

- (f) mamlatdar's order to village officers to give effect to his award of possession :—30 Bom., 415=8 Bom. L. R., 218.
 (g) Dismissal of execution-petition without notice to parties and removal of attachment :—(1907) 31 Mad., 71=18 M. L. J., 46.

But a certificate of guardianship (XI of 1858) should be applied for and would not fall within this line of cases :—(1886) 12 Cal., 542.

II. LIMITATION ACT NOT EXHAUSTIVE—

- (i) It does not apply to all applications whatever made to the Court :—(1910) 37 Cal., 796 ; (1886) 6 Cal., 60 ; (1908) 11 Oudh cases, 208 ;
 (ii) Nor to criminal applications, Art. 178 :—(1888) 10 All., 350 ; (1895) 20 Bom., 543.
 (iii) It does not apply to applications on which only ministerial orders have to be passed :—(1881) 4 Mad., 172 ; (1882) 6 Bom., 586, where the application was for certificate of sale.]

[174] APPELLATE CIVIL.

The 7th and 21st September, 1881.

PRESENT.

MR. JUSTICE MUTTUSAMI AYYAR AND MR. JUSTICE TARRANT.

Srinivasa Chetti.....(Plaintiff), Appellant

and

Nunjunda Chetti.....(Defendant), Respondent.*

Mittadar, right of—Kudivaram presumption as to.

The kudivaram (tenant-right) does not necessarily vest in a mittadar as such so as to entitle him to eject the ryots on his mitta on notice as tenants from year to year.

THE facts and arguments in this case appear sufficiently, for the purpose of this report, in the **Judgment** of the Court (MUTAUSAMI AYYAR and TARRANT, JJ.) which was delivered by MUTTUSAMI AYYAR, J.

Hon. T. Rama Rau for Appellant.

Mr. Grant for Respondent.

Judgment :—The plaintiff (appellant) is the Ijaradar † of the village of Thalihulli in Krishnagiri Taluk in the district of Salem. This village was granted by Government in 1802 (1212) to one Purna Chendu Lal under a "Yaiksala patta," and on this occasion eight items of land measuring 675½ gulies were transferred to Thalihulli from the village of Chevuthulli to which they had belonged. In 1804 (1214) the village of Thalihulli was granted as a mitta‡ to Naranappan, who thereupon granted a perpetual lease or ijara to one Narayana Rao. On the 20th December 1858 the Ijaradar's right, title, and interest in the village was sold in execution of a decree which had been passed against one Kristna Rao, the legal representative of Narayana Rao, and the appellant's father Gopala Chetti became purchaser. The land in suit consists of two plots, which together with six other plots lie close to the tank in the village of Thalihulli. From 1803 (1213) three of them have been treated as inam, and the rest, including those now in dispute, as assessed or "pattukattu"

*Second Appeal No. 232 of 1881 against the decree of J. C. Hannynghton, District Judge, of Salem, confirming the decree of E. Muttusami Ayyar, District Munsif of Dharmapuri, dated 8th November 1880.

†Farmer of public revenue, renter of village at stipulated rate—(Wilson).

‡A revenue estate created in the Madras territories under the permanent settlement—(Wilson).

