

*Gápála Ráu* for respondents argued that the document was admissible in evidence though invalid as an agreement.

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v.  
DARAMMA.

The Subordinate Judge found (on an issue remitted to him by the High Court) that the parties were reversioners of equal grade to the Surgis.

On the receipt of the finding, the Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT :—We must accept the finding.

Though the *karamama* J was set aside on other grounds, we see no reason why the relationship therein set forth should not be considered; and though the evidence is partly hearsay, such evidence is admissible on questions of pedigree.

This second appeal fails and we dismiss it with costs.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Muttusámi Ayyar.*

NÁRÁYANA (DEFENDANT), APPELLANT,

and

MUNI AND OTHERS (PLAINTIFFS), RESPONDENTS.\*

1886.  
July 22, 26.  
Nov. 10.

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*Civil Procedure Code, s. 584—Powers of High Court on second appeal—Rent Recovery Act—Madras Act VIII of 1865, ss. 3, 4 and 7—Contents of pattá—Date of tender of pattá.*

A landlord within three days of the end of the *fasli* tendered to a tenant by way of *pattá* a document containing a statement of account of rent payable in respect of the current *fasli* :

*Held*, that the document tendered was a good *pattá*, and that under local custom a valid tender of *pattá* may be made at the end of the *fasli*.

On second appeal by a landlord against a decree of a District Judge, who stated in his judgment that "though the tenant admitted the execution of the *muchalká*, it was not shown that he dispensed with the *pattá*;" no objection was taken in the memorandum of appeal that the *muchalká*, which contained a statement that no *pattá* was necessary, had been neglected or misconstrued. The High Court ordered that the Judge be asked to take the postscript into his consideration and submit a revised finding.

SECOND appeals against the decrees of H. T. Knox, Acting District Judge of North Arcot, in Appeal Suits Nos. 112 to 122

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\* Second Appeals Nos. 1006 to 1015 and 1035 of 1885.

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of 1885, confirming the decrees of J. Andrew, Acting Head-  
Assistant Collector of North Arcot, in Summary Suits Nos. 92 to  
101 and 103 of 1884.

These were summary suits by the landlord, under Madras  
Rent Recovery Act, s. 9, to enforce the acceptance of a pattá, and  
by the tenants under s. 49 of that Act for the release of property  
distrained for arrears of rent.

In Summary Suit No. 94 by the tenants, the execution of the  
muchalká was admitted, and there was a question whether the  
tender of a pattá was dispensed with. The Lower Court answered  
this question in the negative, although, a postscript to the muchalká  
stated, that a pattá was not necessary : and decrees were accord-  
ingly passed in favor of the plaintiffs.

In Summary Suits Nos. 96 and 98 by the tenants, it was found  
by the Lower Courts that no muchalkás had been executed and  
no proper pattás tendered : and decrees were accordingly passed in  
favor of the plaintiffs.

In Summary Suits Nos. 92, 93, 95, 97, 99—101 by the  
tenants, and Summary Suit No. 103 by the landlord, the tenant's  
case was that the documents tendered as pattás were not in accord-  
ance with the provisions of s. 4 of the Madras Rent Recovery  
Act, on the ground that they were only statements of an account  
of rent to be paid, and further that the tender had been made too  
late, viz., nearly at the end of the fasli in question. The Lower  
Courts recorded findings in accordance with these contentions and  
passed decrees in favor of the tenants.

The landlord preferred these second appeals.

Mr. *Subramanyam* for appellant. The documents tendered as  
pattás were lawful pattás, though they were, as the District Judge  
said, "statements of account of rent payable." Further the  
tender was lawful, though the fasli in question was about to expire  
in three days, under a local custom followed for many years by the  
parties to the suit, by which pattás were tendered only at the close  
of the fasli when the amount payable by the tenant is ascertained.

Mr. *Páthasardhi Ayyangár* for respondents argued that  
neither the pattá nor the tender was valid according to the  
provisions of Act VIII of 1865, ss. 3, 4 and 7, and further with  
regard to Summary Suit No. 94 that the High Court could not  
on second appeal go behind the finding of fact that it was not  
shown that the tenant dispensed with the pattá,

The further arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J, and Muttusámi Ayyar, J.).

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JUDGMENT.—Of these Summary Suits, Nos. 92 to 101 were instituted by certain tenants against their landlord for release of property distrained for arrears of rent under Act VIII of 1865 and Summary Suit No. 103 by a landlord for enforcing the acceptance of a pattá by a tenant. Their case was that the distraint was illegal, and that the landlord failed to comply with the provisions of s. 7 of that Act. This section provides that no legal proceedings taken to enforce the terms of a tenancy shall be sustainable unless pattás and muchalkás have been exchanged, or unless it be proved that the party attempting to enforce the contract had tendered such a pattá or muchalká as the other party was bound to accept, or unless both parties shall have agreed to dispense with pattás and muchalkás. In none of the cases before us have pattá and muchalká been exchanged. The Head Assistant Collector has also found that it was not proved that pattás were tendered, and decreed the claim. On appeal the Judge confirmed the decree but not on the ground mentioned by the Head Assistant Collector.

