

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Rangayya Appa Rao Bahadur, Zemindar of Nuzvid v. Bobba Sriramulu and others, from the High Court of Judicature at Madras; delivered the 2nd December 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This Appeal raises a question of considerable importance in Madras, and as to which there has been some difference of opinion amongst the learned Judges of the High Court.

The Plaintiff (Appellant) is the Zemindar of Nuzvid, and is a "landholder" within the meaning of the Rent Recovery Act (Madras Act VIII of 1865). The several Defendants hold lands under him in the village of Mustabada, which is included in his Zemindari, and they are "tenants" within the meaning of the Act.

The Defendants occupied the lands to which the present controversy relates for a long period, but the time which has to be considered in this Appeal commences with the Fasli year 1295. In that year the Plaintiff tendered puttahs which the Defendants refused to accept (similar proceedings took place in the subsequent years). The Plaintiff thereupon instituted summary suits before the Collector to enforce the acceptance of the puttahs and the execution of corresponding

muchilkas. The Head Assistant Collector, who heard the cases, made his Order modifying the terms of the proposed puttahs and directing the tender of puttahs embodying his modifications. The District Judge on appeal made additional changes in the puttahs. On further appeal the High Court again varied the terms of the puttahs to be tendered; and thus by the Decree of the High Court dated the 29th October 1889 the conditions of the tenancies, including the rates of rent, were finally determined.

The present suits were brought on the 28th October 1892 in the Court of the Munsiff of Bezwada. In them the Plaintiff claimed to recover from the Defendants balances of rent for their respective holdings, at the determined rates, in respect of the Fasli years 1295, 1296, 1297, 1298, and subsequent years.

With the subsequent years this Appeal has nothing to do, it is limited to the four years mentioned. The Courts in India have held that the claim for rent in respect of those four years is barred by limitation, and the correctness of that ruling is the one question raised in the present Appeal.

The rule of limitation applicable to the case is Art. 110 of Schedule II of the Indian Limitation Act (Act XV) of 1877, which prescribes for a suit for arrears of rent a period of limitation of three years reckoned from the time when the arrears become due. The Courts in India have held that the period of limitation in this case for the rent of each Fasli year runs from the close of that year, and if that view be correct the cases have been rightly decided. The contention before their Lordships was that the period should be counted from the 29th October 1889, when the Decree of the High Court determined the rent payable. And if this contention be correct, these claims were in time.

The point of time from which, under the Limitation Act, the period of limitation is to run is that at which the arrear became due. In most cases no doubt the point of time at which rent becomes due is the close of the period in respect of which it is to be paid. But this is not necessarily always the case in India, and the Limitation Act is an Act for all India. Legislation, or custom, or express contract, or the special circumstances of any case may make rent become due at a point of time different from the close of the period in respect of which it is to be paid. The case of *Mussumat Ranee Surno Moyee v. Shooshee Mokhee Burmonia* (12 Moo. I. A. 241), heard before this Board, is an example of a suit for rent, governed by a law of limitation substantially the same as that now before their Lordships, in which the date at which the rent became due was held to be an entirely different date from the close of the period in respect of which that rent was payable. The object of a Limitation Act is presumably to compel people who have actionable claims to sue upon them with due promptitude or to forfeit the right to do so at all. In such an Act the falling due of rent naturally means the falling due of an ascertained rent, which the tenant is under an obligation to pay, and which the landlord can claim and, if necessary, sue for.

In order to see when rent becomes due in a case like the present it is necessary to turn to the Rent Recovery Act (Madras Act VIII. of 1865). That Act enacts (Sec. 3) that certain landholders and others shall enter into written engagements with their tenants, to be embodied in puttahs and muchilkas, which (Sec. 4) must contain, amongst other things, the amount and nature of the rent. By Sec. 7 no suit or legal proceedings for rent can be sustained unless puttah and muchilka have been exchanged, or

a puttah has been tendered such as the tenant was bound to accept, or both parties have agreed to dispense with such documents. If a puttah is tendered and the tenant refuses to accept it, the landholder (Sec. 9) may proceed by summary suit before the Collector to enforce acceptance of the puttah. And in such a suit it is for the Collector to settle the terms of the tenancy, including the rent, in accordance with the principles laid down in the Act. From the Collector's decision an appeal lies to the Civil Courts (Sec. 69).

Under this procedure it seems clear that as long as proceedings are pending before the Collector and, on appeal from him, before the Civil Courts, the rate of rent is in suspense, for no one can say what it will prove to be, and that therefore no arrear of rent can be said to have become due within the meaning of the Limitation Act. That this is the meaning and effect of the Rent Recovery Act becomes much plainer on a further examination of the Act. The Act (Sec. 87) keeps alive the right to proceed in the Civil Courts in respect of rent, and the present Appeal arises out of a civil suit so brought. But the Act deals very briefly with such suits. Its meaning and effect can be better learned from the provisions relating to those special and summary remedies which are dealt with in some detail and fill a large part of the Act. They are available for arrears of rent and must be put in force within one year from the time when the rent became due (Sec. 2). Those special remedies are distress, sale of the holding, ejectment, and arrest. And in each of these cases the proceedings must commence with a document stating the amount of rent due (Secs. 15, 16, 39, 41, 46).

Their Lordships are of opinion that in the present cases no rent was in arrear or due till the

rates of rent were ascertained by the decree of the High Court of the 29th October 1889, and that limitation runs from that date.

It may be well to notice two arguments against the view taken by their Lordships, which seem to have had weight with some of the learned Judges in Madras.

Section 14 of the Rent Recovery Act says that "when rent shall remain unpaid at the time when, according to any written agreement or the custom of the country, it ought to have been paid," it is to be "deemed an arrear of rent." It has been said, and no doubt rightly, that by the custom of the country agricultural rents are payable at or before the close of the Fasli year. And it has been thought that this Section defines the point of time at which agricultural rent becomes in arrear as the close of the Fasli year. And so it seems to do in the cases to which it applies. But in their Lordships' opinion this whole series of Sections applies to ascertained rents, not to rents at rates which have yet to be determined.

Another argument has been based upon Section 7 of the Act, already cited. It has been thought that under that Section where a landholder has tendered a puttah which the tenant refuses, but which, as the result of the litigation rendered necessary by that refusal, has been found to have been a proper one, and then proceeds to sue for the rent so ascertained, he may be met by a plea of limitation, on the ground that he might have sued, and ought to have sued, for the rent without waiting to have the rate determined. If that view were correct, it would not affect the present case, for in this case the puttah tendered by the landholder was not approved by the Courts, but was altered by them. The High Court, however, in the judgment under appeal, has drawn no distinction between the case in which the

puttah tendered has been ultimately approved by the Courts and the case in which it has been modified. And their Lordships think the Court was right in so doing. Section 7 is not an enabling section, but a restraining section. In order to see when there is an arrear which can be sued for it is necessary to examine the Act as a whole; and the reasons have already been stated which lead their Lordships to think that its provisions as to rent due, rent in arrear, and the recovery of rent refer to ascertained rents.

For the foregoing reasons their Lordships are of opinion that the claims for rents in respect of the years 1295, 1296, 1297, and 1298 are not barred by limitation. They will humbly advise His Majesty that the Decrees of the High Court and the District Court ought to be discharged with costs, and those of the Munsiff's Court discharged, and that the cases ought to be remitted to the High Court with a declaration to the above effect, in order that they may be disposed of in the Munsiff's Court in accordance with that declaration.

The Appellant will recover his costs of this Appeal from the Respondents.

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