

(1920) 02 MAD CK 0035
In the Madras High Court

Sree Raja Bollapragada Venkata Lakshmana Garu	APPELLANT
Vs	
Nenda Seetayya and Another	RESPONDENT

Date of Decision : 02-02-1920

Acts Referred:

Citation : 57 Ind. Cas. 764

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—The plaintiff is the appellant. In paragraph 3 of the plaint it is said that the plaintiff was the proprietor of the village of Guttinadevi. The contesting 1st defendant says in paragraph 7 of the written statement that the plaintiff's right as the proprietor of the village had been sold in Court auction to Nyapathi Subba Rao and, therefore, the plaintiff could not claim prior charge for any rent due to him as he does in the plaint. Though this question was not made the subject of any issue, it seems not to have been denied that the property had been sold away to Nyapathi Subba Rao. But there seems to have been a question before the lower Appellate Court as to whether the purchase was prior to the bringing of the Summary Suit No. 219 of 1913 by the plaintiff in the Revenue Court against the 2nd defendant for rent or subsequent to that suit. Whether it was prior or subsequent to it, it has been held by the Privy Council in a case in *Forbes v. Maharaja Bahadur Singh* 23 Ind. Cas. 632 that if the remedy provided by law in favour of the landlord to claim a prior charge for rent is sought to be enforced, he is entitled to do so only when the relationship of landlord and tenant exists at the time when "the remedy provided by law is sought to be enforced." As this suit is based, in my opinion, solely on the alleged existence of the prior statutory charge created by Section 5 of the Madras Estates Land Act in the landlord's favour and of his right in consequence to bring the holding to sale to enforce that first charge as against all other claims, the suit has to be dismissed on the short ground that the charge (even if it existed before) ceased to exist when the plaintiff lost his estate.

2. As however, other questions of law were argued at some length, I shall express my opinion on those questions. Before considering those questions some of the facts have to be stated. One Akula Ammanna was the ryot of the holding (for the rent due on which the plaintiff obtained his decree in the suit of 1913) till at least 1908. Ammanna sold it then to the 2nd defendant by means of a registered sale deed. The 1st defendant contends that the sale deed was a nominal transaction and that Akula Ammanna continued to be a tenant of the holding even after 1908. In execution of the money decree passed against Akula Ammanna in Small Cause Suit No. 3 of 1910 the holding was attached as the property of Ammanna and was purchased by the 1st defendant. First defendant obtained possession of the property through Court. Then the plaintiff had his money decree transferred to the District Munsif's Court of Cocanada from the Revenue Court and attached the holding. The 1st defendant, on the strength of his purchase in Court auction and possession thereunder, put in a claim petition and on that strength the claim was allowed and the attachment was raised. Hence the present suit was brought to declare the plaintiff's right to have the property sold by virtue of his alleged prior charge for the money due under the rent decree. The lower Courts dismissed the suit on the ground that under Order XXXIV, Rule 14, read with Rule 15 the plaintiff can enforce his prior charge only by obtaining a decree for sale in a suit for sale brought on the charge.

3. The appellant's learned Vakil Mr. Narayanamurthi relied upon certain observations in *Suramma v. Jagapathiraju* 48 Ind. Cas. 794 for his contention that Order XXXIV, Rule 14, Civil Procedure Code, does not apply at all to the charge created by Section 5 of the Estates Land Act. Section 100 of the Transfer of Property Act says "where Immovable property of one person is by an act of parties or operation of law made security for the payment of money to another and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property." I am unable to understand why the charge created by Statute for rent under the Madras Estates Land Act at least in cases where the rent is payable in money does not fall u/s 100 of the Transfer of Property Act. Reliance is placed by the learned Judges in their judgments in *Suramma v. Jagapathiraju* 48 Ind. Cas. 794 on certain decisions of the Calcutta High Court. I might at once state that those decisions were based upon the construction of the provisions of the Bengal Tenancy Act, especially Section 65 of that Act. But there are several differences between the provisions of that Act and those of the Madras Estates Land Act [Section 65 of the Bengal Tenancy Act as stated by their Lordships of the Privy Council in *Forbes v. Maharaja Bahadur Singh* 23 Ind. Cas. 632 is not a "happily worded section"]. I shall deal shortly with these Calcutta decisions. In *Fotick Chunder Dey Sircar v. E.G. Foley* 15 C. 492 there was no question of enforcing any prior charge. The landlord got a money decree for rent and he attached other properties of the judgment debtor, that is, the properties other than the holding on which the rent had become due. The only question there was whether, though he obtained a money decree merely, he ought to be deemed as having also obtained a mortgage decree for

