

(1915) 09 MAD CK 0066
In the Madras High Court

Sundaram Iyer and Others

APPELLANT

Vs

Kulathu Aiyer and Others

RESPONDENT

Date of Decision : 01-09-1915

Acts Referred:

Citation : 31 Ind. Cas. 81 : (1915) 2 LW 867

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

Bench : Division Bench

Judgement

Spencer, J.—The question which we have to decide is, whether a landholder in Madras who has ceased to be a landholder can recover rent for the years when he was a landholder by bringing the ryot's holding to sale under the provisions of Chapter VI of Madras Act I of 1908. For Bengal it has been decided by the Privy Council with reference to the Bengal Tenancy Act that he cannot Vide Arthur Henry Forbes v. Maharaj Bahadur Singh 18 C.W.N. 747 : (1914)M.W.N. 397 : 15 M.L.T. 380 : 27 M.L.J. 4. The Madras Estates Land Act is modelled on the Bengal Tenancy Act. Therefore, the above decision must have great weight with us so far as it is based on provisions which have been repeated in the Madras Act. There are, however, several distinctions between the two Acts. In Bengal a landlord must bring a suit and obtain a decree before he can bring to sale the tenant's holding. In Madras he can proceed summarily to attach the holding by notice to the defaulter served through the Collector, provided that he has exchanged a patta and muchilika with the ryot or tendered him such a patta as he was bound to accept. Section 5 of Madras Act 1 of 1908 and Section 65 of Bengal Act VIII of 1885 both declare that the rent shall be a first charge upon the holding. Section 109 of the Madras Act provides for the case of a conflict between the right of a landholder distaining produce and the right of a Civil Court decree-holder by declaring that the landholder's right shall prevail, but this does not apply to the case of a landholder selling the ryot's holding. As in Madras he does not occupy the position of a decree-holder, there can be no competition from other decree-holders for rateable distribution of the proceeds of the sale.

2. Section 148, Clause (h), of the Bengal Tenancy Act, which declares that notwithstanding anything contained in Section 232 of the CPC an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest has become and is vested in him, does not find a place in the Madras Act. Thus one strong argument for the position that the right to sell the holding for arrears is vested in the landholder qua landholder is wanting. The Privy Council decision dwells on the anomaly which would arise by two persons, the landlord and the ex-landlord, having simultaneously a first charge on the tenure, and it goes so far as to class the ex-landlord as an outsider.

3. This anomaly would present no real difficulties in Madras. u/s 111, a landholder cannot sell the holding for arrears until the revenue year in which they became due is over, and he has u/s 112 only one year in which he can take this step. Unless proceedings begun by one landholder were still going on when the succeeding landholder wished to sell the holding for the rent of the following year, there would be no conflict of interests. Even after the sale of the holding the purchaser would be liable for the rent of the year in which he was in occupation. In case of a dispute between two or more rival claimants to the title of landholder, Section 3(5) provides that the person who shall be deemed to be landholder for the purpose of this Act is the person whom the Collector may recognise or nominate as landholder. Again, when there is an intention to distinguish between landholders in possession and other landholders who have no subsisting interest, the Madras Act speaks distinctly of landholders in possession (vide Section 200). This may be used as a not very convincing argument that where the word landholder occurs in the Act without qualification, it includes persons out of possession.

4. I will now consider whether there are any other indications within the four corners of the Act that landholders have, as in Bengal, no right to proceed against their ryots' holding, unless their interest as landholders subsists at the time.

5. It is provided in Section 53 that the remedy of landholders against the ryots' moveables and holdings under Chapter IV of the Act is only available to those landholders who have exchanged a patta and muchilika with their ryots, or have tendered them such a patta as they were bound to accept, or there must be a valid patta or muchiliha continuing in force. Can it be said that a valid patta or muchilika continues in force between a ryot and landholder who has ceased to have any subsisting interest in the estate? If the answer is "No, but he is a person who has exchanged or tendered a patta under the first part of Section 53, we must then look to Section 52 and we find this section declaring that no ryot shall be bound to accept a patta for a period of more than one revenue year and that pattas and muchilikas accepted or exchanged for any revenue year remain in force only until the commencement of the revenue year for which fresh pattas are adapted or exchanged.

