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certain other payments in kind, presumably capable of a money value, which had been made to them up to the judgment in the former suit, but which had been since withheld.

This being so, the action falls within the principle of the judgment by which the former suit (1) was remanded, and of other cases to which their Lordships' attention has been called. They are therefore of opinion that the judgment should be reversed, and the case remanded for the purpose of trial, and that the appellant is entitled to the costs of this appeal; and they will humbly advise Her Majesty to this effect.

Appellants' Agents: Messrs. *Burton, Yeates and Hart.*

PRIVY COUNCIL.

P. C.* 1879. May 7 and 8.

RÁMASÁMI (DEFENDANT) *v.* THE COLLECTOR OF MADURA AS AGENT OF THE COURT OF WARDS ON BEHALF OF BHASKARASÁMI, A MINOR (PLAINTIFF).

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

Registration—Pattá—Section 2, *Act XX of* 1866—*Sections* 3, 8, 9 *and* 11, *Madras Act VIII of* 1865.

The pattás and muchalkas mentioned in Section 3, Madras Act VIII of 1865, must be understood to embrace those written agreements only which are mutually interchanged by a landlord and those of his tenants who are actually engaged in the cultivation of the lands to which they relate, since the remedies which the Act provides in Sections 8 and 9, can only be made available where the relation of landlord and tenant, or a holding of some sort, already exists upon such a basis that the landlord or the tenant, as the case may be, can come into Court and claim to have a writing granted to him.

Semble, if a lease granted by a zamindár to an intermediate holder could be considered a pattá within the meaning of Section 3 of the Madras Act VIII of 1865, it would, under the proviso to Section 11 of that Act, be liable to be set aside by the successor of the grantor if granted at a lower rate than that generally payable on such lands, and not for the purposes mentioned in the said proviso.

THIS was an appeal from a decree of the High Court of Madras, dated the 5th January 1877, which affirmed the judgment and decree of the District Judge of Madura, dated the 30th May 1876, made in favour of the respondent.

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

(1) *See* 6 Mad. H. C. Rep., 449 at p. 451.

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The chief question of law raised by the appeal was as to whether a lease of lands alleged to have been granted to the appellant's father by the father of the respondent on the 15th April 1867, but which had not been registered, was admissible in evidence and could have effect given to it, as falling within the provision of Section 2, Act XX of 1866, which exempts from registration "*pattás*" and "*muchalkas*" as defined in Section 3, Madras Act No. VIII of 1865. Another question arising in the case was as to whether, assuming the lease to be a pattá within the meaning of the said Act VIII of 1865, it would be binding as against the respondent who is the successor of the grantor, having been granted at a lower rate than that usually paid for lands of a similar character, and not for the purposes expressed in Section 11 of the said Act.

The facts of the case, which were not disputed, will be found set forth in their Lordships' judgment.

Mr. *J. D. Mayne*, for the appellant, contended that the instrument in question was a pattá within the meaning of the 3rd section of the Madras Act VIII of 1865, and so exempt from registration under Section 2, Act XX of 1866. It was a written agreement for the payment of rent passing between a landholder and a tenant and contained all the particulars which under Act VIII of the Madras Code a pattá should contain. The fact of the land having been leased at a rate lower than its actual value did not bring the case within the proviso of Section 11 of Act VIII, since that proviso was not of a general character, but intended only to apply to suits brought under Sections 8, 9 and 10 of the Act. It was unlikely that a proviso, incidentally introduced, should be intended to alter the general law of leases. The Act purported to be a consolidation Act, and it was nowhere provided by the old law that a son was not to be bound by his father's pattá if granted at a low rate. The Madras Regulations No. XXX of 1802, Sections 9, 13 and 15, and No. IV of 1822, showed that when these laws were passed the Government had no intention to put any such limit on the rights of landholders and tenants. The case of *Muttu Viran Chetti* v. *Rani Kattama Natchiyar* (1), in which a permanent

(1) 4 Mad. H. C., Rep. 463.

lease made by a zamindár at a low fixed rent was held binding on his successor, shows that before the passing of Act VIII of 1865, there was no limitation of the landholder's right to lease. As to the manner in which the exemption provided under Section 2, Act XX of 1866, has been applied in the case of a pattá, see *Vakaty Ramareddy* v. *Duvvuru Ayapareddy* (1).

Mr. *Cowie*, Q.C., and Mr. *Graham* for the respondent:—The Registration Act No. XX of 1866 alters the previous Registration law, and makes all instruments which being required by the Act to be registered, are not registered, inoperative. Under that Act an unregistered lease is inoperative when it is not a pattá within the meaning of Section 3 of the Madras Act No. VIII of 1865. In the Act last named *tenants* are defined to be all persons bound to pay rent, and it is provided that landholders shall be bound to enter into written agreements with all persons bound to pay them rent. The Act consequently applies only where there is an existing relation of landlord and tenant. But the case here was not of that nature. The appellant's father was a banker not previously connected with the lands of which he obtained this lease, but who had lent money to the father of the respondent. A banker lending money to a zamindár cannot sue the zamindár to grant him a pattá; but the pattá mentioned in Section 3 of Act VIII of 1865, can be demanded as a right. In the present case the previously existing relation of landlord and tenant contemplated by the Act was not found. There was no occupation, and no binding contract to grant a lease. The relation of landlord and tenant begins only with the lease itself. To hold that lease exempt from registration would be equivalent to saying that no lease made in the Madras Presidency need be registered, and would frustrate the whole policy of Act XX of 1866. Further, the contention that the proviso of Section 11, Madras Act VIII of 1865, applies only to suits under Sections 8, 9 and 10 of that Act, is not supported by the language used in Section 11, which does not so limit its application. That section applies generally to all suits and is a substantive enactment. The authorities cited do not touch the case.

