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there can be no market for a temple as such, so there can be no market value for it. A temple has no market-value as it is inalienable, and a tank-bed has no market-value because it is unsaleable except as accessory to other property. No means exist for ascertaining what, in the event of such a sale, its value would be. Accordingly it is impossible to apply the provisions of section 7 (v), because the value of the subject-matter is indeterminate. The only course is to assess the court-fee under article 17-B. I allow the petition with costs, set aside the District Munsif's order, and direct him so to assess it.

K. W. R.

APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Curgenven.

1934, March 21.

ALAKKI VENKATARAMAYYA (PLAINTIFF), APPELLANT,

v.

MAHARAJA OF PITTAPURAM AND EIGHT OTHERS (DEFENDANTS), RESPONDENTS.*

Madras Estates Land Act (I of 1908), ss. 145, 146 and 55—Transfer of holding—Several transfers—Case of—Benefit of ss. 145 and 146—Last transferee's right to—Intermediate transferee not registered as a ryot—Effect of—Application by all transferors and transferees—Necessity—Transferee whose transfer has been recognised by landholder—Suit by, under sec. 55 of Act—Maintainability of—Remedy under sec. 145 (2) of Act not availed of by him—Effect of—Determination of proper rate of rent in such suit—Permissibility.

Where there has been more than one transfer of a holding or a portion thereof, the last transferee can get the benefit of

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* Second Appeal No. 893 of 1931.

sections 145 and 146 of the Madras Estates Land Act (I of 1908) even though the immediate transferee has not been registered as a ryot. But all the transferors and the transferees should join in the application to the landlord and until then he is not bound to recognise the transfer.

A transferee whose transfer has been recognised by the landholder and who has therefore become a ryot can sue under section 55 of the Madras Estates Land Act, even though he has not availed himself of the remedy under section 145 (2) of the Act, and the proper rate of rent can be determined in such suit. The effect of the transferee's failure to avail himself of the remedy under section 145 (2) of the Act is not to confer upon the landholder the right to fix the rent arbitrarily and in any manner he chooses.

Failure of all the co-sharers to agree is not a circumstance which, under the Act, justifies the landholder in not making a fair and equitable distribution.

Ramanathan Chetty v. *Arunachelam Chettiar*, (1920) I.L.R. 44 Mad. 43, relied upon.

APPEAL against the decree of the District Court of East Godavari in Appeal Suits Nos. 227 and 228 of 1926 preferred against the decree of the Court of the Headquarters Deputy Collector of Cocanada in Land Suit No. 94 of 1925.

P. Somasundaram for appellant.

K. Subramaniam for *Advocate-General* (*Sir A. Krishnaswami Ayyar*) for respondents.

Cur. adv. vult.

RAMESAM J.

The JUDGMENT of the Court was delivered by RAMESAM J.—The question arising in this second appeal is one relating to the application and working of sections 145 and 146 of the Madras Estates Land Act. The first respondent in this second appeal is the Maharaja of Pittapuram. In the village of Pavara in his Estate, three brothers of the Chelikani family, Buchirayanim Garu, Tammayya Garu and Achuta Rayanim Garu,

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were holding certain lands under patta No. 6. The holding consisted of the following Survey Nos. with their corresponding extents :—

Survey No.	Extent. ACS.
201/2	0·95
205	10·64
214/2	1·26
242/2	40·48
246	6·2

The rent of the whole holding was Rs. 392–11–0. The evidence shows that the three brothers divided the holding and were enjoying their respective portions separately. Of these fields, the second and the third abovementioned, namely, Survey Nos. 205 and 214/2, fell to the share of the eldest brother Buchirayanim Garu. The shares of the other two brothers were sold to various persons. In the year 1912 steps were taken to have a register of record of rights for this village under Chapter XI of the Madras Estates Land Act. The preliminary register is Exhibits D-1 to D-5. Objections were filed by the two brothers (Exhibits E and E-1). Thereupon an order was passed (Exhibit E-2) recognising their transfer and registering the alienees along with the eldest brother. The final record of rights was then prepared (Exhibits G, G-1 and G-2, dated 30th May 1913). According to this record of rights the rent for Survey No. 205 was Rs. 74–8–0 and for Survey No. 214/2, Rs. 3–2–0. Thus the rent for the two survey fields in the possession of Buchirayanim Garu was Rs. 77–10–0. In the proceedings before the Revenue Officer who prepared the record of rights there was no dispute about the rent of the various fields. The objection

