APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Krishnaswami Ayyangar and Mr. Justice Somayya.

1939, March 1.

ANUMALA ANKAMMA (FIRST DEFENDANT), APPELLANT,

v.

KOMARAVOLU VENKATA SUBBAYYA AND THREE OTHERS (PLAINTIFF AND DEFENDANTS 2 TO 4), RESPONDENTS.*

Madras Estates Land Act (I of 1908), secs. 146 and 147—Retrospective, if—Transfer by ryot before Act of portion of his holding—Sale after Act of that portion for rent arrears due by ryot in respect of portion not sold and in his possession—Validity of—Notice of transfer not given by transferee to landholder—Rent paid by transferee and accepted by officials of landholder from date of transfer—Rent sale and proceedings resulting therein without notice to transferee.

The appellant, who had in 1903 purchased the suit land, which was one of five plots comprised in the holding of a ryot, was in possession of the land from the date of his purchase and paid year by year thereafter the rent due by him in respect of the land to his landlord, the zamindar, who recognised him as being the holder of the land. The appellant did not, however, serve formal notice on his landlord in the manner prescribed by section 146 of the Madras Estates Land Act, 1908. The pattadar, who continued to be in possession of the remaining four plots comprised in the holding, failed to pay to his landlord the rent due by him in respect of those plots for the years 1919, 1920 and 1921 with the result that the landlord instituted a rent suit and obtained a decree. In execution of that decree the suit land was sold as being part of the area covered by the patta and was purchased by a third party. The appellant was not made a party to any of the proceedings and he had no notice of the suit or of the sale. In a suit to recover possession of the suit land from the appellant brought by the transferee of the same from the execution purchaser,

* Letters Patent Appeal No. 18 of 1937.

held by the Full Bench that the appellant was not required to serve formal notice of the transfer on his landlord, that he got a good title to the suit land by the conveyance to him in 1903 and that his title was not affected by the execution sale.

Sections 146 and 147 of the Madras Estates Land Act, 1908, are not intended to have retrospective effect. Before the Act a transferee had a recognised status even without any notice being given of the transfer to the landlord. Therefore in providing that transferees should be bound to give formal notice to the landlords the Act did affect substantive rights and an Act which has this effect cannot be regarded as being retrospective unless this is so stated or this is necessarily implied. There is nothing in section 146 or in section 147 which indicates an intention on the part of the Legislature to interfere with rights acquired before the Act came into force.

Sri Mahant Prayag Dossjee v. *Sarangapani Chetty*(1) overruled.

APPEAL under Clause 15 of the Letters Patent against the decree and judgment of BURN J., dated 2nd November 1936 and passed in Second Appeal No. 299 of 1935 preferred to the High Court against the decree of the Court of the Subordinate Judge of Guntur in Appeal Suit No. 96 of 1934 preferred against the decree of the Court of the District Munsif of Ongole in Original Suit No. 356 of 1929.

The second appeal came on for hearing before LEACH C.J. and SOMAYYA J. when their Lordships made the following

ORDER :—

In view of the decision in *Sri Mahant Prayag Dossjee* v. *Sarangapani Chetty*(1) we consider that the case should be heard by a Full Bench and we direct accordingly.

ON THE REFERENCE :

V. Govindarajachari for appellant.—[Reference was made to *Muthukaruppa Pillai* v. *Annamalai Chettiar*(2), *Ekambara*

(1) (1922) 17 L.W. 361.

(2) (1935) 69 M.L.J. 297, 299.

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Ayyar v. *Meenatchi Ammal*(1), *Peram Narasigadu* v. *Machireddi Butchireddi*(2), *Kesavasami Aiyar* v. *Narayana Chetty*(3) and *Sri Mahant Prayag Dossjee* v. *Sarangapani Chetty*(4).] Section 147 of the Madras Estates Land Act of 1908 was not the law before that Act.

[*G. Chandrasekhara Sastri* for first respondent intervening.—The effect of the decisions of this Court is that a landlord can ignore a transfer of a part of a holding but where the transfer is of the entire holding he is bound to recognise the transfer. This is also the English law.]

V. Govindarajachari continuing referred to Maxwell on the Interpretation of Statutes, page 196, on the question whether declaratory Acts are retrospective. *Muthukaruppa Pillai* v. *Annamalai Chettiar*(5) refers to the earlier decisions. In *Ekambara Ayyar* v. *Meenatchi Ammal*(1) the distinction between a landlord and a tenant under the English law and a shrotriemdar, inamdar or zamindar and his ryots is pointed out ; see page 404.

[KRISHNASWAMI AYYANGAR J.—There is nothing in *Ekambara Ayyar* v. *Meenatchi Ammal*(1) to suggest any distinction between a transfer of the whole holding and a transfer of a portion of the holding.]