6. Under the old Act (VIII of 1865) it was recognised by the Privy Council in *Ramasami v. Bhaskarasami* 5 C.L.R. 341 : 3 Ind. Jur. 420 that there must be a subsisting relation of landlord and tenant for the exchange of pattas and muchilikas.

7. The result, therefore, is that distraint and sale are remedies open only to landholders who have at the time of exercising this power a valid patta in force between themselves and their ryots. I am aware that in his commentary on the Act, Mr. V. Ramadoss takes a different view, but the illustration which he gives to make the matter clear begs the whole question.

8. Again, in Section 3(5) a landholder is defined as a person owing an estate or part thereof and it is doubtful if he can lay claim to be called such a landholder merely because at some previous date he has owned an estate. If, as in this case, he is a lessee and comes within the description of a person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner, there can be no reason for imputing to the Legislature an intention to create in favour of such persons rights of greater extent and duration than those which are declared to be the property of owners who are landholders in their own right.

9. I am, therefore, of opinion that the lower Courts were right in their conclusions that, as the defendant was not the lessee for Fasli 1322, he could not attach the plaintiff's lands for the arrears of Fasli 1321. In such cases the only remedy left to the ex-landholder is the right of suing upon his contract for rent.

10. This second appeal is dismissed with costs. The memorandum of objections is also dismissed with costs.

Seshagiri Aiyar, J.

11. Vagikulam is an inam village belonging to the Vyasarayya Mutt. The defendant had a lease of it from the mutt for 10 years up to the end of Fasli 1321. His son became the lessee in Fasli 1322. The plaintiff, who is a ryot of the village, is alleged to have made default in the payment of rent for Fasli 1321. In or about September 1912, the defendant attached the plaintiff's holding for the arrears. This suit is to raise the said attachment. The only question for decision is whether defendant, who had ceased to be the lessee from July 1912, can attach the plaintiff's holding for the rent due to him while he was the lessee. There is no question that the defendant was a landholder upto the end of Fasli 1321. See *Bachu Perrajugar v. Bhogireddy Subbarayudu* 12 Ind. Cas. 171. It is also undisputed that the lessee who succeeded the defendant was a landholder at the time when the attachment was made.

12. After hearing the matter argued very fully on both sides and having regard to the grounds of the decision in *Arthur Henry Forbes v. Maharaj Bahadur Singh* 12 Ind. Cas. 171 : (1911) 2 M.W.N. 251, I have, though not without hesitation, come to the conclusion that the defendant had no right to enforce the

attachment of the plaintiff's holding in September 1912. The reasoning of the Judicial Committee in *Arthur Henry Forbes v. Maharaj Bahadur Singh* 12 Ind. Cas. 171 : (1911) 2 M.W.N. 251 applies to this case, although, as I shall presently show, the provisions of the Act which the "Privy Council had to construe, differ in some material respect from the Estates Land Act. The definition of landholder would apply, in my opinion, to the defendant. The somewhat hypercritical comments of the learned Vakil for the respondent on the language of Section 3(5) have not convinced me to the contrary. He laid stress upon the phrase "owning an estate" and argued that it predicates a subsisting interest at the time of the attachment. The next clause entitled to collect the rent, "would certainly apply to the man whose lease had expired but to whom arrears were still due. I do not think that the word owning" was intended to negative the rights of persons who owned the estate at the time the arrears fell due. Another argument which belongs to the same category is the distinction sought to be made between rent and arrears of rent. I am of opinion that the defendant was a land-holder when he attached the holding. One has only to look at Section 200 of the Act to see that the Legislature in Madras contemplated the existence of landholders with co-ordinate or mutually exclusive rights. It is different in Bengal. The definition of "landlord" (it is not landholder) is that he is "a person immediately under whom a tenant holds". This would undoubtedly exclude the defendant in Bengal. So far as I am able to see, there can be but one landlord at a time in Bengal, although there may be a proprietor and a landlord. There is no provision in the Bengal Tenancy Act corresponding to Section 200 of our Act which limits the power of the landholder in possession. Consequently the Observation of the Judicial Committee in *Arthur Henry Forbes v. Maharaj Bahadur Singh* 23 Ind. Cas. 422 that there can be but one landlord, cannot apply to conditions which obtain in Madras.

