to the appeal and his rights accordingly remained unaffected. Whether, in this country, Courts will in the absence of a corresponding statutory provision have the power to fix contribution as between tort-feasors is not necessary for the purpose of this case to consider. We are not prepared to do anything which will affect the plaintiffs' right to recover the full amount of damages from either of the defendants. The appeal fails and is dismissed with costs of the plaintiffs-respondents. The liquidator-appellant will not be personally liable for the costs.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Wadsworth.

KAMADANA SESHAYYA AND TWO OTHERS (DEFENDANTS), APPELLANTS,

v.

KOTAMARTHI ARUNDHATAMMA (PLAINTIFF), RESPONDENT.*

1938, September 30.

Madras Estates Land Act (I of 1908), sec. 26 (3)—Compromise decree approved by Court—Rate of rent fixed in—Applicability of sec. 26 (3) to case of—Sec. 199 of the Act—Applicability and effect of.

Section 26 (3) of the Madras Estates Land Act is intended to deal with cases of voluntary remissions given by a landholder so as to reduce the value of the estate which is to be taken by his successor and has no application to rates of rent fixed in a compromise decree approved by the Court.

Section 199 of the Act provides for the settlement of disputes regarding the rate of rent by means of compromises

* Second Appeal No. 741 of 1934.

SESHAYYA v. ARUNDHATAMMA.

subject to the approval of the Court. The effect of a compromise of a dispute regarding the rate of rent must be taken to settle not only what is the rate of rent payable during the lifetime of the then zamindar but what is the lawful rate of rent payable on the land, unless the compromise does not purport to provide for future rates. When the compromise definitely purports to fix the rate of rent for the future and it does not purport to fix it as a favourable rent or a reduction of rent but as the proper rent and the Court as provided by section 199 approves of the compromise, the rate of rent for the future embodied in that compromise is also approved by the Court. The fixation of rent is therefore not the voluntary act of the then landholder, but it becomes the act of the Court. The rate of rent so fixed by the compromise and approved by the Court becomes the lawful rate of rent for the land in question and subsequent payments at an enhanced rate and subsequent muchilikas embodying the enhanced rate will not bind the ryot. His rent can only be raised by the procedure laid down in the Act.

APPEAL against the decree of the District Court of Kistna at Masulipatam in Appeal Suit No. 140 of 1933, presented against the decree of the Court of the Sub-Collector of Bezwada in Summary Suit No. 134 of 1933.

P. Satyanarayana Rao for appellants.

N. S. Vasudeva Rao for *V. Govindarajachari* for respondent.

JUDGMENT.

WADSWORTH J.

WADSWORTH J.—This appeal raises a question, on which so far as I am aware there is no precise authority, with reference to section 26, sub-section (3), of the Madras Estates Land Act. The appellants were defendants in a suit brought by the plaintiff, a ryot, to raise a distraint under section 112 of the Act. The basis of the plaintiff's case was that the rent at the rate of Rs. 10 claimed by the landholder in the attachment notices was not the lawful rate and that the lawful rate was Rs. 6–12–0 on the basis of a compromise

decree, Exhibit A, dated 7th January 1922, in a suit for rent brought by the predecessor of the defendants against the predecessors of the plaintiff. The appellants' contention is that the rate fixed in the decree is not a lawful rate but a favourable rate granted by their deceased predecessor and that by virtue of section 26 (3) they are entitled to revert to the lawful rate of the land after the death of the person who agreed to the favourable rate.

The facts are not in dispute. The compromise decree, Exhibit A, resulted from a suit of 1921 brought by the landholder for rent and the terms on which the suit was decreed were that the defendant should pay certain specified sums for the suit faslis and should thereafter pay at the rate of Rs. 6–12–0 per acre with a concession rate of Rs. 2–8–0 per acre in years when the crops did not yield. The pleadings in that suit have not been exhibited, but I am of opinion that from the terms of the compromise decree it can be inferred that there was a dispute as to the rate of rent due on the land. The present defendants purchased the estate in 1924. The plaintiff purchased the holding in 1925. By a curious oversight it appears not to have been noticed by the plaintiff or by her predecessor that the present suit lands were included in the lands covered by the compromise decree and both the plaintiff's predecessor and the plaintiff herself went on paying at the rate which prevailed previous to this compromise, which was Rs. 10 per acre, the rate now claimed by the appellants. Not only did they pay this rate but they executed muchilikas in which this rate was recognized as the rate on which the land was held. Recently the plaintiff discovered that her land was covered by the compromise decree and when the land was attached for rent claimed at

SESHAYYA v. ARUNDHATAMMA.