lands. These have been held [175] subject to the payment of rent; pattas and muchalkas have been exchanged; and the appellaut has from time to time proceeded against them under Act VIII of 1865 for arrears of rent. He has further caused some of the lands to be attached and sold for arrears of rent under the same Act subsequently to the institution of this suit. In 1854 (1264) the land in suit was held by one Virannan under a patta granted by the Ijaradar Krisna Rao. On the 16th December 1872 the pattadar's right, title, and interest in it was sold in execution of the decree passed against him in Original Suit 592 of 1862, and the respondent became purchaser. Appellant's father, appellant's brother, and appellant himself have since accepted rent from respondent and suffered him to continue in possession. In 1879 appellant brought the suit from which this appeal arises to eject respondent, alleging in his plaint that the land now sued for, together with six other lands, formed part of the waterspread of his ijara village; that respondent was in possession without any title: and that on the 16th October 1878 he (appellant) gave notice to respondent calling upon him to surrender the land in order that it might be appropriated as the bed of the tank in his ijara village and which he desired to improve. On the other hand, respondent relied on his right as purchaser of the right, title, and interest of the pattadar Virannan, and on the acquiescence of appellant, his father and brother in his title, and contended that appellant, as purchaser from the Ijaradar Krishna Rao, acquired no better right than his vendor possessed, and that the suit was barred by the Act of Limitation. It was in evidence that the land sued for lies between the tank and the other six lands, and that for the last forty or fifty years it had not been submerged. The Court of First Instance found that the land in suit was no part of the waterspread of appellant's village, that there was no satisfactory proof that it was transferred to Thalihulli as part of its waterspread, and that appellants attempt to eject respondent while he allowed the occupiers of the other six plots to remain in possession was the result of enmity, and upon these grounds dismissed the suit with costs. In his petition of appeal appellant contended, among other things in the Lower Appellate Court, that as the proprietor of the land in question he was entitled to eject respondent and his vendor Virannan who had held the land under him as pattadar. The Lower Appellate Court concurred in the findings of the Court [176] of First Instance, and held that respondent's position was that of an ordinary pattadar, and that, as such, he was not liable to be ejected at the caprice of the appellant.

It is contended in support of this second appeal that the claim should have been decreed, inasmuch as the respondent was a tenant from year to year liable to be ejected on due notice and a reasonable notice had been given. Appellant, as purchaser of Virannan's interest in the land, can of course claim no other rights than those possessed by Virannan, and is subject to the same obligations. But Virannan's tenancy has been found to be that of an ordinary pattadar, and we apprehended that such a tenancy, when there is no evidence of a contract as to its origin and duration, or that the kudivaram* right vested in the Mittadar at any time, entitles the tenant to the right of occupancy for the purpose of cultivation determinable on the conditions prescribed by (Madras, Act VIII of 1865. The case *Vencataramanier v. Anandu Chetty* (5 M. H. C. R., 120) is in point and relates to a mitt situated in the district of Salem. In *Chockalinga Pillai v. Vythealinga Pundara Sannady* (6 M. H. C. R., 171), however, the Court considered that it had gone too far in the last-mentioned case in laying down the rule as to a pattadar's right of occupation in the broad

*Share of the produce which is the right of the inhabitants or of the cultivator—(Wilson).

termsthat it does. Mr. Justice HOLLOWAY referred to Sections 12^{3c} and 45[†], Act VIII of 1865, and held that the duration of the tenancy was still a matter left for determination in a regular suit by the application of the general law to the agreement of the parties in each case, and that the Act did not operate to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it. There was, however, in that case a muchalka which showed the conditions subject to which the tenancy was created, and upon the construction of that document the Court held that the tenancy was one from year to year, and that the tenant was liable to be ejected at the end of any fasli. Further, the appellant in that case was the trustee of a *matam* to which the land belonged, and the respondent was let into possession by the Collector of the district as the trustee of the institution under the muchalka already mentioned. It has since been held in several cases that the mere payment of a uniform [177] rent, though for a considerable length of time, does not necessarily import a right of permanent occupancy. We take the result of the decided cases to be that where the duration of a tenancy is regulated by an express or implied contract between the proprietor and the ryot, Act VIII of 1865 does not operate to extend the term; that length of possession may be consistent with a yearly tenancy continued from year to year; and that when the proprietorship is one established, the tenant is bound to give up the land on due notice, unless he can show a right of occupancy permanent or otherwise. In the case before us, however, there were traces of a right of occupancy. Appellant alleged a transfer of the land as part of the waterspread of Thalibulli as a special cause of his title. The Lower Appellate Court having found against that allegation, he falls back upon his position as Mittadar. It does not necessarily follow from his position as such that the *kudivaram* right vests in him every case, and that he is entitled to eject every ryot in his mita on notice. It is incumbent on him to show that the *kudivaram* as well as the *melvaram* † right once vested in him, and when this is done, he is entitled to treat the tenancy as one from year to year, determinable on proper notice. In this case there is no finding that he was proprietor in the sense that the *kudivaram* right ever belonged to him. On the other hand, he has not only exchanged pattas and muchalkas and instituted proceedings against the pattadars under Act VIII of 1865, but has also sold some of the eight lands alleged to form the waterspread of the village and acquiesced in the purchase made by respondent for a period of nine years. It appears that he has treated the tenants' interest in some of the eight lands as a saleable interest within the meaning of Act VIII of 1865, and thus there

