

APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao and Mr. Justice
Abdur Rahman.*

1937,
December 3.

BHAMIDIPATI SATYANARAYANA, RECEIVER,
CHINCHINADA ESTATE, IN ORIGINAL SUIT No. 28 OF 1923,
SUB-COURT, NARSAPUR (SECOND RESPONDENT), APPELLANT,

vs.

ALLURI KRISHNAMRAJU (APPELLANT) RESPONDENT.*

*Madras Estates Land Act (I of 1908), sec. 42—Retrospective
effect—Adjudication under the section, if has—Back rent, if
can be decreed under.*

Section 42 of the Madras Estates Land Act does not refer to back rent and a decree cannot be granted in respect of an excess area for past faslis also.

Section 42 is a special piece of legislation involving an invasion of accrued rights and must be strictly construed.

APPEAL under Clause 15 of the Letters Patent preferred against the judgment of WADSWORTH J. in Second Appeal No. 722 of 1932 preferred to the High Court against the decree of the District Court of West Godavari at Ellore in Appeal Suit No. 203 of 1930 (Summary Suit No. 8 of 1929, Deputy Collector, Narsapur Division).

A. Satyanarayana and P. Satyanarayana Rao for appellant.

V. Rangachari for respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by VENKATASUBBA RAO J.—The point is one of some difficulty in regard to section 42 of the Madras Estates Land Act (I of 1908). The landholder

VENKATA-
SUBBA RAO J.

* Letters Patent Appeal No. 116 of 1935.

SATYA-
NARAYANA
v.
KRISHNAM-
RAJU.
—
VENKATA-
SUBBA RAO J.

filed an application before the Sub-Collector under section 42 (2) praying for an alteration of the amount of rent in respect of the excess area in the defendant's holding. The rent which was sought to be altered was being paid under the terms of a patta, which had been for long in force. At that time there was a previous suit filed by the landholder, pending before the Sub-Collector, for rent under the Act. The defendant had pleaded that the rent claimed was excessive and issues had been framed in the suit. It was at this stage that the application under section 42 (2) was made.

The Sub-Collector heard the application and the suit concurrently and gave a consolidated decision, as it were, holding the defendant liable in respect of a large excess area and passed a decree upon that footing for back rent also, thus giving retrospective effect to his adjudication under section 42. It is not material to the question, but it may be interesting to note, that the patta rent was in respect of less than an acre and the area found by the Sub-Collector was upwards of six acres.

The short point raised by this Letters Patent Appeal is, whether the Courts below are right in holding that a decree can be granted in respect of an excess area for the past faslis also. It would be false analogy to refer to other sections of the Act, or to other Acts which contain similar but differently worded provisions. Section 42 obviously does not refer to land on which there has been a trespass, for there are other sections dealing with cases of trespass. Section 163 refers to the ejectment of, and section 45 to the rent payable by, trespassers. Section 42, the provisions with

SATYA-
NARAYANA
v.
KRISHNAM-
RAJU.
—
VENKATA-
SUREA RAO J.

which we are concerned, is a special piece of legislation involving an invasion of accrued rights. Construing the section strictly—and there can be no doubt that such a provision should be so construed—we find it difficult to hold that retrospective effect was intended. The notion that the rent which has been acquiesced in can be abruptly altered with retrospective effect seems repugnant to every legal conception. WADSWORTH J., from whose decision this appeal has been filed, was also of the opinion that back rent cannot be claimed, but he seems to suggest the sanctity of contracts as the ground of his decision. We doubt, although we agree with his conclusion, if his reasoning is correct, for the section seems to proceed upon the footing of an absence of contract. For instance, in section 44, which prescribes the rules for determination of alteration of rent, it is stated that the Collector should have regard *inter alia* to the fact whether the rent was a consolidated rent for the entire holding. This and other similar rules seem to exclude the idea of an inroad upon people's rights where the tenancy has its origin in an express contract.

In support of our view that section 42 does not refer to back rent, we may refer to the marked contrast of its wording to that of section 45. The latter section deals, as already stated, with the case of trespassers. It makes the person in possession liable to pay not only what the Collector determines to be fair rent, but, in addition, such sum as he may award as damages for unauthorised occupation; thus, this section expressly enacts that an amount in respect of a past period

can be awarded. The omission of similar words in the section in question is significant.

In the result, the judgment of WADSWORTH J. is confirmed and the Letters Patent Appeal is dismissed with costs.

A.S.V.

SATYA-
NARAYANA
v.
KRISHNAM-
RAJU.

APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao and
Mr. Justice Abdur Rahman.*

IN RE VEERASWAMI PADAYACHI (PETITIONER),
APPELLANT.*

1937,
December 6.

Letters Patent (Madras), Cl. 15—Second appeal—Judgment of single Judge of High Court in—Review of—Order of that Judge refusing—Appeal from—Competent without leave of that Judge, if.

An appeal from an order of a Judge of the High Court refusing to grant a review of his judgment in a second appeal is not competent unless that Judge certifies under Clause 15 of the Letters Patent that the case is a fit one for appeal.

Clause 15 of the Letters Patent, properly construed, means that no judgment of a Judge of the High Court in the exercise of second appellate jurisdiction is appealable without leave. An order refusing to grant review of the judgment in a second appeal is made in the exercise of such second appellate jurisdiction.

APPEAL sought to be preferred under Clause 15 of the Letters Patent against the order of PANDRANG ROW J. dated 16th April 1937 and made in Civil Miscellaneous Petition No. 708 of 1937 for review of the judgment in Second Appeal No. 1188 of 1932 preferred to the High Court against the