WADSWORTH J.

the ten-rupee rate, she filed the present suit alleging that the proper rate for the land was Rs. 6-12-0.

Now I may observe that, in my opinion, section 26 (3) of the Act is not confined in its operation to original grants of land and that it does apply to a grant at a reduced rent of land already in the enjoyment of a ryot. But, so far as I know, it has never been decided whether section 26 (3) does or does not apply to a favourable rate of rent granted by the previous landholder and embodied in a decree of Court in a suit under section 77. This is a question which has to be decided with reference to the provisions of the Act and without the help of authorities. I may however refer to the ruling in *Narayana Patrudu* v. *Veerabadra Raju*(1) as authority for the position, about which there can be no doubt, that when there is a dispute regarding the rate of rent that dispute can be the subject of adjudication by the Court in a suit brought under section 77 merely for recovery of rent. This has a bearing in view of the provisions of section 199 which deals with compromises under the Act. Section 199 provides that the Court may pass a decree in terms of any lawful agreement or compromise so far as it relates to the suit and that any decree passed in accordance with such lawful agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject-matter of the suit as is dealt with by such agreement, compromise or satisfaction. Now it is argued for the appellants that this compromise related not only to the rent for the faslis then demanded but also to future rents and that to the extent to which it provides for future rents it goes beyond the subject-matter of the suit. It is also contended that, in view of the provisions of section 26 and the finding of the Courts below that at the time of

(1) (1927) I.L.R. 51 Mad. 228.

the compromise the lawful rent was Rs. 10 per acre, the compromise goes beyond the powers of the then landholder if it is taken to be a fixation of rent at a favourable rate in perpetuity. The argument is that the landholder cannot by contract bind his successors by a favourable rate granted to a ryot. It is argued that there is no particular sanctity attached to a contract embodied in a decree of Court which goes beyond the subject-matter of the suit, and that even if it be held in accordance with the provisions of section 199 that the contract embodied in a compromise approved by Court will bind the succeeding landholders, this can only be in so far as it related to the subject-matter of the suit and the subject-matter of the suit must be taken to be the rent payable in the light of the limitation on one landholder's powers of fixing the rent in the future. This argument is ingenious but I am of opinion that it is fallacious. Section 26, sub-section (3), is intended to deal with cases of voluntary remissions given by a landholder so as to reduce the value of the estate which is to be taken by his successor and it is in accordance with the policy of the Act to hold that such a voluntary remission given by a mere contract would have no greater sanctity than one which is given as an act of grace. But the Act provides for the settlement of disputes regarding the rate of rent by means of compromises subject to the approval of the Court. I think it must be assumed that the Court would not approve of a compromise which would be prejudicial to the rights of future zamindars. Moreover, the effect of a compromise of a dispute regarding the rate of rent must be taken to my mind to settle not only what is the rate of rent payable during the lifetime of the present zamindar but what is the lawful rate of rent payable on the land, unless the compromise

SESHAYYA v. ARUNDHATAMMA.

WADSWORTH J.

does not purport to provide for future rates. The compromise Exhibit A definitely purports to fix the rate of rent for the future and it does not purport to fix it as a favourable rent or a reduction of rent but as the proper rent. I think it follows that the Court having as provided by section 199 approved of this compromise, the rate of rent for the future embodied in that compromise was also approved by the Court. This fixation of rent is therefore not the voluntary act of the then landholder, but it becomes the act of the Court. It seems to me to be illogical to treat a fixation of rent approved by the Court as the irresponsible act of a deceased predecessor. In that view I hold that section 26, sub-section (3), has no application to rates of rent fixed in a compromise decree approved by the Court. It follows that Exhibit A specifies what is the lawful rate of rent for the suit land and it is undeniable that subsequent payments at an enhanced rate and subsequent muchilikas embodying the enhanced rate would not bind the ryot. His rent can only be raised by the procedure laid down in the Act.

The appeal is therefore dismissed with costs.

V.V.O.