No. In fact in *Peram Narasigadu* v. *Machireddi Butchireddi*(2) the transfer was of a portion of the holding. *Kesavasami Aiyar* v. *Narayana Chetty*(3) was a case of devolution of interest in respect of a portion of a holding.

G. Chandrasekhara Sastri for first respondent.—The plaintiff—first respondent is not trying to give any retrospective operation in the strict sense of the word to sections 146 and 147 of the Estates Land Act. If the rent sale had been before the Act and a question of its validity arose and the landlord contended that the sale was valid even though it was without notice to the transferee, the landlord would be attempting to give a retrospective effect to the said sections. The fact that rent was received from the transferee by the officials of the estate from 1903 onwards does not show that the zamindar recognised the transferee as being the holder of the land.

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(1) (1903) I.L.R. 27 Mad. 401, 406. (2) (1910) 20 M.L.J. 732.
(3) (1912) 24 M.L.J. 228. (4) (1922) 17 L.W. 361.
(5) (1935) 69 M.L.J. 297, 299.

[THE CHIEF JUSTICE.—That fact shows that the zamindar recognised the transfer and accepted rent on that footing.]

The JUDGMENT of the Court was delivered by LEACH C.J.—The question which falls for decision in this appeal is whether section 146 and section 147 of the Madras Estates Land Act, 1908, are intended to have retrospective effect. Before considering the provisions of the Act I will state how this question arises. The appellant is a ryot in possession of a piece of land known as Survey No. 191/1. The land forms part of a holding granted by the Raja of Venkatagiri. There are five lots bearing survey numbers in this holding, the other four being in the possession of one Venkata Subbayya, the pattadar. Venkata Subbayya is the son of one Vobayya, who in 1903 sold to the appellant and two others the land described as Survey No. 191/1. The appellant's co-owners eventually gave up their interests in the land and he alone cultivated it. Venkata Subbayya failed to pay to his landlord the rent due by him for the years 1919, 1920 and 1921 in respect of Survey Nos. 246, 445, 679 and 305 which comprised the remainder of the holding. The result was the landlord instituted a rent suit before the Sub-Collector, Ongole, in 1922 and obtained a decree. In execution of that decree the land held by the appellant was sold as being part of the area covered by the patta. The purchaser was one Poluri Yellamraju, who on 28th November 1928 conveyed the land to one Komaravolu Venkata Subbayya.

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The appellant was recognised by the landlord as the holder of Survey No. 191/1 after his purchase in 1903 and he continued to pay year by year the rent due by him in respect of it. It was held by the trial Court in the suit out of which this appeal arises that Venkata Subbayya had deliberately defaulted,

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knowing that a rent suit could be filed. His scheme was to induce the decree-holder to sell in execution the appellant's land as it formed part of the holding and thus give him an opportunity of buying it at the Court auction. Of course, a scheme of this nature could only be carried through with the connivance of the subordinate officials of the zamindar. The present suit was filed in the Court of the District Munsif of Ongole by Komaravolu Venkata Subbayya on 29th April 1929, six years after the Court auction had taken place, to recover possession of the property from the appellant. The District Munsif dismissed the suit, holding that the appellant's title was not affected by the sale, because he had no notice of the suit or of the sale, he was not made a party to any of the proceedings, he had been in possession of the land since 1903, and he had regularly paid his rent to the landlord, who had recognised him as his tenant. The District Munsif also held that Poluri Yellamraju and Komaravolu Venkata Subbayya were creatures of Venkata Subbayya. Poluri Yellamraju had bought the property at the Court auction on behalf of Venkata Subbayya and had transferred it to Komaravolu Venkata Subbayya, who was also his benamidar. The plaintiff appealed to the Subordinate Judge of Guntur who held that the evidence was not sufficient to justify the conclusion that the auction purchaser was a benamidar of Venkata Subbayya, although he appears to have accepted the finding that the plaintiff was. The Subordinate Judge set out the evidence on which the District Munsif had held that the auction purchaser was a benamidar and apparently did not dispute its accuracy. If true, the evidence was sufficient to support the District Munsif's finding that the auction purchaser was a benamidar. Accepting

the evidence as true, there was no other conclusion really open. Holding that the auction purchaser was not a benamidar and relying on the decision in *Sri Mahant Prayag Dossjee* v. *Sarangapani Chetty*(1) where it was held that the Madras Estates Land Act had retrospective effect, the Subordinate Judge allowed the appeal and decreed the suit. The appellant then appealed to this Court, but in his memorandum of appeal he took no exception to the finding of the Subordinate Judge that the auction purchaser was not a benamidar. He challenged the correctness of his decision on legal grounds and left the facts entirely alone. It is unfortunate that he did so because it was open to him to have challenged the decision of the Subordinate Judge with regard to the position of the auction purchaser. It is, however, too late in the day now for this question to be raised, and the Court is merely concerned with the question whether the decision of BURN J., who heard the appellant's appeal which followed the decision of the Subordinate Judge, is right in law. BURN J. dismissed the appeal on the ground that he was bound by the decision in *Sri Mahant Prayag Dossjee* v. *Sarangapani Chetty*(1).