related to the alienations and all the parties agreed to the rates of rent as finally settled in the record of rights. Buchirayanim Garu and his sons then began to alienate these two fields by sale deeds, Exhibits C, C-1, C-2 and C-3, ranging between April and October 1913. The vendee, Venkatachalam, and his undivided brother, Venkataswami, sold the property to the plaintiff under two sale deeds, dated 22nd September 1923 (Exhibits A and B). Soon after the sale, the plaintiff and his vendors put in a petition to the zamindar praying that the transfer to the plaintiff should be recognised and that patta should be issued in his name. No reply was received to this petition. Paragraph 4 of the plaint contains an allegation that after receipt of this petition the zamindar "caused notice to be sent by the karnam of his village, collected sist of Rs. 77-10-0 fixed for the said two fields and cesses and granted a receipt to the plaintiff as purchaser but he neither granted patta in the name of the plaintiff nor caused the land to be entered in his name". This allegation in the plaint was not denied in the written statement. Some time after, on 7th July 1925, another notice was sent by the plaintiff praying that the patta should be issued to him. The defendant-zamindar replied to this saying that the other co-sharers in the holding have not agreed to the subdivision as prayed for by the plaintiff. He also objected to the recognition of the transfer in plaintiff's favour on the ground that his transferors were themselves not registered as ryots. Thereupon the plaintiff filed an application before the Collector under section 145 of the Madras Estates Land Act but that application was

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dismissed. The ground given by the appellate Court was that it was barred by time. Thereupon the present suit was filed by the plaintiff under section 55 of the Madras Estates Land Act praying for the issue of a patta. The first defendant is the zamindar. In paragraph 5 of the written statement he refers to the reply he gave to the plaintiff's notice of July 1925, and prays that it may be read as part of the written statement. In paragraph 4 of the written statement he contends that the joint pattadars did not agree to the subdivision of the holding. After this plea all the remaining co-sharers in the holding have been impleaded as additional parties as defendants 2 to 9. Of these, defendants 2 to 5 resisted the subdivision in the manner claimed by the plaintiff. The other defendants did not appear. No defendant objects to the transfer to the plaintiff. The Deputy Collector who tried the suit found that the plaintiff should be regarded as a "ryot", that his transfer should be recognised and therefore he is entitled to the issue of a patta, and that the dismissal of the application under section 145 by the Collector does not make the present suit *res judicata*. He gave a decree to the plaintiff directing a patta to be issued with rent of Rs. 77-10-0 as settled by the record of rights. On appeal, the learned District Judge also found that the plaintiff was entitled to a separate patta, and that the suit was not barred by *res judicata*. But he also found that, as the plaintiff's application under section 145 was dismissed, the zamindar acquired a right to fix the rent in any manner he liked and as the zamindar pleaded that Rs. 131 was the proper rent for the plaintiff's holding he

directed patta to be issued to the plaintiff with that rent. He also directed that each party should bear his own costs. The plaintiff now appeals.

The first point that arises in the second appeal is whether the plaintiff is entitled to be recognised as a transferee and is entitled to a separate patta. Both the lower Courts have decided this in favour of the plaintiff but the respondents again raise the contention. They contend that the original ryot of the holding must join in an application for transfer and wherever he does not join the zamindar is not bound to recognise the transfer. They even contend that, where the immediate transferor is not a ryot and is himself a transferee who has not yet been registered as a ryot, the zamindar is not bound to recognise his transfer at all. In fact, the latter part of the contention amounts to this, namely, that where there is more than one transfer and the intermediate transferee has not been registered as a ryot, the last transferee cannot get the benefit of sections 145 and 146 of the Act. We have no hesitation in rejecting this portion of the contention. It is opposed to the language of section 10 and such an extreme construction is not necessary for protecting the interest of the landholder. While rejecting this portion of the contention, we agree with the Advocate for the respondents in thinking that when there is more than one transfer, all the transferors and all the transferees should join in the application to the landlord and until then he is not bound to recognise the transfer. In this case, if the zamindar had taken his stand from the beginning on this plea he would probably be

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technically right, but, as already mentioned, paragraph 4 of the plaint contains an allegation that the zamindar, as a matter of fact, recognised the transfer and collected the rent from the plaintiff in accordance with the record of rights and gave him a receipt. The allegation is not denied. That being so, it appears that the zamindar did recognise the plaintiff's transfer in 1923, though later on he began to raise objections to it and would not recognise it in 1925. On this ground we hold that the zamindar, as a matter of fact, recognised the plaintiff's transfer and cannot now refuse to recognise the same. The plaintiff's transfer being recognised by the first defendant he becomes a "ryot".