In Summary Suits Nos. 96 and 98, to which Second Appeals Nos. 1010 and 1012 relate, the District Judge has found that the muchalkás alleged to have been executed by the tenants, had not really been executed by them. It is also found that no proper pattá has been tendered and refused. We accept the finding and dismiss Second Appeals Nos. 1010 and 1012 with costs.

In Summary Suit No. 94, from which the Second Appeal No. 1008 arises, the Judge observed that though the tenant admitted the execution of the muchalká, it was not shown that he dispensed with the pattá. In coming to this finding he has overlooked the postscript in the muchalká, in which it is stated that no pattá is necessary. The District Judge will be asked to take this fact into his consideration and to submit a revised finding.

In the other cases, the District Judge has held that though certain documents were tendered as pattás and refused, they were not pattás but statements of account and that they do not satisfy the requirements of s. 4 of Act VIII of 1865. This section mentions among the particulars which a pattá ought to contain, the amount and nature of the rent payable and the *period at which*

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*payments are to be made.* Adverting to the words, the period at which payments are to be made, the Judge observes, "the section contemplates a document which will prevent *disputes in the future*, whereas the documents produced as pattás are not intended to regulate or declare the relations of the parties, but only to enable the landlord to recover by summary process, a debt long overdue. Though the tenant might have waived this objection and accepted the document as a pattá, it cannot be said that the tenant was bound on the 27th June to accept as a pattá a document declaring what he ought to have paid months before." It was held by a majority of Judges of this Court that, where pattás were required to be tendered, the tender must be made before the expiration of the fasli for which rent was claimed in the suit: *Gopalasawmy Mudelly v. Mukkee Gopalier*(1).

Again, it was held in *Seshádri Áyyangár v. Sandanam*(2) that at what precise time these written agreements should be entered into, the Act has not expressly enacted or declared, but that they should be made and exchanged as soon as conveniently may be after the creation and during the existence of the tenancy. The practice of exchanging pattás and muchalkás after the annual settlement is made is observed in several places in the Presidency, and in the case of considerable number of tenants having occupancy rights, the pattá is not the original contract which creates the tenancy and its terms but only a written memorial of the settlement made or to be made for the year on those terms.

The distribution of the amount of rent in instalments in which rent was payable according to usage is not fatal. In cases in which tenants had paid before the annual settlement several instalments on the previous year's demand, the distribution is necessary, as in the case of Government raiyats, to show the amounts for which the landlord was entitled to take credit and the surplus, if any, which should be set off against instalments still due. The construction then placed on section 4, viz., that the pattá may be lawfully tendered before the expiration of the fasli is reasonable regard being had to the usage generally obtaining in places where the amount of rent is ascertained and an annual settlement is made in the course of the fasli. We are, therefore, of opinion that pattás tendered before the expiration of the fasli year for

(1) 7 M.H.C.R., 312.

(2) I.L.R., 1 Mad., 146.

which rent is claimed are lawfully tendered, and set aside the decrees of the Lower Courts in Appeal Suits 112, 113, 115, 117 and 119 to 121 (Summary Suits 92, 93, 95, 97, 99 to 101) and direct that the suits be dismissed with costs, and we reverse the decrees of the Lower Courts in Appeal Suit 122 (Summary Suit 103) and allow plaintiff's claim with costs throughout.

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## APPELLATE CIVIL.

*Before Sir Charles A. Turner, Kt., Chief Justice, and  
Mr. Justice Brandt.*

RAMUNNI (PLAINTIFF), APPELLANT,

and

SHANKU (DEFENDANT), RESPONDENT.\*

1884.  
Dec. 16.

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*Civil Procedure Code, s. 244—Execution proceedings—Revaluation of improvements allowed for in decree.*

A mortgagor obtained a decree for redemption on payment of the mortgage amount, together with a further sum assessed as the value of improvements made by the mortgagee. When the decree-holder applied for the execution of the decree it was contended on behalf of the mortgagee that the improvements ought to be revalued as they were at the time of execution of more value than at the date of the decree:

*Held*, that the mortgagee was entitled to a revaluation in the execution proceedings.

THIS was an appeal against an order of F. H. Wilkinson, District Judge of South Malabar, dated 15th January 1884, rejecting an appeal from an order passed by the District Munsif of Patambi in Civil Miscellaneous Petition No. 114 of 1883.

In a suit on a mortgage, the Court passed a decree for redemption on payment of principal and interest, together with a sum fixed as the value of certain improvements made by the mortgagee. The value of the improvements increased between the passing and the execution of the decree. The mortgagee accordingly filed a petition in the execution proceedings for a revaluation of the improvements, but his petition was rejected by both the Lower Courts. He accordingly appealed to the High Court.

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\* Appeal against Appellate Order No. 17 of 1884.