

(1914) 08 MAD CK 0036
In the Madras High Court

C. Raghunatha Row Sahib

APPELLANT

Vs

Vellamoonji Goundan

RESPONDENT

Date of Decision : 25-08-1914

Acts Referred:

Madras Estates Land Act, 1908 — Section 53(2)

Citation : AIR 1915 Mad 86 : (1915) ILR (Mad) 1140 : (1914) 27 MLJ 597

Hon'ble Judges : Seshagiri Aiyar, J; Oldfield, J

Bench : Full Bench

Judgement

Oldfield, J.—The learned Judge confirmed the decree setting aside the distraint on the ground that it was for an excessive amount. It is

contended here with reference to Section 53(2) Estates Land Act, that the amount in respect of which the distraint was excessive, should have

been ascertained, and that the distraint should have been set aside in respect of that amount only and sustained in respect of the remainder of the

demand.

2. Section 53(2) is general in its wording, It refers to the patta as enforceable without qualification to the extent, to which it is found to be correct.

On its merits appellant's contention would appear to be in accordance with convenience and justice. Contra it is argued first that a patta found

incorrect to the amount of the demand is not partially correct but totally incorrect, a partially incorrect patta being for instance found correct as to

some only of the items of the holding covered by it. No authority has been shown for this contention; and it does not commend itself on its merits.

3. Next it is urged that Section 53(2) deals only with the procedure by suit on the patta and provides only for the enforceability of the patta by suit.

This is supported on the ground that Section 53(1) refers to distraint and sale of moveables and to sale of the holding under Chapter VI and that

Section 53(2) must therefore have been intended to regulate the remaining method of recovery provided by the Act, that by suit. This does not in

my opinion follow. As observed above, Section 53(2) contains no restriction of its effect to suits. The use in it of the word "nevertheless" is against

the importation of that restriction. And finally such importation is in my opinion negated by the fact that exchange of patta and muchilika is not

under the Act a necessary preliminary to the institution of a suit, and a provision regarding errors in the former could therefore have no effect in

connection with one.

4. We have been referred to the course of decisions under Act VIII of 1865, which contained nothing similar to Section 53(2). Those decisions

therefore do not seem to me material. I observe however that up to 1908, when the Estates Land Act Came into force, there was authority for and

against claims similar to that to appellant and that these cases therefore afford no reason for a decision against him.

5. In these circumstances the appeal must be allowed. The Lower Appellate Court's decision is set aside and it is directed to re-admit the appeal

and dispose of it according to law in the light of the foregoing, after deciding what amount was lawfully recoverable by appellant by his distraint and

after dealing with respondent's contention that tender of patta was not proved. Costs to date will abide the result of the re-hearing.

Seshagiri Aiyar, J.

6. I entirely agree. Mr. Venkatrama Sastriar for the Respondent argues that the word enforceable in clause 2 of Section 53 of the Estates Land

Act deals only with suits for rent and not with proceedings by way of distraint. I am unable to find any justification for this contention. Clause (1)

makes reference to suits. It makes the tender of patta a condition precedent to the adoption of the distraint proceedings; Clause (2) is by way of

exception, the object being to enforce the distraint to the extent to which the patta is correct. If the history of the legislation is looked into, the

meaning of the two clauses will be rendered clearer. By Section 7 of Act VIII of 1865, the landlord was precluded from suing for rent or from

distrain-ing for it unless he had tendered a proper patta. Under that Act. even for

suits for rent in Civil Courts, patta should have been tendered.

The new Act has expressly enacted that in certain classes of cases, the landlord must sue for rent only in the Revenue Court; at the same time, it

removed the restriction that there should be a tender of patta prior to suit. The general principle of the legislation is that in suits for rent, the landlord

is not bound to tender a patta before he sues to recover it... but if he wants to adopt the exceptional remedy of distraint in which he takes upon

himself the functions of the Court, although he has to conduct the proceedings with the assistance of the Revenue Officials he must have tendered a

patta in order that the Subordinate Revenue Official may have some tangible proof of the landlord's claim. It would serve no purpose therefore to

enact in Clause (2) of Section 53 that the landlord can enforce his claim for rent in a Revenue Court in so far as the patta correctly states it. If the

decisions prior to the Estates Land Act can furnish any assistance, I feel no doubt that they would support this conclusion of mine. Prior to the

passing of the new Act, the predominant view was that a distraint for an excess amount should not be avoided altogether. See Ramachandra v.

Narayanaswami ILR (1887) M. 229 Bhupati Razu v. Ramaswami ILR (1899) M. 226 Pitchuviengar v. Oliver ILR (1902) M. 260 Periakaruppa

Pillai v. The Manager of the Lessees of the Sivaganga Zemindari ILR (1907) M. 22. I do not refer to Raja Venkata Narasimha v. Ravisubbayya

ILR (1911) M. 139 because that was after the Act. For these reasons I agree in the conclusion at which my learned colleague has arrived.