the sale of the holding and whether he should first bring to sale the holding and should not be allowed to proceed against the other properties of his tenant in execution of the mere money decree for rent. The Court held that Section 68 of Act IV of 1832 had no application and the landlord could execute his money decree by attaching and bringing to sale other properties. Having decided the direct point involved the learned Judges proceeded thus : "This, we think, is a sufficient and complete answer to Dr. Banerjee's argument. But we are not prepared to admit that the "charge" referred to in Section 65 of the Bengal Tenancy Act, 1885, is such a "charge" as is defined by Section 100 of the Transfer of Property Act." Where the difference lies the learned Judges do not point out. On this vague obiter dictum, I do not think it is possible to hold that Order XXXIV, Rule 14, is not applicable where the charge for rent is sought to be enforced. The next case referred to is *Srimati Moharanee Dasya v. Harendra Lal Roy* 1 C.W.N. 458 . I do not find any reference made to *Fotick Chunder Dey Sircar v. E.G. Foley* 15 C. 492 in the judgment in this case, but it seems to have been referred to only in the judgment of the Subordinate Judge who first decided the case. The only relevant observation in *Srimati Moharanee Dasya v. Harendra Lal Roy* 1 C.W.N. 458 is that there is no strict analogy between a charge for rent and a mortgage charge, because money due for rent is both a personal debt and a first charge on the land in respect of which it is due and the landlord can enforce his decree either by selling the land in some cases or by selling other properties. I cannot say that this case has any bearing on the question whether, when a Civil Court is asked in execution to enforce the charge, Order XXXIV, Rule 14, is applicable. As regards *Tariniprosad Roy v. Narayan Kumari Debi* 17 C. 301 : 8 Ind. Dec. (N.S.) 740 this also is a decision merely on the point whether the landlord can pursue his personal remedy, against the tenant without first having the holding sold. In the case of *Royzuddi Sheik v. Kali Nath Mookerjee* 33 C. 985 the question was whether, when a regular mortgage-deed or a regular bond creating a charge is taken for the arrears of rent, the charge under the Bengal Tenancy Act still existed. Mookerjee, J., says: "The present suit is in no sense a suit to enforce the original rent charge. It is in substance, as it is in form, a suit to enforce the rights of the plaintiff under the installment bond by which, in lieu of the original liability, a new liability was substituted. Besides, if the plaintiff had sued to enforce the rent charge his claim would be barred by limitation." That ground was sufficient for the disposal of that case and it was not necessary to consider at all the nature of the charge referred to in Section 65 of the Bengal Tenancy Act. But as an obiter dictum again the learned Judge remarks that, as decided in *Fotick Chunder Dey Sircar v. E.G. Foley* 15 C. 492, "the charge referred to in Section 65 of the Bengal Tenancy Act is not such a charge as that defined by Section 100 of the Transfer of Property Act, and does not require to be enforced in the same manner."

4. I shall lastly refer to the case in *Gopi Nath Mahapatra v. Kashi Nath Beg* 1 Ind. Cas. 35 also referred to in *Suramma v. Jugapathiraju* 48 Ind. Cas. 794. That case was decided not only u/s 65 of the Bengal Tenancy Act but also u/s 107 of that

