

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice
Abdur Rahman.

1938,
April 25.

NAIVARANI MATATHIL AYYA PATTAR
(PETITIONER), PETITIONER,

v.

KRISHNAN *alias* THONDEE KARUPPASSAN *alias*
THONDEEPUNATHUNNAVAL AND THIRTEEN OTHERS
(RESPONDENTS 1 AND 3 TO 15), RESPONDENTS.*

*Madras Revenue Recovery Act (II of 1864), secs. 38 and 40—
Revenue sale of property—Purchaser at—Application for
possession under sec. 40 of Act by—Nature of possession
purchaser is entitled to, actual or symbolical—Persons not
bound by sale in possession and claiming value of improve-
ments—Encumbrance on property sold within meaning of
sec. 42 of Act—Claim to value of improvements, if.*

A sale certificate issued in favour of the petitioner under section 38 of the Revenue Recovery Act stated that he had purchased at public auction the property mentioned therein when it was sold for arrears of revenue due by the first respondent, the jenmi of the property. The second respondent was the kanamdar and respondents 3 to 14 were tenants under him. But the sale certificate did not make any mention of any of them. On an application by the petitioner under section 40 of the Revenue Recovery Act for possession, respondents 3 to 14 claimed the value of improvements.

Held that in the circumstances of the case the petitioner was entitled only to symbolical possession and not to actual possession.

The sale bound the first and second respondents and not any other person directly. Respondents 3 to 14 were not bound by the sale and, as they were on the property claiming rights, the petitioner could, by virtue of section 40 of the Revenue Recovery Act, get only such possession as would be

* Civil Revision Petition No. 1695 of 1934.

given to a decree-holder under Order XXI, rule 36, of the Civil Procedure Code, i.e., symbolical possession.

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Held further that, in view of the nature of the claim of respondents 3 to 14, they could not be said to have an encumbrance over the property within the meaning of section 42 of the Revenue Recovery Act.

PETITION under section 115 of Act V of 1908, praying the High Court to revise the order of the Court of the District Munsif of Payoli, dated 17th July 1934 and made in Execution Application No. 1040 of 1933.

K. P. Ramakrishna Ayyar for petitioner.

A. Achuthan Nambiar for seventh respondent.

B. Pocker for eighth respondent.

Other respondents were not represented.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—This civil revision petition arises out of an application made by the petitioner before us under section 40 of the Madras Revenue Recovery Act for possession of the property in pursuance of a revenue sale certificate issued to him by the Collector.

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The facts are these. The first respondent is the jenmi of the property. The second respondent is the kanamdar. Respondents 3 to 14 are tenants under the kanamdar. The property was sold for arrears of the Government revenue due on it from the first respondent and it was purchased by the petitioner. A sale certificate under section 38 of the Revenue Recovery Act was issued in his favour and it stated that the petitioner had purchased at a public auction the property mentioned therein when it was sold for arrears of revenue due by the first respondent. It did not make any mention of the second respondent or of respondents 3 to 14. When the petitioner applied for possession,

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respondents 3 to 14 claimed the value of the improvements. The lower Court passed an order that the petitioner is entitled to symbolical possession, holding that respondents 3 to 14 are entitled to the value of improvements.

In this civil revision petition two points are argued. The first is that the lower Court has committed an error in the exercise of its jurisdiction because it has refused to deliver actual possession to the petitioner, what was delivered to him being only symbolical possession. It is contended that under section 40 of the Revenue Recovery Act under which the application was made by the petitioner for possession the lower Court should have delivered to him actual possession. It appears to us that this argument is untenable. Section 40 says that the purchaser shall in the circumstances mentioned therein be put in possession "in the same manner as if the purchased lands had been decreed to the purchaser by a decision of the Court", i.e., such possession as will be given to a decree-holder under the Civil Procedure Code will be given to the purchaser under this section. This is the kind of possession which the purchaser is entitled to get of the property mentioned in the sale certificate. Under Order XXI, rule 35, Civil Procedure Code, actual possession will be delivered to the decree-holder by removing any person bound by the decree who refuses to vacate the property. Under Order XXI, rule 36, Civil Procedure Code, if in execution of the decree the amin finds that a person against whom no decree has been passed is in possession claiming right to the property, then symbolical possession only of the property will be delivered to the decree-holder. In the present case the revenue sale was directed against the first respondent (the jenmi) and the result of the sale

under section 42 of the Revenue Recovery Act was that the property became free of the encumbrance held by the second respondent. It follows that the sale bound the first and second respondents and not any other person directly; and so, when the amin went to deliver possession of the property and found that other persons were on it claiming rights, he could under the Civil Procedure Code deliver to the petitioner only symbolical possession; and that is what the learned Judge in the Court below has held that the petitioner is entitled to. It follows therefore that the argument that the lower Court should in the circumstances have ordered *actual* possession to the petitioner is not sound in law. A few cases were cited to us in support of the petitioner's contention, viz., *Chithambaram Chetti v. Natasam*(1), *Kelan v. Manikam*(2) and *Narasimma v. Surianarayana*(3). In none of these cases did the present question arise. In *Chithambaram Chetti v. Natasam*(1) the question was simply whether the Civil Procedure Code will apply to an application under section 40 of the Revenue Recovery Act. In *Kelan v. Manikam*(2) the question was whether the sale in that case was free of the kanamdar's rights. In *Narasimma v. Surianarayana*(3) the question was whether a permanent lease will amount to an encumbrance or not. For the above reasons we must overrule the first point that the lower Court should have delivered to the petitioner actual possession instead of symbolical possession.

The next point argued is that respondents 3 to 14 should be considered to be holders of an encumbrance on the property since they claim the value of improvements. The argument has not been supported by any

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(1) (1891) 1 M.L.J. 594.

(2) (1888) I.L.R. 11 Mad. 330.

(3) (1892) I.L.R. 16 Mad. 144.

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authority and we cannot, having regard to the nature of their claim which is only a right to be paid the value of improvements, hold that they have an encumbrance over the property within the meaning of section 42 of the Revenue Recovery Act. In our opinion the decision of the lower Court is right and no error in jurisdiction or irregularity in the exercise of it has been brought to our notice.

This civil revision petition is dismissed with costs of respondents 7 and 8.

A.S.V.

APPELLATE CIVIL.

*Before Mr. Madhavan Nair, Officiating Chief Justice, and
Mr. Justice Stodart.*

1938,
August 18.

KOZHIKOTE PATINHARE KOVILAKATH MAHADEVI
alias KUNHI THAMBURATTI *alias* VALIYA THAMBU-
RATTI AVERGAL STYLED VIYATHEN NOTTI (FIRST
PLAINTIFF), APPELLANT,

v.

KOZHIKOTE PATINHARE KOVILAKATH KULAPURA
TAVAZHI KARNAVAN AND MANAGER VEERARAYAN
alias MARUMAKAN THAMBURAN AND TWO OTHERS
(DEFENDANTS AND SECOND PLAINTIFF), RESPONDENTS.*

*Court-fee—Possession—Suit by landlord against his tenant for—
Decree for possession in, conditional upon plaintiff paying
value of tenant's improvements—Appeal by landlord contesting
liability for value of improvements—Court-fee payable in.*

Where a suit by a plaintiff for recovery of possession of properties from his tenants was decreed but on condition that he should pay a certain amount for value of improvements and

* Second Appeal No. 1199 of 1936.