceedings were properly initiated under the section, even though the ryots were not actually served with notices prior to the execution of the sale deed, and that the landholder was entitled to attach and sell the holding for arrears of rent.

Forbes v. Maharaj Bahadur Singh, (1914) I.L.R., 41 Calc., 926 (P.C.), explained and applied.

SECOND APPEALS against the decrees of the District Court of Rāmnād in Appeal Suits Nos. 8 and 9 of 1924 preferred against the decrees of the Court of the Special Deputy Collector of Manamadura in Summary Suits Nos. 242 and 250 of 1922, respectively.

T. R. Ramachandra Ayyar (with him *P. R. Ganapathi Ayyar* and *K. P. Panchapagesa Ayyar*) for appellants.

* Second Appeal Nos. 2242 and 2243 of 1927.

C. S. Venkatachari (with him *M. S. Venkatarama Ayyar*) for respondents.

The JUDGMENT of the Court was delivered by

ANANTAKRISHNA AYYAR J.—The landholder proceeded to take steps under section 112 of the Estates Land Act to attach and sell the holding of the ryots for non-payment of arrears alleged to be due to him by the ryots. The ryots instituted the two suits, Summary Suit Nos. 242 and 250 of 1922, to set aside the attachment under section 112. Second Appeal No. 2242 relates to the suit filed to set aside the attachment in respect of the arrears for fasli 1329 and Second Appeal No. 2243 relates to the suit similarly instituted to set aside the attachment made by the landholder in respect of the arrears for fasli 1328. The main pleas raised by the ryots, the plaintiffs in these suits, were that the landholder had agreed on the 31st March 1920 to transfer his rights as landholder in favour of a stranger. He took proceedings in respect of rent due for fasli 1329 on the 15th August 1920, and in respect of rent due for fasli 1328 in June 1920. The sale deed, however, was executed only on the 16th August 1920. On these facts, the plea raised by the ryots that the landholder had no *locus standi* to take proceedings under section 112 of the Estates Land Act was overruled by both the lower Courts. There was also a question raised on behalf of the ryots as to whether they had encroached on some portion of the Mulaimal land, and, if so, what rent was due by them in respect of the same for the faslis in question. The first Court held that the encroachment was proved, whereas the lower Appellate Court held that Exhibit VI was not reliable, and that the alleged encroachment was not proved and consequently that the ryots were not bound to pay anything in respect of the alleged encroached lands. The ryots have preferred these second appeals.

MEENAKSHI
ANNAL

"
RANGASWAMI
AYYAR.

ANANTA-
KRISHNA
AYYAR J.

MEENAKSHI
AMMAL
v.
RANGASWAMI
ATTAR.

ANANTA-
KRISHNA
ATTAR J.

The first point raised by the learned Advocate for the appellants in these cases is that the landholder is not entitled to take, or to continue, proceedings under section 112 of the Estates Land Act. The learned Advocate argued that the decision of the Privy Council in *Forbes v. Maharaj Bahadur Singh*(1) is an authority for the position that after a landholder transferred his interest as landholder in the lands to a stranger, he is not entitled to take any steps in respect of any past arrears under the Madras Estates Land Act. For the purpose of disposing of the present appeals, we think it is enough to confine our decision to the actual facts of these two cases. As already remarked, the landholder had initiated proceedings under section 112 of the Estates Land Act *before* he transferred his interest in the land to a third person. The case is not, therefore, one where a landholder, after a transfer of his rights in the lands, began proceedings under the Estates Land Act. The learned Advocate, however, argued that proceedings under section 112 could be taken to be initiated only when the ryots were actually served with notices. We are unable to agree with that contention. The landholder legally initiates proceedings under section 112 if he sends the notices contemplated by section 112 to the Collector in proper time. It is not disputed that the landholder's acts in sending the notices were in fact *before* he sold the properties to a stranger by a document dated the 16th August 1920. In the Privy Council case their Lordships took care to remark at page 939

“The right to proceed to sale in one case, in the other to eject, is dependent on the existence of the relationship of landlord and tenant at the time when the remedy provided by law is sought to be enforced.”

Having regard to the facts of the present case, the landholder had the right to initiate proceedings

(1) (1914) I.L.R., 41 Calc., 926.

at the time that he did, and therefore the learned Advocate's argument on the first point is not, in our view, sustainable.

[His Lordship then dealt with the questions relating to deduction of interest, road-cess and village-cess, and concluded as follows:—]

For these reasons we think that, except in respect of the modification made above, the decrees of the lower Courts should be confirmed. As the appellants have substantially failed, the second appeals will be dismissed with costs.

K.R.

APPELLATE CIVIL.

*Before Mr. Justice Kumaraswami Sastri
and Mr. Justice Pakenham Walsh.*

AMBU NAIR (FIRST DEFENDANT), APPELLANT,

v.

KELU NAIR AND ANOTHER (PLAINTIFF AND THIRD
DEFENDANT), RESPONDENTS.*

1922,
October 3.

*Mortgage—Transfer of Property Act (IV of 1882), sec. 60—
Usufructuary mortgagee suing for possession or for mortgage
money—Compromise decree perpetuating mortgage relation-
ship and also giving right to redeem in execution—Dismissal
of execution application as barred by time—Right of
redemption by suit—Civil Procedure Code (V of 1908),
sec. 47—Res judicata—Clog on equity of redemption.*

In a suit by a usufructuary mortgagee for possession and in the alternative for the mortgage money, a compromise decree was passed to the following effect:—(a) that the mortgagor was to pay the mortgage amount in three years and redeem, (b) that, on default, the mortgagee was to take possession in execution, (c) that the mortgagor could, thereafter, pay on the first day in any

* Appeal No. 406 of 1924.