## [255] APPELLATE CIVIL.

*The 11th August, 1881.*

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Varathachari.....(Defendant) Appellant

*versus*

Balu Naicken.....(Plaintiff) Respondent. *

*Madras Act VIII of 1865, Section 7 Acceptance of Muchalka without delivery of Patta.*

When a muchalka has been taken from a tenant under the Rent Recovery Act (Madras Act VIII of 1865) but no patta granted, this is some evidence that the tenant dispensed with the delivery of a patta, and legal proceedings ought not to be set aside merely because no patta and muchalka have been exchanged, without inquiry as to whether the parties have agreed to dispense with pattas and muchalkas.

THIS was a summary suit brought to set aside an attachment of plaintiff's land under the *Rent Recovery Act Madras Act* VIII of 1865) on the ground that all rent due had been paid, and that pattas and muchalkas had not been exchanged.

The Deputy Collector directed the land to be released, because Sec. 7† of the *Rent Recovery Act* required that patta and muchalka must be exchanged, and not merely a muchalka given as was the case here.

On appeal this decision was confirmed by the District Judge.

The defendant appealed to the High Court.

Mr. *N. Subramaniam* for Appellant contended that the Lower Courts ought to have found that defendant had by his conduct dispensed with the grant of a patta.

The Respondent did not appear.

The Court (INNES and MUTTUSAMI AYYAR, JJ.) delivered the following

**Judgment**:—We think in this case the Court of First Instance and Lower Appellate Court have decided against the liability of plaintiff to the attachment, without determining a point, essential to the right decision of the case. The ground upon which the Courts proceed is that patta and muchalka have not been exchanged as required by Section 7, Act VII of 1865. The object of the provisions contained in that section is to secure the **[256]** tenant from imposition on the part of the landlord. This is effected by requiring that the terms and the acceptance of those terms shall be in writing except in certain stated cases. If the tenant chooses to accept terms verbally offered and gives

Second Appeal No. 48 of 1881, against the decree of A. L. Lister, Acting District Judge of Chingleput, confirming the decision of the Deputy Collector of Chingleput, dated 27th October 1880.

† [Sec. 7:—No suit brought, and no legal proceedings taken to enforce the terms of a tenancy, shall be sustainable unless Puttahs and Muchalkas have been exchanged as aforesaid, or unless it be proved that the party attempting to enforce the contract had tendered such a Puttah or Muchalka as the other party was bound to accept, or unless both parties shall have agreed to dispense with Puttahs and Muchalkas. Such tender shall be sufficiently evidenced by such proof of service as is provided for by Section 39 in the case of notices. But it shall not be necessary to send duplicates of such documents to the Collector.]

No suit to be brought unless Puttahs and Muchalkas have been exchanged, or tendered or dispensed with.

a muchalka accepting those terms, this is some evidence of his having dispensed with the delivery of a patta. If he has dispensed with the delivery of a patta and accepted the terms offered, that is sufficient to fix him with liability.

We must require the District Judge to find—

I. Whether plaintiff dispensed with a patta.

II. If he did so, whether he has, as contended, paid the full amount owing.

The District Judge is directed to try the foregoing issues upon the evidence already recorded and upon such further evidence as the parties may adduce, and to return his finding thereon together with the evidence to this Court within six weeks from the date of receiving this order, when ten days will be allowed for filing objections.

**NOTES.**

[*See* (1908) 18 M.L.J. 246 where it was held that a mere acceptance of them uchalka was not sufficient proof of the patta having been dispensed with. *See* also (1886) 10 Mad. 363.]

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**[3 Mad. 256.]**

APPELLATE CIVIL.

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*The 11th August, 1881.*

PRESENT:

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI IYYAR.

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Karakavalasa Appayya.....(Defendant) Appellant

*versus*

Karanam Papayya.....(Plaintiff) Respondent.*

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*Decree for payment by instalments—Proviso on default that whole sum became recoverable—Payments out of Court—Default in fifth instalment—Application for execution as to fifth instalment not barred—Right to recover whole amount not enforced—Original obligation not affected.*

Where a decree was passed by consent in 1872 for payment to plaintiff through the Court of Rs. 300 by fifteen annual instalments on 20th February in each year, and in default of payment of any instalment the whole amount became recoverable, and four years' instalments were paid out of Court and default made on 20th February 1877, and plaintiff applied to recover the instalment of 1877 by execution on 17th November 1879, and 1st March 1880 ;

*Held*, that the application of November 1879 was not barred under Clause *b*, Article 179, Schedule II of the Limitation Act of 1877, inasmuch as when the Indian **[257]** Limitation Act, 1877, came into force (1st October 1887), the application was not barred under Clause 6, Article 167, Schedule II of the Indian Limitation Act, 1871.

*Held* also, that the provision as to the whole amount becoming recoverable at once if default was made did not affect the admissibility of the application for execution, because that provision had not been enforced and the obligation to pay by instalments was still subsisting.

THIS was a case stated and referred under Section 617 of the *Civil Procedure Code* by the District Judge of *Ganjam*. The facts are set out in the High Court's Judgment.

The parties were not represented before the High Court, but before the District Court the Counsel for the defendant cited *Arunachella Pillai* v. *Aupavu*

* Referred Case 15 of 1880, stated by J. Wallace, Acting District Judge of Ganjam.