13. It seems to me that to hold that on the expiry of the lease the lessee has no right of distraint would render nugatory the provisions of the Act. Sections 77 and 111 make it clear that distraint proceedings should be commenced only if the rent due during the next preceding 12 months remains unpaid. These sections do not impose the further restriction that at the time of the distraint, the distrainer must be the sole landholder. As proceedings of this kind are prohibited during the year that rent falls due, it seems to me that the Legislature contemplated action being taken by the person who had the estate when the arrears fell due. On the other hand, the Bengal Legislature confers the right to distrain only on the person in whom the estate vests at the time. Section 148(h) prohibits an assignee of a decree from distraining unless the estate itself is transferred to him. There is no corresponding provision in the Madras Act. I do not think that the fact that in Bengal distraint proceedings have to be taken after decree in a Civil Court affects the question. My conclusion upon this portion of the case is that the defendant was entitled to distrain.

14. The third question is "could he distrain the plaintiff's holding?" It is here that the ratio decidendi of the Privy Council decision affects the defendant. In the

Madras Act, there is a provision for the landholder distraining the general moveable property of the defaulter. See Section 77. In Section 121 of the Bengal Tenancy Act, which corresponds to Section 77, this power is not given. In - Madras, (a) the holding, (b) the crops on the holding, (c) the ordinary moveable property of the tenant and (d) the trees on the holding, subject to specified exceptions, can be distrained. In Bengal the distraint can only be with reference to (a) and (b). Therefore, if in the present case, the defendant had distrained the moveable property or the trees, I would have held that the proceedings were not illegal; both the landholders having the right to distrain these properties. In the case of the holding itself, Section 5 of the Madras Act and Section 65 of the Bengal Tenancy Act give the landholder or the landlord, as the case may be, a first charge for the rent due. In Madras, the first charge extends to the crops on the holding as well, but although in Bengal the crops can be distrained, the rent is not made a first charge on them. This right of first charge must be taken to have been given only to the landholder who has a subsisting interest. See *Ramasami v. Bhaskarasami* 2 M.k 67 . There would certainly arise a conflict of interests in the case of the holding being attached by two persons. The lessee that has passed out may not take action until the very end of the second year. The lessee in possession may commence proceedings in the beginning of his second year. As sometime must elapse before the holding is brought to sale, the question will have to be dealt with whether both or either of them had the right to attach and whose rights should take precedence. It was argued that this dispute can be settled by the Collector under the second clause of Section 3(5) of the Estates Land Act. I think the clause would only enable the Collector to recognise one of two claimants as the landholder. It would not authorise him to decide the question of priority regarding the rights of two landholders. The Judicial Committee in the Calcutta case pointed out in more than one place that the right to distrain the holding is dependant upon the right of first charge. It is also pointed out that to acquire the right which the section gives, not only the person obtaining the decree must be the landlord at the time, but the person seeking to execute it by sale of the tenure, must have the landlord's interests vested in him. Again we have this strong expression of opinion: In whose decree and on whose application is the tenure to be sold? The question admits of only one answer, that it is the existing landlord alone who can execute the decree; the ex-landlord is an outsider, and, whilst he can execute his decree against the debtor as a money-decree, he has no remedy against the tenure itself."

15. The expression "existing landlord" and "ex-landlord" may not be appropriate to designate the position of the two landholders in Madras, but there is no doubt that the Judicial Committee have clearly and emphatically laid down that a holding can be sold only by the landlord who has a subsisting interest in the estate: The language of Section 127 of the Estates Land Act is in favour of this position. Under Clause (c), if the holding is sold, the person to whom the arrears were due in the previous Fasli gets no portion of it. The arrears payable under Clause (b) will go to the attaching landholder and not to the person whose

interest has ceased. I must, therefore, conclude that the holding can be attached only by the landholder who has the estate still in his possession.

16. As I have discussed the sections at some length, I may re-state my conclusions thus:

1. A person to whom arrears are due is a landholder, notwithstanding the fact that his estate has terminated.
2. The law does not give him a first charge on the holding.
3. He can distrain the moveable property or the trees on the holding of the defaulter.
4. He is not entitled to attach the holding.

17. These propositions will reconcile the provisions of the Estates Land Act with the decision of the Judicial Committee in *Arthur Henry Forbes v. Maharaj Bahadur Singh* 23 Ind. Cas. 632 The second appeal must be dismissed with costs. The memorandum of objections must also be dismissed with costs.