(1) 7 Mad. H. C., Rep. 234.

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Mr. *Mayne*, in reply: The respondent's contention that Act VIII does not apply where the lease is to a stranger is incorrect. It provides that a pattá may be demanded for waste lands, in respect of which there can be no anterior relationship of landlord and tenant. It is also incorrect to say that assuming the appellant's contention that the instrument in dispute is a pattá under Act VIII and so exempted from registration to be true, it would follow that no lease in Madras would require registration. All leases granted by persons other than landholders would still have to be registered.

Their Lordships' judgment was delivered by

Sir MONTAGUE E. SMITH:—This was a suit brought by the Collector of Madura, acting for the Court of Wards, on behalf of the minor Zamindár of Ramnad, against the defendant to recover possession of the village of Selugai, and also to set aside a lease of that village granted by the late Zamindár of Ramnad, the minor's father, in the year 1870. The learned Counsel on the part of the appellant, the defendant below, has not sought to impeach the judgments of the Courts below so far as they set aside the lease of 1870, but his contention has been directed to establish a former pattá which had been granted by the late Zamindár to the appellant's father in the year 1867. It does not appear that the question which has been argued at the bar was the subject of decision in the High Court. The judgment of the District Judge of Madura proceeded upon the footing that the document of 1867 was inadmissible in evidence. It is an unregistered document made before the birth of the present plaintiff. The District Judge also held that the lease of 1870 which was registered did not bind the minor plaintiff, inasmuch as it was granted after his birth, and upon considerations which did not support it against his inchoate title. Their Lordships feel regret and some surprise that the Judges of the High Court have given no reasons for their judgment; none have been reported to their Lordships.

The sole question which is now before their Lordships is whether the document of 1867, in consequence of its not having been registered, is admissible in evidence and affects the estate; the point for decision being whether it is a document that falls within the General Registration Act No. XX of 1866.

The argument having turned entirely upon the effect of this Registration Act, which refers to a Madras Act, and upon the construction of those two Acts as applicable to the instrument, it is unnecessary to go into the previous history of the case. It is sufficient to say that the late Zamindár of Ramnad was adopted by the widow of a former Zamindár; that his adoption was disputed, and great litigation was the consequence of that dispute. The case ultimately came before this tribunal upon appeal, and a decision was given, in May 1868, in favour of the adoption. Considerable expenses were necessarily incurred, and the defendant's father, Arunáchalam Chetti, and his partners, who appear to have been merchants and bankers, made very large advances to the Zamindár and his agents for carrying on the legal proceedings. In 1867, when the document in question was granted, the advances amounted to about a lakh and a half of rupees; and at the end of the litigation the further advances and accumulated interest amounted to very nearly four lakhs of rupees. The merchants who advanced the money took security for their advances, and in the end they received the whole of their money with compound interest, and several large sums by way of presents in addition to the interest.

The document on which the question arises is dated the 15th April 1867, and professes to be a lease from the late Zamindár to Arunáchalam Chetti. Its terms are these: "In consideration of the assistance you have rendered to this Samastánam (zamindárí), you requested that the Kasba (chief) village of Selugai, in Selugai division in Raja-Singamangalam Firka, should be leased to you for 40 years, fixing a favourable poruppu (a low rent). The aforesaid Selugai village"—describing it—"has been accordingly leased to you for 40 years from this Fasli 1276 up to Fasli 1315, fixing the poruppu at 400 rupees per annum." It may be stated, in passing, that it is found that the value of this village was 1,700 rupees per annum so that it was obviously a favourable lease, which was intended to confer a valuable interest on the lessee. "You shall, therefore, raise the required crop and enjoy; and, agreeably to the káraranáma (agreement) you have given, you shall continue to pay the fixed poruppu according to the instalments of kist year after year."

This lease was not registered. It is the document upon which the defendant now relies to resist the claim to the possession of

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the village made on the part of the minor Zamindár; for, as has been already stated, it is not now contended that the judgments below with regard to the lease of 1870 can be impeached.

It is necessary to refer shortly to Act No. XX of 1866, though the main question arises upon the Madras Act VIII of 1865, to which reference is made in it. By the 17th section of Act No. XX "leases of immoveable property for any term exceeding one year" are required to be registered. The interpretation clause, (clause 2) says of the word "lease," "'Lease' includes a counterpart, a kabulyat, an undertaking to cultivate or occupy, and an agreement to lease, but not a pattá or muchalka as respectively defined in section 3 of Act No. VIII of 1865 of the Governor of Fort St. George in Council executed in the Madras Presidency." It is contended on the part of the defendant that this document is a pattá as defined in section 3 of this Act.