The plaintiff having become a ryot can he now sue under section 55 even though his application under section 145 was barred? We think he can. It must be remembered that the zamindar has got the first right to subdivide the holding whenever there is a transfer of a portion. It is in the nature of both a right and a duty. In his own interest he is entitled to make an equitable distribution of the rent of the holding. There is also a duty on his part to make such a fair distribution in the interest of the co-sharers also. Section 145 says that he ought to do it in a fair way and within a reasonable time. In the present case, the zamindar has never made any distribution, fair or unfair, within a reasonable time. He simply kept quiet after the first notice and merely collected the rent. On account of his delay the plaintiff ought to have filed an application under section 145 within the time mentioned in clause 25 of Schedule B. Not having filed an application

within the time he lost that right. But can it be said that merely because the plaintiff lost that right the zamindar acquires a right to fix the rent arbitrarily and in any manner he chooses? We do not think that he acquires any such right by reason of the default of the plaintiff in filing an application in time. It must be remembered that such an application has become necessary by the zamindar's own delay in making a distribution, and he is not to gain by his own default. The excuse mentioned in the reply given by the zamindar in 1925 that all the co-sharers did not agree is irrelevant. That is not a circumstance which, under the Act, justifies the zamindar in not making a fair and equitable distribution. Whether all the co-sharers agree or not it is his duty to make a fair and equitable distribution. He failed to do so and, merely because the transferee-plaintiff failed to avail himself of the remedy given by the Act, the zamindar cannot get any advantage thereby. The policy of the Act is to see that every holding should be liable to a fair and equitable rent, neither more nor less, and that policy is not to be defeated by allowing the zamindar to fix any rent he chooses arbitrarily. There must therefore be some proceeding open to one or the other of the parties by which a proper rate of rent should be determined. Such a proceeding is the proceeding for the obtaining of a patta. Just as in a suit for rent a proper rate of rent can be determined incidentally where it is not already known even though a suit under section 55 for the obtaining of a patta was not filed, similarly, though the remedy under section 145 (2) has not been made use of by the ryot

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still the proper rate of rent can be determined in a suit for obtaining a patta under section 55. This conclusion is in accordance with the decision in *Ramanathan Chetty* v. *Arunachelam Chettiar*(1), and is consonant with the policy of the Act. The analogy relied on by the learned District Judge based on article 91 of the Limitation Act is misleading and is not a good analogy. We are of opinion that a suit under section 55 lies and, if a suit lies, the terms of the patta can be considered by the Court, one of the terms being the proper rate of rent.

On the above conclusion, if there is any further point to be considered in the case, we should call for a finding from the lower appellate Court to determine the proper rate of rent. The record of rights is only presumptive evidence (section 167) but cannot be conclusive about it. But both the lower Courts have expressed the opinion that in the present case the rent in the record of rights is the proper rent, and, seeing that it has never been seriously objected to by any co-sharers, we have no doubt that the finding is correct. In these circumstances, it is unnecessary to call for a fresh finding.

It is only fair to the zamindar to settle this matter finally in such a way that he should not be harassed by the other sharers by way of claiming a lower rate of rent than their holding should reasonably bear. We declare that the other sharers are liable to the rate of rent mentioned in the record of rights for their holding, nothing being shown to the contrary, and that the zamindar should be entitled to the total rent of the

(1) (1920) I.L.R. 44 Mad. 43.

whole holding of Rs. 392-11-0, and it should not be open to the other co-sharers to say that their lands are liable for smaller rent. We wanted to hear the other sharers if they have got anything to say in the matter but they were not represented and no arguments were advanced on their behalf. We therefore allow the second appeal and direct that the patta to the plaintiff should be issued by the first defendant with rent of Rs. 77-10-0 and corresponding cesses. The decree of the Deputy Collector will be restored with costs here and in the lower appellate Court to be borne by the first defendant. The declaration should be entered in the decree.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1934, March 7.

PAPI NAIDU (DECEASED) AND FOUR OTHERS (SECOND DEFENDANT AND HIS LEGAL REPRESENTATIVES), APPELLANTS,

v.

SUBBARAYA CHETTY AND FOUR OTHERS (PLAINTIFF AND DEFENDANTS 3 TO 6), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), O. XXI, rr. 46 and 54—Mortgage with possession—Debt under—Attachment of, under r. 46—Permissibility—Effect of—Security and right to possession if affected by—Separate attachment of security or of right to possession under r. 54—Necessity.

A mortgage debt under a possessory mortgage can be attached under Order XXI, rule 46, of the Code of Civil Procedure. The attachment of the mortgage debt operates not only on the debt but also on the security which fastens itself to the debt. There is therefore no further necessity to attach

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* Second Appeal No. 243 of 1930.