
(1913) 10 MAD CK 0025
In the Madras High Court

N. Venkataramier and Another

APPELLANT

Vs

Vythilinga Thambiran Avergal The Dakshinam Karwar and
Agent of Ambalavana Pandara Sannadhi Avergal

RESPONDENT

Date of Decision : 31-10-1913

Acts Referred:

Citation : AIR 1914 Mad 135 : 24 Ind. Cas. 754

Hon'ble Judges : Tyabji, J; Miller, J

Bench : Division Bench

Judgement

Miller, J.—This was a suit instituted u/s 213 of the Estates Land Act before a Deputy Collector, decreed by him and dismissed by the District Judge on appeal. A preliminary objection is taken that no appeal lies to the High Court from the decree of the District Judges, and is based on a contention that Section 192 applies the provisions of the CPC only to the procedure in proceedings authorized by the Act, and not so as to give an appeal which the Act does not give.

2. In my opinion, this objection must fail. The language of Section 392 of the Act does not support it, and there are two cases under the repealed Rent Recovery Act of 1865 which point the other way : Ganne Kotappa v. Venkataramiah 10 M.L.J. 398. and Veerasami v. Manager, Pittapur Estate 26 M.K 518 : 13 M.L.J. 296.

3. Reliance was placed on the recent case of Rangoon Botatoung Co. Ltd. v. Collector, Rangoon 16 Ind. Cas. 188 : 39 I.A. 197 in the Privy Council in which their Lordships held that no appeal lies as of right to His Majesty from a decision of the Chief Court of Lower Burma confirming the award of a Collector under the Land. Acquisition Act in the Town of Rangoon. That case seems to have turned on the question whether the decision was a decree or order of the Chief Court, and the Privy Council, as I understand the case, held that it was not a decree or order, within the meaning of Section 309, Civil Procedure Code, but was in the nature of an award. This case, therefore, does not help the respondent. In the present case the District Judge's decision is embodied in a decree, and he was

sitting in appeal. The provisions of Chapter XLII of the Code of 1882 are by Section 392 made applicable to the matter, and, as I have said, We cannot strike out those provisions which give the right of appeal and retain merely those which prescribe in what manner an appeal is to be heard and determined. It is not denied that the corresponding provisions of the present CPC apply where the old Code applied, and the preliminary objection, therefore, fails. I have dealt with it, as it was fully and ably argued for the respondent, but in my view the decision, of the District Judge is right. He held that the suit u/s 213 of the Estates Land Act is barred by limitation, not having been instituted within three months of the cause of action.

4. In the appeal as argued before us, the decision is attacked on the ground that plaintiffs had a continuing cause of action for the detention of their property until they paid the money demanded and released it, and that was within three months of the institution of the suit. The weight of authority in this Court is against the contention. The appellant may be said to receive some support from "Yamuna Bai Rani Sahiba v. Solayya Kavundan 24 M.K 339., but that case is distinguished in , Pamu Sanyasi v. Zamindar of Jorpur 25 M.P 540. and Rajah of Venkatagiri v. Isakapalli Subbiah 26 M.K 410 . is undoubtedly an authority against him. Ram Narain v. Umrao Singh A.W.N. (1907) 194 : 4 A.L.J. contains a dictum which supports the respondent. The present is not a case in which an order to restore the property had been made and the damages accrued owing to disobedience to the order, and I agree with the view taken in Pamu Sanyasi v. Zamindar of Jorpur 25 M.P 540. that, where the proceedings which give rise to the cause of action consist in the wrongful distraint, that distraint is not a continuing wrong, though no doubt the injury continues : and, not being a continuing wrong, it will not give rise to a continuing cause of action under Section 23 of the Limitation Act. In England the question what is a continuing cause of action, seems to have arisen principally in regard to the point of time up to which damages can be assessed in any given action and then a continuing cause of action" has been defined as involving a repetition of acts or omissions of the same kind as that for which the action was brought : Hole v. Chard Union (1804) 1 Ch. 298 : 63 L.J. Ch. 469 : 7 R. 84 L.T. 52. That definition, if it can be used as a guide to a definition of a continuing wrong, does not help the appellants.

5. It seems to me that difficulties surround the case which the appellants urge upon us, and that we are on safer ground if we follow the authorities in this Court.

6. The appellants presented an alternative case thus : the claim is for return of the money paid by the plaintiffs to save their property from sale : such a suit is not cognizable by a Deputy Collector : therefore, the suit is not competent and he should dismiss it on that ground, leaving the plaintiffs to their rights in a Civil Court.

7. The answer is that this suit is not for recovery of the money paid : it is a suit

for damages u/s 213 of the Estates Land Act, and if it bases a suit for the money in the Civil Court, that was for the plaintiffs to consider when they instituted it. They have not asked to be allowed to withdraw it. I need not deal with the other questions raised, as in my opinion the appeal must be dismissed with costs on the question of limitation.

Tyabji, J.

8. It seems to me that Section 392 of the Madras Estates Land Act allows in this case an appeal to the High Court. *Rangoon Botatoung Co. Limited v. Collector, Rangoon* 16 Ind. Cas. 188 : 39 I.A. 197 seems to be distinguishable. It was decided in that case that no appeal lay to the Privy Council from an award under the Land Acquisition Act, as such an award was not a decree within the terms of Section 309 of the Civil Procedure Code, 1908 (Section 595 of the Act of 1882). Here we have a decree, which seems to me to fall under the terms of that section :

9. On the point whether the suit as framed is barred, I agree that it is. The plaint proceeds on the basis that the cause of action arose (within the meaning of Article 21 of part A of the Schedule to the Estates Land Act) when the plaintiff was served with the notice u/s 95 of the said Act. Receiving such a notice would in itself cause no damage, for which alone a suit u/s 213 lies. The only other alternative on the allegations in the plaint seems to be that the cause of action in respect of which this suit is brought, arose on the date of the distraint. The payment made by the plaintiff after notice u/s 95 is not alleged in the plaint as giving rise (either by itself or in combination with the distraint) to the cause of action. The payment is referred to merely for assessing the damages claimed. It was suggested (though not admitted) in argument that rent was actually due and that this was the reason why the plaintiff did not wish the question of the payment to be raised in this suit. It was also argued that a suit on the payment would lie in a Civil Court, not before the Collector. But whatever their reasons, the plaintiffs did not frame their suit on the basis that the payment constituted a part of the whole of the cause of action. In *Pamu Sanyasi v. Zamindar of Jaypur* 25 M.P 540. it was held that continuance of a distraint wrongfully made was not in itself a continuing wrong,-- distinguishing *Yamuna Bai Hani Sahiba v. Bolayga Kavundan* 24 M.P 339. where the detention continued after the attachment had been set aside. See also *Rajah of Venkatagiri v. Iskapalli Subbiah* 26 M.P 410 .. The plaint before us, however, makes no allusion to any continuing wrong.

10. If my view of the effect of the plaint is right, the only cause of action shown in the plaint, if any is shown, is the distraint, and time must be taken to run from then. The suit is, therefore, barred and the appeal must be dismissed with costs.