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**(1925) 02 MAD CK 0077**  
**In the Madras High Court**

Nagalla Kottayya

APPELLANT

Vs

Koganti Kottappa and Others

RESPONDENT

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**Date of Decision :** 02-02-1925

**Acts Referred:**

Madras Revenue Recovery Act, 1864 — Section 2

**Citation :** 90 Ind. Cas. 551

**Hon'ble Judges :** Phillips, J

**Bench :** Single Bench

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**Judgement**

1. The plaintiff held the patta for the suit land and took in with him four lopayakari tenants, but, in 1908 a dispute arose between them as to who was entitled to the occupancy right in the land, and it was finally decided that they all had occupancy right in the land. Subsequently, the plaintiff paid the whole of the rent and now seeks to recover a portion of the amount from the other co-sharers. In the present case, we are only concerned with one of these sharers. The plaintiff relies on the ruling of the Full Bench in Rajah of Vizianagram v. Rajah Setrucherla Somasekhararaz 26 M. 686 : 13 M.L.J. 83 in which it was held that, where one of two or more co-sharers owning an estate subject to the payment of revenue to Government pays the whole revenue in order to save the estate he is by the operation of law entitled to a charge upon the share of each of his co-sharers for the realisation of the latter's share of revenue, and contends that, in consequence of this, his suit which is brought more than three years after the payment is not barred by limitation as it is a suit to enforce a charge and comes within the scope of Article 132 of the Limitation Act. The District Judge has differentiated the present case from that, in that the present claim is one for rent under the Estates Land Act holding that under the Estates Land Act rent is not a charge on the land. Section 5 of the Act, however, clearly makes rent a charge upon the land and it is difficult to see how the present case can be differentiated from the Full Bench decision which is concerned with the payment of revenue. There seems to be no distinction between the charge given u/s 5 of the Estates Land Act and the charge given u/s 2 of the Revenue

Recovery Act. In both cases the charge is actually given in favour of the landlord, in the latter case, the Government, but there is nonetheless the charge upon the land in both cases. It would, therefore, appear that the Full Bench decision is applicable here and that the District Judge is wrong.

2. The respondent, however, relies on a case of *Panangipalli Suranna v. Suryanarayana Jagapathiraju* 48 Ind. Cas. 794 : 42 M. 114 : 35 M.L.J. 443 : (1919) M.W.N. 25 : 25 M.L.T. 365 in which it was held that the charge u/s 5 of the Estates Land Act is not a charge within the meaning of Section 100 of the Transfer of Property Act. The correctness of the decision, to which I was a party, has been questioned in a subsequent case reported as *Bollapragada Venkatalakshmana Garu v. Nenda Seetayya* 57 Ind. Cas. 764 : 39 M.L.J. 30 : 11 L.W. 466 : (1920) M.W.N. 294 : 28 M.L.T. 44 : 43 M. 786, but whether it is correct or not, the mere fact that the charge does not come within the meaning of Section 100 of the Transfer of Property Act does not necessarily imply that it is not a charge within the meaning of Article 132 which is very general in its terms. I do not think that the decision in *Panangipalli Suranna v. Suryanarayana Jagapathiraju* 48 Ind. Cas. 794 : 42 M. 114 : 35 M.L.J. 443 : (1919) M.W.N. 25 : 25 M.L.T. 365 is any authority to the contrary.

3. Another argument is based on some of the remarks in *Bollapragada Venkatalakshmana Garu v. Nenda Seetayya* 57 Ind. Cas. 764 : 39 M.L.J. 30 : 11 L.W. 466 : (1920) M.W.N. 294 : 28 M.L.T. 44 : 43 M. 786, namely, that because it is Section 132 of the Estates Land Act which gives the Revenue Court power to apply the provisions of Ch. VI (of that Act) to the execution of a decree for arrears of rent, the same provisions are not applicable in the case of a Civil Court which must act under the C.P.C. No doubt these remarks in a way support the respondent's case, that the charge u/s 5 is limited in its application, but they were made obiter and if it was meant to lay down that a Civil Court cannot in any circumstances enforce the charge for rent given by Section 5 (of the Estates Land Act) with all respect, the remarks appear to me to go too far, for Section 132 relates only to a question of procedure and does not affect the substantive rights of the parties. The procedure to be adopted by the Revenue Court is that contained in Ch. VI of the Estates Land Act, whereas the procedure in execution by a Civil Court is that laid down by the C.P.C. but whichever form of procedure is adopted, it cannot remove a charge which is given by law. In this view, I think that the ruling in *Rajah of Vizianagaram v. Rajah Setrucherla Somasekhararaz* 26 M. 686 : 13 M.L.J. 83 must be held applicable to the present case and that, consequently, the plaintiff has a charge upon the land for the rent paid by him.

4. A further contention is put forward by the respondent that he is not liable for contribution u/s 69 of the Contract Act because the plaintiff alone was the person bound to pay the rent. It was held in *Jagapatiraju v. Sadrusannamarad* 31 Ind. Cas. 255 : 39 M. 795 : 29 M.L.J. 639 : 2 L.W. 1046 : 18 M.L.T. 464, that the only person who is personally bound to pay revenue to the Government is the registered holder and that as the plaintiff was the pattadar the other sharers

were not personally bound to pay rent This is a new argument put forward apparently for the first time in this Court and it would appear to be opposed to the facts, for it appears that the other co-sharers did actually obtain pattas in their own names from the landlord and, consequently, they would thus be liable to pay the rent under these pattas. Another case relied on is *Naraina Pal v. Appu* 28 Ind. Cas. 456, but that, again, was a case of contribution in which the persons ought to be made liable was not the pattadar. In the present case, as all the parties had pattas, they were all personally liable to pay the rent. Consequently, the plaintiff has a right u/s 69 of the Contract Act to ask for contribution.

5. The appeals must accordingly be allowed, and there will be a decree for the recovery of the respondent's proportionate share of the rent with proportionate costs throughout, with the direction that on failure to pay the amount, his share in the estate will be liable to be sold. Time three months.