The preamble of the Madras Act is as follows: "Whereas it is expedient to consolidate and simplify various laws which have been passed relative to landholders and their tenants, and to provide a uniform process for the recovery of rent." Section 3 seems to be confined to the relation of tenants who are cultivating the land and their immediate landlords. The whole Act may not be confined to that class, but the intention appears to be, by section 3 and the sections which specifically refer to it, to regulate the relation of landlords and tenants of that description. This 3rd section, which is the one under which this document must be brought, if it is to escape the obligation of registration, is as follows: "Zamindárs, Shrotriemdárs, Inamdárs, and persons farming lands from the above persons, or farming the land revenue under Government, shall enter into written agreements with their tenants, the engagements of the landholders being termed pattá, and those of the tenants being termed muchalka." It is said that this description embraces all cases where there is a landlord and a tenant. If that were the construction of the 3rd section as applied to the Registration Act, the consequence would be that in Madras all leases would be excluded from the beneficial operation of that Act. However large the premiums that may have been given on such leases, however small the rent, if there be a rent at all, according to the contention on the part of the appellant, the lease would fall within the 3rd section, and therefore need not be registered. One class of those who

are described as landlords as distinguished from tenants are persons farming lands from Zamindárs and others who are previously mentioned; but if the wide construction were to prevail, every lease from a Zamindár to any such person intermediate between the Zamindár and the ryots, would be a lease which need not be registered; and the mischief against which the Registration Act was intended to provide a remedy would exist in the case of all the valuable leases which are granted by Zamindárs to intermediate holders.

The reference in the Registration Act is to a "pattá or muchalka as respectively defined in section 3." This section of the Madras Act does not strictly contain a definition, but a description only. It appears to provide for what shall be done where there is an existing relation of landlord and tenant, and requires that the landlord shall in that case enter into a written engagement with his tenant. Following the provisions of the Act, the remedies which are given in sections 8 and 9 can only be available where the relation of landlord and tenant, or a holding of some sort, already subsists, upon the basis of which the landlord or the tenant, as the case may be, may come into Court and claim to have a lease granted. Section 8 is, "When any of the landholders specified in section 3 shall for three months after demand refuse to grant such a pattá as his tenant was entitled to receive, it shall be lawful for the latter to proceed by filing a summary suit before the Collector, who shall try the case and direct a proper pattá to be granted." Under section 9, the landlord may in like manner compel the tenant to accept a proper pattá. These provisions are made upon the assumption that there is an existing relation which would warrant the application by either party for a written pattá. It cannot, of course, be contended that in this case the Zamindár was bound to grant the lease of 1867, or any lease to Arunáchalam Chetti. The other provisions of the Act are consistent with this construction of section 3. Sections 5, 10, 11, and 12 refer specifically to the class of landlords described in section 3; whilst section 18 refers to other classes, showing that section 3 was not intended to apply to all cases of persons holding under others, but to a particular class of landlords and tenants only.

A further question was raised in the first instance before the District Judge, viz., whether, supposing the document of 1867

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to be a pattá within the meaning of the Madras Act VIII of 1865, the proviso which is found at the end of section 11 would not nullify its effect as regards the respondent, the "successor" of the grantor? There seems to be ground for the contention that this proviso is not limited to cases where suits are brought under the 8th, 9th, and 10th sections, although the commencement of the 11th section refers to such suits. The commencement is: "In the decision of suits involving disputes regarding rates of rent which may be brought before Collectors under sections 8, 9, and 10, the following rules shall be observed," and then come four rules. Three of them appear to apply to such suits, but it may be doubtful whether clause 4, which relates to waste lands, is so confined. Then the proviso referred to is, "Provided also, no pattás which may have been granted by any such landholder at rates lower than the rates payable upon such lands, or upon neighbouring lands of similar quality and description, shall be binding upon his successor, unless such pattá shall have been *bonâ fide* granted for the erection of dwelling houses, factories, or other permanent buildings, or for the other purposes mentioned in the proviso." It is difficult to suppose that the operation of this proviso was intended to be confined to cases in which suits are brought under sections 8 or 9; and it may be that it was intended to apply to all pattás which come within the 3rd section. If so, the appellant, assuming the respondent to be a successor within the meaning of the proviso, would be placed in the difficulty which induced his advocates at the first hearing before the District Judge of Madura to take the opposite view from that which his Counsel has taken to-day, and to contend that this document was not a pattá within the meaning of the Madras Act, a view which was upheld by the Judge. It is not, however, necessary to decide this point.

On the whole, therefore, their Lordships are of opinion that this appeal fails, and they will humbly advise Her Majesty to affirm the decrees of the Court below, with costs.

Agents for the appellant: Messrs. *Gregory, Rowcliffes and Rawle.*

Agent for the respondent: Mr. *H. Treasure.*