Act, under which the purchaser in execution of a rent decree has got the right to apply to the Collector to annul all prior encumbrances. But the question relating to the necessity of bringing a suit as prescribed under Order XXXIV, Rule 14, was not decided in that case nor was it necessary to decide it. Phillips, J., however,, mentions in his judgment in *Suramma v. Jagapathiraju* (1919) M.W.N. 25 two other considerations as to why Section 100 of the Transfer of Property Act cannot include a charge for rent u/s 5 of the Estates Land Act He says "it may also be noted that where rent is payable in kind, a charge for arrears of rent cannot come within the definition of Section 100 which refers only to payment of money, and it would be most anomalous that a charge created by Statute should be a charge within the meaning of Section 100 in some oases but not so in others." With the greatest respect, I do not see why, if a particular charge falls within the words of Section 100, it should not be a charge under that section because another kind of charge created by the same Statute does not fall within the section. Further even the rent payable in kind becomes really payable in money, whenever the rent is sued for and a decree in the alternative for the value of the rent payable in kind is asked for and granted. So far, therefore, as the judgment in *Suramma v. Jagapathiraju* 48 Ind. Cas. 794 held that Section 100 of Act IV of 1882 and consequently Order XXXIV, Rule 14, Civil Procedure Code, would not apply to the enforcement of a charge for rent even payable in money, I respectfully differ from them. But it was argued that u/s 132 of the Madras Estates Land Act where the property is sold for arrears of rent due on it, the purchaser takes it free of all encumbrances except those created before the Act came into force, reading Section 132 with Section 125 of the Madras Estates Land Act, That is I take it, the main ground of the judgments in *Suramma v. Jagapathiraju* 48 Ind. Cas. 794 and I agree with the judgments in that respect, provided of course the sale was one conducted in execution of its decree as expressly restricted by the provisions of Section 132. But in this case, the decree had been transferred to the Cocanada District Munsif's Court and that Court has u/s 42, Civil Procedure Code, power to execute it only in the same manner as if it was a decree passed for money by itself, and it cannot exercise the powers conferred by the Revenue Court by Section 132 of the Madras Estates Land Act. (In the Calcutta cases there is nothing to show that execution and sales in execution in question were held in any other Court than a Revenue Court.)

5. In the result the second appeal fails and is dismissed with costs.

Spencer, J.

6. The suit land belonged to one Akula Ammanna, who sold his holding by a private sale to 2nd defendant.

7. The 1st defendant purchased the property at an auction held in execution of Small Cause decree in Small Cause No. 3 of 1910 obtained by a third party against Akula Ammanna.

8. The plaintiff brought a suit (Rent Suit No. 219 of 1918) in a Revenue Court as

a landholder to recover arrears of rent from 2nd defendant and obtained a personal decree for payment of Rs. 137-8-6 with interest.

9. When in execution of this decree he attached the holding, the 1st defendant preferred a claim under Order XXI, Rule 58, Civil Procedure Code, and it was allowed.

10. The plaintiff now sues to establish his right to recover by sale of the land the amount of rent decreed to him, relying not on the weakness of the 1st defendant's title as auction-purchaser but on the strength of his own title based on Section 5 of the Madras Estates Land Act, which provides that the rent due upon ryoti land shall be a first charge upon the holding.

11. The plaintiff's decree for rent was transferred to a Civil Court (viz., the Court of the District Munsif, Cocanada) for execution and it is there that the plaintiff sought to enforce his statutory charge and was defeated.

12. Now under the Madras Estates Land Act it is in exercise of the right to a charge conferred by Section 5 that the land-holder can bring the ryot's holding to sale u/s 111. This he can do either summarily by an application to the Collector or u/s 132 when he has obtained a decree for arrears of rent and executes it in a Revenue Court. But if a money decree passed by a Revenue Court is transferred to a Civil Court u/s 201 for execution, the power to execute it under the provisions of Chapter VI does not go with it to the executing Court as those powers are peculiar to Collectors, as may be seen from part B of the Schedule to the Act, Serial No. 18, and from the words of Section 132 which runs thus: "The provisions of this Chapter shall be applicable, as far as may be, to the execution by a Revenue Court of any decree for arrears of rent."

13. If a decree for rent is transferred to a Civil Court for execution, the provisions of the CPC at once become applicable to the execution proceedings, and the Court executing the decree passed by another Court transferred to it for execution has no authority to go behind the decree to be executed and enforce a charge which is not declared in that decree, nor can the Civil Court assume powers which, by law, have been definitely conferred on Revenue Courts only.

14. This, in my opinion, is the short answer to the plaintiff's present claim.

15. I think that his suit was rightly dismissed by the Courts below and that the second appeal should now be dismissed with costs.