*[Sec. 12:—The landholders specified in Section 3 are not empowered to eject tenants from their lands except by a decree of a Civil Court, or under the provisions of Section 10 or 41 of this Act. Tenants ejected without such due authority may bring a summary suit before the Collector to obtain reinstatement with damages: Provided always that tenants shall be allowed to relinquish their lands at the end of the revenue year by a writing to be signed by them in the presence of witnesses, or, at any other time, if the landholder is willing to accept the relinquishment.]

†[Sec. 45:—When the arrear cannot be liquidated by distress and sale of the moveable property of the defaulter, or by the sale of his interest in the land, it shall be lawful for a landholder or his authorized agent to apply to the Collector for a warrant for the personal arrest of the defaulter, which shall be granted upon the production of a written statement such as is prescribed by Section 41 of this Act, if the Collector shall have reason to believe that the defaulter, or his security, is wilfully withholding payment, or has been guilty of fraudulent conduct in order to evade payment.]

‡ The proportion of the crop claimed by Government.

is evidence to warrant the finding that the respondent is not liable to be ejected except under Act VIII of 1865. We think that the conclusion arrived at by the Judge that the respondent is not liable to be arbitrarily ejected is warranted by the evidence on record, and dismiss this appeal with costs.

NOTES.

[The ryot has a heritable and alienable interest :—22 Mad., 39, at 43 ; but not the sole interest, so that the Zamindar can intervene if fruit trees are cut down :—(1906) 30 Mad., 155.

On the nature of the relative rights of the ryot and the melvaramdar in a permanently settled estate, see (1897) 20 Mad. 299.]

[178] APPELLATE CIVIL.

The 21st July and 21st September, 1881.

PRESENT :

MR. JUSTICE MUTTUSAMI AYYAR AND MR. JUSTICE TARRANT.

Venkata Narasiah.....(Plaintiff), Appellant
and
Subbamma.....(Defendant), Respondent.*

Suit to recover land sold in execution of a decree—Limitation.

V having bought lands from A, whose husband (deceased) acquired them at a Court sale, sued S in ejectment in 1879.

S pleaded Limitation on the ground that B (her deceased husband) had purchased the lands in question at a Court sale in 1876.

Held, that as A was no party to the decree or the execution proceedings under which B purchased, it was not necessary for V to set aside the sale to B in this suit.

THE facts and arguments in this case appear in the Judgment of the Court (MUTTUSAMI AYYAR and TARRANT, JJ.).

Subba Rao for Appellant.

Ramachandrayyar for Respondent.

Judgment.—The suit out of which this appeal arises was brought to recover certain lands, which, as alleged by the plaintiff, were purchased by him on the 29th December 1878 from one Adamma, whose husband, Chabati Narasinga Rao, had acquired them under a decree passed against one Timmaiya, the son of Chelamaya, the defendant in Suit No. 8 of 1864 on the file of the Subordinate Court of Cuddapah. The plaintiff, which was filed on the 17th November 1879, further stated that the defendant prevented the plaintiff from cultivating the lands, and unlawfully dispossessed him of the same on the 28th October 1879. The defendant's case was that the decree obtained by Narasinga Rao was collusive, that her husband purchased the property in suit at the Court sale held in execution of the decree in Suit No. 8 of 1864, and that neither the plaintiff nor his vendor was ever in possession. The Lower Courts held that, as the claim could not be decreed without setting aside the sale set up by the defendant, the suit was substantially brought to set aside a sale, held in

* Second Appeal No. 83 of 1881 against the decree of J. Wallace, Acting District Judge of Cuddapah, confirming the decree of Kurnool Lakshmana Rau, District Munsif of Nundalur, dated 22nd October 1880.