ALWAR CHETTY v. MADRAS ELECTRIC SUPPLY CORPORATION, LTD.

CORNISH J.

the occupier, the learned trial Judge has come to the conclusion that the noise does not amount to a nuisance. He finds that in point of fact the comfort of the residents in the immediate neighbourhood of the defendants' premises is not materially diminished by the noise. The learned Judge was entitled to come to that conclusion upon the evidence, and I see no reason to differ from it.

But I think that the slowness of the defendants in carrying out the assurance which was given by them to the Madras Corporation in 1926 to do something to meet the complaints about the noise was in large measure responsible for this suit, and justifies the special order as to costs which my brother RAMESAM has proposed.

Attorneys for respondents.—*Moresby and Thomas.*

G.R.

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Mockett.

1932, July 29.

RAGHUNATHA DESIKACHARIAR (DEFENDANT), APPELLANT,

v.

RANGASWAMI PILLAI (PLAINTIFF), RESPONDENT.*

Madras Estates Land Act (I of 1908), sec. 24—Enhancement of rent by private contract—Permissibility—Sec. 112—Suit by ryot under—Muchilika previously executed accepting puttah containing an enhancement—Legality of—Ryot's right to contest, in the suit—Secs. 52 and 53 of the Act—Effect of.

A landholder cannot enhance the rent without a suit, and independently of the Madras Estates Land Act, by agreement with his tenant. Section 24 of that Act is absolute and peremptory, and it leaves no room for enhancement otherwise than

*Second Appeal No. 1272 of 1930.

as provided for by the Act, as for instance, by private contract. The omission of such contracts from section 187 cannot affect the plain language of section 24.

A ryot who has once given a muchilika accepting a puttah containing an enhancement is not debarred from contesting its legality in a suit filed by him under section 112 of the Act. The expression "contesting the right of sale" in that section is wide enough to allow him to raise all possible pleas, including the plea that a portion of the arrear claimed is an enhancement not as provided by the Act, and therefore an amount which cannot be claimed under the Act. Sections 52 and 53 of the Act do not warrant the view that once there has been an exchange, then for all purposes of distraint, the puttah shall be held to be valid.

APPEAL against the decree of the District Court of South Arcot in Appeal Suit No. 243 of 1928 preferred against the decree of the Court of the Deputy Collector of Tindivanam Division in Revenue Suit No. 1 of 1927.

S. Varadachariar for *S. V. Venugopalachariar* for appellant.

K. Rajah Ayyar for *K. Desikachari* for respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

JACKSON J.—Suit by a ryot contesting the right of the landholder to sell his holding under section 112, Madras Estates Land Act I, 1908, for arrears of rent.

It is not disputed that from 1919, or fasli 1329, the rent was enhanced by two annas in the rupee by mutual consent. Nor is it disputed that this enhancement was due to a rise in local prices, and to repairs to the irrigation works. On the facts the landholder may or may not have had good grounds for a suit under section 30 of the Act. But, could he, and this is the question, enhance the rent without a suit, and independently of the Act, by agreement with his tenant?

Section 24, marginally described as "restriction on enhancement", runs "the rent of a ryot shall not be

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enhanced except as provided by this Act", and then section 30 provides for a suit to that end by the landholder. So far as we can discover from the reports it has never been argued before a Bench, much less held, that section 24 was otherwise than absolute and peremptory. It leaves no room for enhancement otherwise than as provided for by the Act, as for instance, by private contract.

No doubt under section 187 certain contracts made before or after the passing of the Act are invalidated, and a contract to enhance rent is not in this category. But there is no question of invalidating a contract to enhance rent made before the passing of the Act, and therefore contracts limited to those made after the passing would not naturally fall into this dual category of contracts "made before or after".

We do not find that the omission of such contracts from section 187 affects the plain language of section 24; compare *Venkataramanachar* v. *Ibrahim Sahib*(1). Nor do we find anything in the Act to justify the further argument that a ryot who has once given a muchilika accepting a puttah containing an enhancement is any way debarred from contesting its legality. The language of section 112 is very broad. On a landholder's attempting to sell a holding for an arrear of rent under section 111, the ryot may file a suit "contesting the right of sale". This will allow him to raise all possible pleas, including the plea that a portion of the arrear claimed is an enhancement not as provided by the Act, and therefore an amount which cannot be claimed under the Act.

It is argued that this broad right of suit is narrowed by the terms of sections 52 and 53; but those sections

(1) (1924) 20 L.W. 582.

only lay down the formal pre-requisites for the process of distraint without in any way begging the question at issue between the parties. Before a landholder can distrain by summary process he and the ryot in question must be deemed to have exchanged puttah and muchilika under section 53, and the circumstances in which, and the period for which, such exchange will be deemed to have occurred is explained in sections 52 and 53. But there is no warrant for reading into these sections that once there has been an exchange, then for all purposes of distraint, the puttah shall be held to be valid. On the contrary as regards a puttah of previous faslis continuing in force (the present case) it is expressly laid down at the end of section 53 (1) that it must be a valid puttah. As a mere matter of drafting the word "valid" might have been inserted before puttah wherever it occurs in this sub-section; or it might have been omitted altogether, with the natural presumption that the puttah whether exchanged, tendered or continued must be valid; but the sense of the section is perfectly clear. A distraining landholder must show a puttah (or prove its tender) as certifying his *prima facie* right to distrain; and the ryot may then go below the surface and question whether the puttah is so valid as to justify the distraint.

For these reasons we agree that the judgment of the learned District Judge is correct, and the appeal must fail.

The appellant did not attempt to argue in this appeal that another item of the arrear claimed, a charge for taking green manure from land not in the use or occupation of the ryot, is rent, and withdrew his claim to that amount; so we have not discussed the item.

The appeal is dismissed with costs.

A.S.V.