

(1905) 07 MAD CK 0007
In the Madras High Court

Muthusami Pillai

APPELLANT

Vs

Arunachallam Chettiar and Another

RESPONDENT

Date of Decision : 26-07-1905

Acts Referred:

Citation : (1905) 15 MLJ 361

Judgement

1. The respondent is the manager of the Rameswaram Devasthanam. The appellant is the lessee of a village forming part of the endowment of the

Devasthanam. The respondent proceeded u/s 39 of the Rent Recovery Act (Act VIII of 1865) in respect of arrears of rent due for fusly 1311

under the terms of the lease.

2. The legality of the distraint is impeached on behalf of the appellant and in support of his contention reliance is placed on the concluding portion

of the opinion of the Pull Bench in Nallayappa Fillian v. Ambalavana Pandara Sannadhi ILR 27 M. 470. No doubt the cases referred to therein

have been overruled by the opinion so far as they proceed on the supposition that the word tenant as defined in Section 1 of the Act is applicable

to an intermediate land-holder who has to pay rent to a superior land-holder. We do not, however, understand this passage to lay down that an

intermediate land-holder bound to pay rent to a superior land-holder is not a tenant within any of the other provisions of the Act as in effect

contended for on behalf of the appellant. If that were the meaning of the Full Bench there was no necessity for the guarded and qualified language

used and quoted above. The opinion would have been directly to the effect that intermediate land-holders paying rent to superior land-holders

were not tenants for any purposes whatsoever under the Act. This certainly

would have been the case as the prior Pull Bench case in

Lakshminarayana v. Venkatarayanam ILR 21 M. 116 quoted in the opinion with approval explicitly proceeded on the footing that intermediate

landholders bound to pay rent to superior land-holders were tenants within the meaning of the Act for some of the purposes though not tenants

within the meaning of Section 3. We are unable, therefore, to accept the argument that the respondent was altogether disentitled to take

proceedings for the recovery of the rent under the Act, nor do we see anything in the language of Sections 38 or 39 to confine the operation of

those sections to cases where the tenant proceeded against is a cultivating tenant to whom Section 3 is applicable. Section 38, no doubt, refers to

land-holders referred to in Section 3 but the respondent here is undoubtedly such a land-holder, The true effect of this reference is Section 38 to

land-holders mentioned in Section 3 is to exclude land-holders falling under the second para of Section 1, namely, all holders of land under

ryotwari settlement or in any way subject to the payment of land revenue direct to Government and all other registered holders of land in

proprietary right from resorting to the remedy made available by those two Sections 38 and 39

3. We think the claim for damages set up by the appellant is not a matter to be considered in this litigation. The second appeal fails and is dismissed

with costs.