

(1913) 01 MAD CK 0028
In the Madras High Court

Peri Lakshminarasimham Pantulu Garu

APPELLANT

Vs

Sree Sree Ramachandra Mardaraja Deo Garu by guardian,
the Collector of Ganjam

RESPONDENT

Date of Decision : 17-01-1913

Acts Referred:

Citation : 18 Ind. Cas. 308

Hon'ble Judges : Sundara Aiyar, J;Ralph Benson, J

Bench : Division Bench

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 zemindar. 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 zemindar 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 landholder 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 zemindar to recover arrears of cess as arrears of rent, and that, since the zemindar has got power to recover arrears of rent from the ryot by distraint, he has similar power as against intermediate tenure-holder 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 with or without a right of occupancy as an intermediate land-holder on an under-tenure created, contained or recognised by a landholder, 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 lands held by the intermediate land-holder less one-half the tax assessable on the amount of any kattubadi, jodi, poruppo or quit rent payable by the intermediate landholder to the land-holder," and Section 74 says that every land-holder (or intermediate land holder 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 power as may, under any Act or Regulation which now here 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 want 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 the 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 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 the following

Finding

1. I have been required by the High Court to submit my finding on the following issue:

What damages, if any, were sustained by the plaintiff by reason of the distraint complained of?

2. When the matter was taken up for inquiry, the Vakils on both sides informed me that they had no fresh evidence to adduce. The distraint complained of was admitted. Plaintiff's Vakil stated that his client, who is a rich and influential person, was put to considerable indignity and suffered much pain of mind and

that he is entitled to substantial damages. He admitted that his client did not suffer any actual pecuniary loss by reason of the distraint. The Vakil for the respondent stated that his client acted bona fide, that the provisions of law as to distraint were not clear and that plaintiff is not entitled to damages, unless he proves actual pecuniary loss and, in any event, is only entitled to nominal damages. I am of opinion that the plaintiff is entitled to damages even though he has not proved actual pecuniary loss. The plaintiff is a well-to-do man and there can be little doubt that a distraint of moveable properties is looked upon as a disgrace. In the present case, the distraining officers entered his house and took away a silver rose-water sprinkler and some other articles. The distraint has been held by the High Court to be illegal and, consequently, plaintiff is entitled to some damages. The defendant, when he took it upon himself to distraint property, did so at his own risk and his ignorance of law is no excuse, however difficult or complicated the law on the subject might be. The fact that he acted without any malice and in the bona fide belief that he was entitled to distraint, can only go in mitigation of damages.

3. As there is no evidence of any actual pecuniary loss to plaintiff and as it has not been shown that the defendant acted with malice or any ulterior motive, I am of opinion that Rs. 50 would be a reasonable sum to award to the plaintiff.

4. This second appeal coming on for final hearing this day, after the return of the finding of the lower Appellate Court upon the said issue, the Court delivered the following

5. We accept the finding and reversing the decrees of the Courts below award the plaintiff Rs. 50 damages with interest at 6 per cent from this date to the date of payment. The defendant will pay the plaintiff's costs throughout.