Before referring to what was said in that case I will set out the provisions of section 146 and section 147 of the Madras Estates Land Act. Section 146 provides that whenever a holding or any portion thereof is transferred by the act of a ryot, or in execution of a decree or order of a civil Court passed against him, or by a sale for arrears of Government revenue or for any demand recoverable as arrears, the transfer shall, subject to the provisions of section 145, be recognised by the landholder if notice in

(1) (1922) 17 L.W. 361.

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writing be communicated to him by the transferor and transferee, or a certified copy of a decree or order of a civil Court establishing a transfer is produced, or in cases in which a transfer is effected by sale under the order of any Court or public officer, the sale certificate or a certified copy is produced. On notice in writing given by the transferor and transferee or by the co-sharers, as the case may be, the landholder is required to enter into separate engagements with the holders of the sub-divisions from the revenue year next succeeding that in which the notice has been given. Therefore under this section the landlord is not bound to recognise a transfer unless he receives a notification in the manner prescribed by the section. Section 147 says that all acts and proceedings commenced or had under the Act against the transferor or the co-sharers prior to the giving of the notice under section 146 or prior to the production of such copy of the decree or order or certificate of sale under section 146 in so far as such acts and proceedings affect or purport to affect the land on which the arrear is due, the crops and the products, shall as against the transferee or co-sharer be as valid and effectual as if such acts and proceedings had been commenced or had against the transferee or co-sharer himself, and he had been the defaulter. In other words all proceedings which have been commenced before notice has been received by the landlord shall be effective against the transferee.

In *Sri Mahant Prayag Dossjee* v. *Sarangapani Chetty*(1) a Bench of this Court consisting of OLDFIELD and RAMESAM JJ. held that these two sections applied to cases where the transfer was before the Act. In

(1) (1922) 17 L.W. 361.

other words they held that the Act had retrospective effect. Although the learned Judges seemed to have had some doubt as to what was the law before the Act came into force, it was well settled that where a pattadar transferred his holding or part of his holding to another, the transferee became the tenant and it was the duty of the landlord to find out the transferee and collect the rent from him. Proceedings for the recovery of the rent could not be commenced until notice had been given to the transferee. See *Ekambara Ayyar* v. *Meenatchi Ammal*(1), *Peram Narasigadu* v. *Machireddi Butchireddi*(2), *Kesavasami Aiyar* v. *Narayana Chetty*(3) and *Muthukaruppa Pillai* v. *Annamalai Chettiar*(4). The decision in *Peram Narasigadu* v. *Machireddi Butchireddi*(2) and that in *Kesavasami Ayyar* v. *Narayana Chetty*(3) had reference to a case where the pattadar had transferred only a portion of his holding. The decision of OLDFIELD and RAMESAM JJ. in *Sri Mahant Prayag Dossjee* v. *Sarangapani Chetty*(5) that the Act had retrospective effect was based on the opinion which they had formed that the Act did not determine any substantive rights, but we are unable to share this view. Before the Act a transferee had a recognised status even without any notice being given of the transfer to the landlord. Therefore in providing that transferees should be bound to give formal notice to the landlords the Act did affect substantive rights and an Act which has this effect cannot be regarded as being retrospective unless this is so stated or this is necessarily implied. That is not the position here. The wording of section 146 is in the present

(1) (1903) I.L.R. 27 Mad. 401. (2) (1910) 20 M.L.J. 782.
(3) (1912) 24 M.L.J. 228. (4) (1935) 69 M.L.J. 297.
(5) (1922) 17 L.W. 361.

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tense, and there is nothing in that section or in section 147 which indicates an intention on the part of the Legislature to interfere with rights acquired before the Act came into force.

To give retrospective effect to the Act would cause damage to the appellant. In 1903 he acquired a valid title to the land which was sold in execution of the rent decree. He was not in default and throughout had paid his rent to his landlord, the zamindar, who recognised him as being the holder of the land. The payment of the rent to the officials of the zamindar and their acceptance of it means recognition by the zamindar. The Legislature can take away rights which have become vested, but it can only do so by a measure which clearly expresses its intention. There is no indication here of any such intention on the part of the Legislature which passed the Madras Estates Land Act, and *Sri Mahant Prayag Dossjee* v. *Sarangapani Chetty*(1) was wrongly decided. It follows that in our opinion the appellant was not required to serve formal notice on his landlord and that he got a good title to the land by the conveyance to him in 1903.

The result is that the appeal succeeds and the suit will be dismissed with costs throughout in favour of the appellant.

A.S.V.

(1) (1922) 17 L.W. 361.