

APPELLATE JURISDICTION (a)

*Special Appeal No. 351 of 1862.*KAMALÁ NÁYAK.....*Appellant.*RANGÁ RAU.....*Respondent.*

A, a zemindár, granted lands on kaul to B. B assigned to C, but the lands being mostly in the hands of cultivators, C only occupied those that had been in B's possession. The kist fell into arrear and A attached property of C's. Notice of the attachment was given before but the property was not seized till after the whole of the arrears claimed had become due. C resisted A's claim on the ground, substantially, that the sum demanded included arrears which had accrued on the lands not occupied by him:

Held, that as to the lands of which C had obtained the actual possession, there was such a privity between A and C as gave A a right to realize the amount of kist outstanding in respect of those lands.

Held also that this right was not affected by failure to prove the execution of a muchalká by C to A, or by the omission to furnish C with a list of the property attached.

Held also that the attachment was not vitiated by the circumstance that notice of the attachment was given before a portion of the arrears claimed had become due.

1862.
October 6.
S. A. No. 351
of 1862.

THIS was a special appeal from the decree of R. Cotton, the Civil Judge of Madura, in Appeal Suit No. 218 of 1861.

Mayne for the appellant, the defendant.

The facts of the case sufficiently appear from the judgment of the Court, which was delivered by

SCOTLAND, C. J. :—This special appeal has arisen on the confirmation in appeal by the Civil Judge of Madura of a decision passed by the Sub-Collector of that district, under the revenue regulations.

The Zamindár of Ámmánáyakanur, the plaintiff before the Sub-Collector, appears to have granted three villages of the zamindári on kaul to Mr. Fondclair, who sub-let them to the defendant Rangá Rau, and afterwards empowered the Zamindár to make what arrangement he pleased with the defendant. The evidence seems to have been insufficient to establish that a muchalká was executed by the defendant, and there appears nothing to disprove the defendant's statement that the lands assigned to him were in the occupancy

(a) present Scotland, C. J. and Phillips, J.

of the cultivating ryots, and that he had been able to take only those which had been in the actual possession of Mr. Fondclair. These, the defendant admitted, were liable to a revenue demand on the part of the plaintiff the Zamindár, of rupees 236, to which extent he acknowledged his responsibility to the plaintiff. The latter, however, on the strength of the muchalká alleged by him to have been executed by the defendant, but of which there appears to have been no sufficient evidence, attached property exceeding in value the arrear which the defendant admitted to be due to the plaintiff.

1882
October 6.
S. A. No. 351
of 1862.

Against this proceeding of the Zamindár, the defendant sought the intervention of the Sub-Collector, on the ground—(1) that he owed the Zamindár only rupees 236; (2) that neither notice nor demand had been served on him; and (3) that he had not been furnished with a list of the property attached.

The Sub-Collector gives no decided opinion as to the execution of the muchalká in point of fact, but proceeds to declare that it is illegal and invalid by reason of the omission in its preparation of certain of the requirements specified in section V, Regulation XXX of 1802; and he further decides that the attachment itself was illegal, as the demand for the kist which led to the attachment was made before it fell due. He therefore ordered the release of the property belonging to Ranga Rau which had been attached.

The plaintiff appealed, urging among other reasons, that though notice of the attachment had been given *before*, yet, that the defendant's property had not been seized until *after* the rent had become due.

The Civil Judge after observing that as Mr. Fondclair was lessee and patta-holder, the Zamindár was justified in sequestering property belonging only to him, and that process should have been issued against the lands only of the renter, seems to have been of opinion that no such privity existed between the plaintiff and the defendant as entitled the plaintiff to enforce any part of his claim, and further that the attachment was invalid on the legal grounds taken by the Sub-Collector.

1862.
 October 6.
 S. A. No. 351
 of 1862.

We are unable to adopt the view of the Zamindár claim and the attachment which the lower courts have taken. We observe that the defendant was content to resist the Zamindár's claim for rent, on the ground, substantially, that the sum demanded from him, embraced arrears which had accrued on lands not placed in his occupancy by his superior renter. And we are of opinion that in regard to those lands, of which he had obtained actual possession from Mr. Fondclair, there had been established between Ranga Rau and the Zamindár, a privity such as gave the latter a right to realize the amount of kists outstanding in respect of those lands notwithstanding either the failure to prove the execution of a muchalkà by the defendant to the plaintiff, or the objection taken to it on the ground of informality. We do not consider that the fact of a notice of arrears of rent having reached the sub-renter shortly before a portion of those arrears fell due, is sufficient in this case to vitiate the attachment which was put in force only when the entire amount of arrears claimed, had become due and payable.

We therefore reverse the judgments of the courts below, and adjudge as payable by the defendant to the plaintiff, a sum of rupees 236, and declare that to the extent of enforcing the payment of that amount the attachment is valid.

The costs of the proceedings before the Sub-Collector will be borne by the plaintiff, and each party will bear his own costs of the appeals to the Civil Court and to this Court.

Appeal allowed.