

(1929) 12 MAD CK 0013
In the Madras High Court

Meenakshi Ammal and Others

APPELLANT

Vs

A. Rangaswami Aiyar and Another

RESPONDENT

Date of Decision : 03-12-1929

Acts Referred:

Madras Estates Land Act, 1908 — Section 112

Citation : AIR 1930 Mad 911 : (1930) ILR (Mad) 802 : (1930) 59 MLJ 752

Hon'ble Judges : Anantakrishna Aiyar, J

Bench : Division Bench

Judgement

Anantakrishna Aiyar, J.—The landholder proceeded to take steps u/s 112 of the Estates Land Act to attach and sell the holding of the ryots

for non-payment of arrears alleged to be due to him by the ryots. The ryots instituted the two suits, Suits Nos. 242 and 250 of 1922, to set

aside the attachment u/s 112. Second Appeal No. 2242 relates to the suit filed to set aside the attachment in respect of the arrears for fasli 1329

and Second Appeal No. 2243 relates to the suit similarly instituted to set aside the attachment made by the landholder in respect of the arrears for

fasli 1328. The main pleas raised by the ryots, the plaintiffs in these suits, were that the landholder had agreed on the 31st March, 1920, to transfer

his rights as landholder in favour of a stranger. He took proceedings in respect of rent due for fasli 1329 on 15th August, 1920, and in respect of

rent due for fasli 1328 in June, 1920. The sale-deed, however, was executed only on the 16th August, 1920. On these facts, the plea raised by the

ryots that the landholder had no locus standi to take proceedings u/s 112 of the Estates Land Act was overruled by both the Lower Courts. There

was also a question raised on behalf of the ryots as to whether they had encroached on some portion of the Mulaimal land, and, if so, what rent

was due by them in respect of the same for the faslis in question. The first Court held that the encroachment was proved, whereas the Lower

Appellate Court held that Ex. VI was not reliable, and that the alleged encroachment was not proved and consequently that the ryots were not

bound to pay anything in respect of the alleged encroached lands. The ryots have preferred these second appeals.

2. The first point raised by the learned Advocate for the appellants in these cases is that the landholder is not entitled to take, or to continue,

proceedings u/s 112 of the Estates Land Act. The learned Advocate argued that the decision of the Privy Council in (1914) L.R. 41 I.A. 91 (Privy

Council) is an authority for the position that after a landholder transferred his interest as landholder in the lands to a stranger, he is not entitled to

take any steps in respect of any past arrears under the Madras Estates Land Act. For the purpose of disposing of the present appeals, we think it

is enough to confine our decision to the actual facts of these two cases. As already remarked, the landholder had initiated proceedings u/s 112 of

the Estates Land Act before he transferred his interest in the land to a third person. The case is not therefore one where a landholder, after a

transfer of his rights in the lands, began proceedings under the Estates Land Act, The learned Advocate, however, argued that proceedings u/s 112

could be taken to be initiated only when the ryots were actually served with notices. We are unable to agree with that contention. The landholder

legally initiates proceedings u/s 112 if he sends the notices contemplated by Section 112 to the Collector in proper time. It is not disputed that the

landholder's acts in sending the notices were in fact before he sold the properties to a stranger by a document dated the 16th August, 1920. In the

Privy Council case their Lordships took care to remark at page 939:

The right to proceed to sale in one case, in the other to eject, is dependent on the existence of the relationship of landlord and tenant at the time

when the remedy provided by law is sought to be enforced.

3. Having regard to the facts of the present case, the landholder had the right to initiate proceedings at the time that he did, and therefore the

learned Advocate's argument on the first point is not, in our view, sustainable.

4. The second question raised was that the Lower Appellate Court had not made deductions in respect of interest and road cess, in respect of the

ryots" claim allowed on appeal. We think that the Lower Appellate Court should have, when it decreased the amount of rent payable, also made a proportionate decrease in the amount of road cess and railway cess, and also interest payable. The decrees of the Lower Appellate Court will be modified accordingly, in that the landholder's claim to road cess, railway cess and interest will be proportionately decreased on the amounts disallowed by it.

5. The learned Advocate also argued that the rate at which the Lower Courts calculated railway cess and road cess was in excess of what was allowed by law. Such a question has not been raised in the Lower Courts and we cannot allow the learned Advocate to raise that point for the first time here in Second Appeal.

6. The last point that he raised was that patta was not properly served upon the ryots. This is not one of the points mentioned by the Lower Appellate Court to have been raised before it. In fact the Lower Appellate Court" specifically remarks that, excepting the points dealt with by it, no other points were raised before it. Therefore we cannot allow this point to be raised before us in the circumstances.

7. Nor can we allow him to raise another point, namely, that the amount claimed in the attachment notices was not the amount actually due, because there were some subsequent payments.

8. For these reasons we think that, except in respect of the modification made above, the decrees of the Lower Courts should be confirmed. As the appellants have substantially failed, the Second Appeals will be dismissed with costs.