

(1905) 07 MAD CK 0012
In the Madras High Court

Muthusami Pillai

APPELLANT

Vs

Arunachellam Chettiar and Another

RESPONDENT

Date of Decision : 26-07-1905

Acts Referred:

Citation : (1906) ILR (Mad) 79

Hon'ble Judges : S. Subrahmania Ayyar, O.C.J.;Boddam, J

Bench : Division Bench

Judgement

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

Devastanam. The respondent proceeded u/s 39 of the Rent Recovery Act (Act VIII of 1885) in respect of arrears of rent due for fasli 1311 under

the terms of the lease. 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 Full Bench in Nollayappa Pillian and Ors. v. Ambalawana Pandara Sannadhi ILR 27 Mad. 465 at p. 470.

No doubt the cases referred to in the passage have been overruled by that 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 landholder who has to pay rent to a superior landholder. We do not however

understand this passage to lay down that an intermediate landholder bound to pay rent to a superior landholder, is not a tenant within the meaning

of any of the other provisions of the Act as an 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 in the opinion, and the opinion itself would have been directly to the effect that

intermediate landholders paying rent to superior landholders were not tenants for any purposes whatsoever under the Act. This certainly would have been the case as the prior Full Bench decision *Bakshminarayana Pantulu v. Venkatrayanam* ILR 21 Mad. 116 cited in the later opinion with approval explicitly proceeded on the footing that intermediate landholders, bound to pay rent to superior landholders, were tenants within the meaning of the Act for some purposes though not tenants within the meaning of Section 3 thereof. We are unable therefore to accept the argument that the respondent was altogether disentitled to take proceedings for the recovery of the rent due to the Devasthanam under the Act. Nor do we see anything in the language of Section 38 or 39 of the enactment of 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 landholders referred to in Section 3, but the respondent here is undoubtedly such a land holder. The true effect of this reference in Section 38 to landholders mentioned in Section 3 is to exclude landholders falling Under the second paragraph 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 Sections 38 and 39.

2. We think the claim for damages set up by the appellant is not a matter to be considered in this litigation.

3. The second appeal fails and is dismissed with costs.