

either in regard to the creation of new rights or the variation of those already existing.

1878.
April 17.

We are of opinion that the decrees of the Courts below should be affirmed and this appeal dismissed.

DARBHA VEN-
KANIMA
v.

Appeal dismissed.

RÁMA SUBBA-
RÁYADU.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Kindersley.

ZAMINDÁR OF DÉVARACOTA (PLAINTIFF) APPELLANT v.
VEMURI VENKAYYA (DEFENDANT) RESPONDENT (1).

1878.
July 12.

Act VIII of 1865, sections 9 and 10—Jurisdiction—Revenue Court.

A suit under Section 9 of Madras Act VIII of 1865 to enforce the acceptance of a pattá is not a suit to enforce the terms of a tenancy within the meaning of Section 7 of the same Act, but a suit to determine those terms.

THE plaintiff, the Zamindár of Dévaracota, sued under Section 9 of Madras Act VIII of 1865 to enforce the acceptance of a pattá which had been, on the 11th September 1876, tendered to and refused by the defendant, a ryot of Ghantasala, a village included in the plaintiff's zamindári.

The pattá was for Fasli 1286, and its term was one year. Plaintiff alleged that the defendant had for the past-fasli accepted a pattá, the terms of which were identical with those of the pattá tendered and refused for Fasli 1286. Defendant objected to the pattá on several grounds. The Assistant Collector altered the terms of the pattá in several particulars, and passed a decree under Section 10 of Act VIII of 1865, ordering the defendant to accept within ten days the pattá so altered, and to execute a muchalka in accordance with it.

The defendant appealed on the ground that under Section 7 of Madras Act VIII of 1865 the plaintiff's suit should have been dismissed. The District Judge said "Neither the pattá tendered by the plaintiff nor the pattá amended by the Assistant Collector was, in my opinion, such a pattá as the defendant was bound to

(1) Second Appeal No. 763 of 1877, against the decree of W. Wilson, District Judge of Kistna, dated 4th August 1877, reversing the decree of the Assistant Collector of Kistna, dated 14th December 1876.

1878.

July 12.

ZÁMINDÁR OF
DE'YARACOTA

v.

VENURI VEN-
KAYYA.

accept (*vide* Section 7, Madras Act VIII of 1865) and the decree will be that the judgment of the Assistant Collector be reversed and the plaintiff's suit dismissed with all costs against plaintiff in both Courts."

The plaintiff preferred a second appeal on the ground, among others, that the District Judge was in error in dismissing the plaintiff's claim; he ought to have amended the pattá instead.

The *Advocate-General* (Mr. O'Sullivan) and *Ananthacharlu* for the Appellant.

Mr. *Shaw* and Mr. *Michell* for the Respondent.

The Court (INNES, J., and KINDERSLEY, J.) delivered the following

JUDGMENT:—The District Judge, in disposing of the appeal, referred marginally to Section 7 of the Act, and has dismissed the suit, apparently taking the view that, as the pattá required amendment, the jurisdiction to entertain the suit was originally wanting. In this we consider he was in error. This summary suit is not to enforce the terms of the tenancy in the sense of Section 7, but to obtain a determination as to what those terms should be; and it is clear from the language of Sections 9 and 10 that although the pattá may be found not to be in all respects proper, the Revenue Court has still jurisdiction to proceed to determine what is a proper pattá, and to require the parties to adopt it in its amended form; and if the Revenue Court has jurisdiction to do so, it follows that the Appellate Court equally has jurisdiction. The language of Section 9, therefore, cannot import that the perfect propriety of the pattá in all respects is a condition required to give rise to the jurisdiction. To dispose of the suit in appeal by altogether dismissing it would be to defeat the object of the Act. We shall, therefore, reverse the decision of the District Judge and direct that the appeal be restored to the file, and that a decision be passed in determination of what is the proper pattá to be tendered.

Suit remanded.