

(1912) 04 MAD CK 0029
In the Madras High Court

Peri Lakshminarasimham Pantulu Garu	APPELLANT
Vs	
Sree Sree Ramachandra Maharaja Dev Garu, minor, by guardian, the Collector of Ganjam	RESPONDENT

Date of Decision : 03-04-1912

Acts Referred:

Madras Estates Land Act, 1908 — Section 77
Madras Local Boards Act, 1884 — Section 73

Citation : (1913) 24 MLJ 290

Judgement

1. In this case the suit was instituted to set aside a distraint upon the plaintiff's land made by the defendant who is a Zamindar. The plaintiff is an intermediate tenure-holder under the defendant. The distraint was levied in order to recover a portion of certain arrears of cess which had been collected from the defendant u/s 73 of the Madras Local Boards Act and which portion he was entitled to recover from the plaintiff.

2. The first question argued before us is that Section 77 of the Estates Land Act does not authorise the Zamindar to levy distraint against an intermediate tenure-holder and we think the language of Section 77 is clear to support that contention. This, in fact, is not disputed by the learned vakil for the respondent. Section 77 says "'At any time after an arrear of rent has become due the land-holder may, in addition to any other remedy to which he is entitled by this Act, in respect of any arrear of rent which has accrued due within the next preceding twelve months, distrain upon his own responsibility the moveable property of the defaulting ryot..." There can be no doubt that the plaintiff is not a ryot within the meaning of the Estates Land Act. But it is argued that Sections 73 and 74 of the Madras Local Boards Act give power to a zamindar to recover arrears of cess

as arrears of rent, and that, since the zamindar has got power to recover arrears of rent from the ryot by distraint, he has similar power as against

intermediate tenure-holders from whom he is entitled to recover arrears of cess paid by him. The argument is prima facie untenable. Section 73

says "...Provided that in all cases where a person holds lands without a right of occupancy as an intermediate land-holder on an under tenure

created, continued or recognised by a land-holder it shall be lawful for the land-holder to recover from the intermediate land-holder the whole of

the tax paid by the land-holder in respect of land held by the intermediate land-holder less one-half the tax assessable on the amount of any

kattubadi, jodi, poruppu or quit-rent payable by the intermediate land-holder to the land-holder," and Section 74 says that "every land-holder (or

intermediate landholder as the case may be) shall, in collecting or recovering the portion which may be due to him "under the proviso referred to

be entitled to exercise the same powers as may, under any Act or Regulation which now is, or hereafter may be, in force, be exercised by any

land-holder in the collection and recovery of rent...." The learned pleader for the respondent wants us to say that every land-holder is entitled to

exercise in collecting a cess the same powers as those which any land-holder may possess as regards rent. But such power of a land-holder must

be considered with reference to the person against whom the power is to be exercised. There is no Act or Regulation which authorises the landlord

to levy distraint upon the property of a tenure-holder for recovery of rent. Section 77 of the Estates Land Act as we have pointed out, only

authorises a landlord to levy distraint upon moveable property of the ryot. Thus even if we read the word "any" as meaning any one of the class of

land-holders vested with the largest possible powers for recovery of rent it is not shown that any land-holder has got power to levy distraint upon

the property of a person other than a ryot. But we may observe that the words any land-holder in Section 74 of the Local Boards Act cannot

possibly mean such land-holder. We are of opinion that section 77 of the Estates Land Act does not apply. The result will be that the distraint will

be declared to be illegal and will be set aside. We must therefore ask the District Judge to inquire and find what damages, if any, were sustained by

the plaintiff by reason of the distraint complained of. Further evidence may be taken on the point. The finding will be submitted within three months

from the date of the receipt of this order, and ten days will be allowed for filing objections.

3. [In compliance with the order contained in the above judgment the District Judge of Ganjam submitted a finding that a sum of Rs. 50 was a reasonable sum to be awarded to the plaintiff as damages which was accepted by their Lordships (Benson and Sundara Aiyar JJ.) and a decree for the amount with interest at 6 percent, was passed in plaintiff's favour with costs throughout]. Ed.