

## FULL BENCH.

*Before Sir W. Morgan, C.J., Mr. Justice Innes, and Mr.  
Justice Kindersley.*

DARBHA VENKAMMA (PLAINTIFF) APPELLANT v. RÁMA-  
SUBBARÁYADU (DEFENDANT) RESPONDENT (1).

1878.  
April 17.

*Postpone-Petition—Suit.*

Plaintiff sued in the Munsif's Court of Ellore for recovery of certain monies claimed as due under a 'postpone-petition.' In execution of a decree in a former suit between the same parties a petition was presented by them to the Munsif's Court stating an arrangement between them for the payment of the amount decreed by instalments, with a provision that, in default of payment, "the Court may, on the application of the plaintiff, issue a warrant and collect the amount, with costs of the petition, from the produce of my share of the Agraharam lands.....which are held liable by the razinána decree of this suit, from the said lands, from my other property and from myself, and pay the same to plaintiff." The petition concluded thus: "We, both the parties, present this postpone-petition with our free will and consent, and pray for its being enforced according to its terms."

*ELL* on second appeal, by the Full Court, affirming the decree of both the lower Courts that, as it was clear that no intention existed between the parties to create new rights enforceable by suit in supersession of those acquired or declared by the decree, a suit on the 'postpone-petition' was not maintainable.

THIS was a second appeal against the decree of the District Judge of Godávári in R. A. No. 316 of 1876, affirming the decree of the District Munsif of Ellore in Original Suit No. 583 of 1875.

Mr. *Johnstone* for the appellant.

The facts fully appear in the following

JUDGMENT :—Venkamma, the appellant in this case, was the plaintiff in the suit which is thus described in the judgment of the Lower Appellate Court: "The plaintiff sued as heiress and representative of the original minor plaintiff, Darbha Sítaramáyya, since deceased. She, Venkamma, mother of deceased, sued for recovery of certain monies claimed as due under what is known in this district as a 'postpone-petition', dated 12th October 1868. It appears that, in execution of a decree

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(1) Second Appeal, No. 652 of 1877, against the decree of F. Brañdt, Acting District Judge of Godávári, dated 11th July 1877, affirming the decree of the District Munsif of Ellore, dated 16th September 1876.

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(in Original Suit No. 215 of 1863) on the file of the District Munsif of Rajahmundry, the parties to that decree put in a petition under which the debtor promised to pay, by instalments specified, a certain sum stated as due under the decree, and the creditor consented to accept payment as therein agreed. The plaint contains the request, that 'as execution cannot be given in respect of the decree on the petition,' decree may be passed 'in respect of the said postpone-petition.'

What is called the 'postpone-petition' is a petition presented by the parties to the Munsif's Court stating an arrangement between them for the payment of the amount decreed, by instalments, with a provision that, in default of payment, "the Court may, on the application of the plaintiff, issue a warrant and collect the amount, with costs of the petition, from the produce of my share of the Agraharam lands at Korumilli and Naganamilli, and the half putti of my inám land at Attili, which are held liable by the razináma decree of this suit, from the said lands, from my other property and from myself, and pay the same to plaintiff." The petition concludes thus: "We, both the parties, present this postpone-petition with our free will and consent, and pray for its being enforced according to its terms." Both the Courts below have decided that the suit is not maintainable, holding in effect that no new valid contract had been made capable of being enforced by suit; that the decree in the former suit must regulate the rights of the parties until the same has been adjusted or satisfied; and that the remedies (if any) must be had in the shape of the issue of process of execution in a manner conformable to the decree.

It is of course competent to the parties to create new rights enforceable by suit in supersession of those acquired or declared by the decree. In the present case it is clear that no such intention was manifest. On the contrary, the petition shows that what the parties desired was that the Court should regard the amount adjudged by the decree as payable by instalments, and that process of execution in case of default should be issued in the manner provided.

No order was in fact made on the petition, and it is not obvious how such an application could have been dealt with

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

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

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*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.