APPELLATE JURISDICTION (*a*)

*Referred Case No.* 46 *of* 1870.

RAMASAMI AIEN *against* MANJEYA PILLAI.

Section 7 Madras Act VIII of 1865 applies to cases where the landlord is the exclusive proprietor of both the melwarum and the mirasiwarum and the tenant has no saleable interest in the land.

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THIS was a case referred for the opinion of the High Court by V. Ramasami Aiyer, the District Munsif of Trivadi, in Suit No. 193 of 1870.

This is a suit brought for recovery of Rupees 39-2-0 as rent due for the latter half of Fusly 1276, on mahs 9 and sulies 47 of nunja and punja land, held and enjoyed by the defendant in the said Fusly.

The defendant, admitting that he cultivated and enjoyed the land, pleads that, no puttah and muchilka having been exchanged in the said Fusly, the suit is not sustainable under Section 7 of the Rent Recovery Act (Madras Act No. VIII of 1865.)

The case was heard before me on the 4th day of July 1870, and was adjourned for further consideration subject to the decision of the High Court upon the following case :—

The facts of the case are as follows :—The land for which rent is claimed forms part of the estate of "Thattimal Padugai" entirely exempt from the payment of revenue to Government; and, as certified by the Collector of Tanjore in his letter to the Civil Court under date the 8th September 1870, the Palace authorities at Tanjore are the exclusive proprietors of both warums or shares thereof, viz., the mirasiwarum and melwarum.

The plaintiff held the farm of the said estate from the Palace authorities for 3 Fuslies, viz., 1273 to 1275, and, on the 15th August 1863, sub-rented the land aforesaid to the defendant for the same period under an agreement (exhibit A) obtained from him to the effect that he should pay a rent of Rupees 78-4-0 per Fusly by two instalments, viz., Rupees 39-2-0 in September and Rupees 39-2-0 in March.

The defendant acted up to the conditions of A, up to the end of Fusly 1275, when the terms of the plaintiff's farm

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as well as the defendant's sub-rent expired together ; but the defendant, however, continued to hold possession of the land in Fusly 1276, while the plaintiff again became the farmer of the said "Thattimal Padugai" estate for Fuslies 1276 to 1278 under a document obtained by him from one Rama Mupen, to whom the Palace authorities had leased it out for those Fuslies.

Now the plaintiff, as farmer of the said estate for Fuslies 1276 to 1278, sues to recover Rupees 39-2-0 as rent due for the latter half of Fusly 1276, alleging that, notwithstanding the expiration of the term limited in A, the defendant held and enjoyed the land in Fusly 1276 and was therefore liable to pay rent at the rate fixed in A, and that the rent due for the first half of the said Fusly became barred by lapse of time.

The defendant allows that he cultivated and enjoyed the land in the said Fusly, but pleads that the suit is barred by Section 7 of the Rent Recovery Act, no puttahs and muchilikas having been exchanged.

The counsel for the plaintiff admits that in Fusly 1276 no puttahs and muchilikas were exchanged, tendered, or dispensed with in the manner prescribed by the said Section, and that the plaintiff took no lease or agreement in writing from the defendant specifying the rent to be paid by him in respect of the said land, but argues, 1stly, that Section 7 of the Act had no application to cases wherein the landlord was himself the proprietor of both warums of the land, and the tenant had no interest whatever in the soil, and 2ndly, that the defendant having cultivated and enjoyed the land in Fusly 1276, *i*, *e*., after the expiration of the term of his sub-rent, was liable to pay rent at the rate fixed in A.

On the other hand the counsel for the defence contends that, no puttahs and muchilikas having been exchanged in Fusly 1276, he was not a person bound to pay rent to the landlord within the meaning of Section 1 of the Act.

Upon the foregoing facts and arguments, I was of opinion that the position of the Tanjore Palace authorities with respect to the land in question was either that of a Jaghirdar or Inamdar referred to in Section 1 of the Act; that the plaintiff, being confessedly a farmer of the said land from the said

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Palace authorities, was a landholder within the meaning of the said Section, and, as such, was bound by Section 3 of the said Act, to exchange puttahs and muchilikas with his tenants, and that the plaintiff's counsel having admitted that no puttahs and muchilikas had been exchanged, tendered, or dispensed with in Fusly 1276, the suit was not sustainable against the defendant under Section 7. I was further of opinion that, whether the defendant had or had not a saleable interest in the land, he was still a tenant within the meaning of Sections 1 and 38 of the Act, and that even assuming that Section 7 had no application to cases wherein the landlord was the exclusive proprietor of both warums the bare admission of the defendant that he cultivated and enjoyed the land in Fusly 1276 would not entitle the plaintiff to recover, the latter having failed to take any lease or agreement in writing from the defendant specifying the rent to be paid by him for that Fusly, as prescribed by Section 13.

The questions for the decision of the High Court are

I.—Whether Section 7 of the Rent Recovery Act (Madras Act No. VIII of 1865) has application to cases wherein the landlord was the exclusive proprietor of both the melwarum and mirasiwarum thereof and the tenant had no saleable interest in the soil.

II.—If Section 7 had no application, would the bare admission of the defendant that he cultivated and enjoyed the land in Fusly 1276 entitle the plaintiff to recover rent for that Fusly, in the absence of any such lease or agreement in writing as is prescribed by Section 13 of the Act.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—This is a suit to enforce payment of rent claimed to be due by the defendant as tenant to the plaintiff. We have no doubt that, with respect to the right to maintain such a suit, the plaintiff is one of the landlords to whom Section 7 of Madras Act VIII of 1865 is applicable. He comes literally within the first of the two interpretations of "landholders" in Section 1, and every such landholder is required by Section 3 to enter into written engagements by puttah and muchilika with his tenants ; and

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to all suits brought to enforce the terms of a tenancy, in cases in which puttahs and muchilikas should have been exchanged in compliance with Section 3, the provisions of Section 7 are applicable.

We find nothing in the Act to warrant the distinction attempted to be made at the hearing before the District Munsif with respect to landlords who have the right to both the melwaram and mirasiwaram.

We have no doubt also that, whatever be the nature of a tenancy created by a landholder who is within Section 3, a suit to enforce its terms is subject to the enactment in Section 7.

We therefore return an opinion in the negative on the first question submitted, and, as the second question is conditional upon Section 7 having no application to the case, it is unnecessary to consider it.

We do not think that the agreement under which defendant held (exhibit A) can be said to be impliedly a continuing contract of tenancy with the plaintiff under his new lease. Its operation, we think, terminated with the former lease to the plaintiff under which it was granted.