

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Forbes.

KARÍM (FIRST DEFENDANT) APPELLANT, *v.* MUHAMMAD KÁDAR
(PLAINTIFF) RESPONDENT.*

1879.
January 8.

Pattá, right to enforce—Regular Suit.

A Regular Suit to enforce the acceptance of a pattá is maintainable.

IN this suit the plaintiff sought to obtain a decree declaring that he was a landlord and first defendant his tenant within the meaning of clauses 1 and 3, Section 1, Madras Act VIII of 1865, in respect of one acre of nanjah land, and that first defendant was accordingly bound to pay plaintiff *mélwaram* on the said land. Plaintiff further asked that first defendant should be directed to accept a pattá from plaintiff and to execute a *muchalka* for Fasli 1285 (1875-76). It was stated in the plaint that on the 2nd March 1876 plaintiff gave notice to first defendant to accept a pattá from him and execute a *muchalka* for Fasli 1285; that upon his refusal plaintiff filed a summary suit before the Collector to compel him to do so, and that first defendant having denied before the Collector plaintiff's title as landlord, plaintiff was referred to a civil suit. The first defendant alleged that he bought both the *kudiwaram* and *mélwaram* rights in the land from plaintiff twenty years before date of suit. The District Munsif decreed in favor of plaintiff as prayed for.

The first defendant appealed, and in argument it was urged that the present suit could not be maintained in the ordinary Civil Courts. The Subordinate Judge overruled this objection and confirmed the decree of the Court of First Instance.

The first defendant preferred a second appeal to the High Court on the grounds, among others—

That the present suit was not sustainable, being brought to declare the plaintiff a landlord within the meaning of Madras Act VIII of 1865, and to compel the exchange of pattá and *muchalka* which would be in the nature of a new agreement.

* Second Appeal No. 409 of 1878, against the decree of A. Annusami, Subordinate Judge of Tinnevelly, dated 31st January 1878, confirming the decree of the District Munsif of Tinnevelly, dated 27th June 1877.

1879.

KARIM
v.
MUHAMMAD
KADAR.

That the Court below had no jurisdiction to make a decree for exchange of pattá and muchalka under the provisions of Section 87 of the said Act.

C. Rámachandra Rau Saib for the appellant.

T. Ráma Rau for the respondent.

JUDGMENT :—In this case, while we considered the decree right in other respects, we reserved the question whether a regular suit could be maintained to enforce the acceptance of a pattá.

In Section 3, Madras Act VIII of 1865, landlords of the description therein enumerated are required in positive terms to enter into written engagements with their tenants. If, therefore, the action of the tenant precludes the landlord from doing what the law enjoins upon him, and without which he is disabled from making use of many of the summary remedies under the Act, he will have his right of action to compel the tenant to do that which will enable the landlord to conform to the law, unless such right of action is taken away by other provisions of the law.

We have not been referred to any such provision. Section 7 of this Act is no bar to the right of suit, as a suit to enforce acceptance of a pattá is not a suit to enforce the terms of a tenancy, but a suit to compel the defendant to agree to terms; and even were it so, the plaintiff having tendered a pattá would not be disabled by that section from bringing his action.

Section 87 requires the Courts in regular suits regarding rates of rent to be guided by the provisions of Act VIII of 1865, but places no explicit restriction upon the institution of other suits between landlord and tenant for the enforcement of their respective rights. In the recognition of the jurisdiction of the Regular Courts over suits for *arrear*s of rent or revenue which occurs in the early part of the section, it may perhaps be doubted whether there is not an implied exclusion of the jurisdiction of the Regular Courts over other suits which may be instituted summarily under the Act. The concluding part of the section however shows that no such exclusion could have been intended, because a class of suits is there recognized as cognizable which under such interpretation would not be so.

The language of Section 9 also appears to be merely permissive of the right of the landlord to adopt the summary remedy and not to shut him out from the remedy by regular suit. The

remedy by summary suit was originally given as an alternative remedy (see as to this *Gopālasāmi Mudali v. Mukki Gopāl Ayyar*) (1), and there is nothing to show that the landlord is debarred the remedy by regular suit in such a case as that before us. The second appeal will be dismissed with costs.

1879.

 KARIM
 v.
 MUHAMMAD
 KADAR.

 PRIVY COUNCIL.

RAMASĀMI AYYAN AND OTHERS (DEFENDANTS) *versus* VENKATA-
 RĀMAIYAN *alias* CHIDAMBARAIYAN (PLAINTIFF).

P. C.*
1879.
 May 8, 9, 10,
 13, 14; June
 14.

[On appeal from the High Court of Judicature at Madras.]

Hindu law—Adoption by widow—Agreement by natural father restricting son's interest in the inheritance of his adoptive father.

The natural father of a boy whom the widow of a deceased Hindu proposed to adopt as a son to her husband, entered into a written agreement with her to the effect that the boy should inherit only a third of the property of his adoptive father: *Held*, that the agreement was not void, but was at least capable of ratification when the adopted son became of age.

Chitko Raghunath Rajadiksh v. Janaki and others (2), referred to.

THIS was an appeal against a decree of the High Court of Judicature at Madras, dated the 24th January 1877, reversing a decree of the District Court of Trichinopoly, dated 15th January 1875. The defendants were the appellants, and the respondent the plaintiff in the original suit. The plaintiff sued as heir of one Rangasāmi, by virtue of an adoption made by Rangasāmi's widow after his death, to set aside various dispositions of the property made by the widow before the adoption. The defendants were the widow and various persons who claimed under the disputed transactions.

Neither the adoption nor the transactions in dispute were denied. The defence set up was that the plaintiff had been adopted by the widow upon the faith of an express written agreement by his natural father that none of the transactions now sought to be set aside were to be disputed, and that this agreement had been ratified in writing by the plaintiff himself nine years after his adoption and two years after he came of age.

(1) 7 Madras H. C. Rep., 312.

* *Present* :—Sir JAMES W. COLVILLE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, and Sir ROBERT P. COLLIER.

(2) 11 Bom. H.C.R., 199.