

MURUSHOT-
TAMA
v.
RAJU.

ment by the defendant to pay the plaintiff his moiety of the tirvai now sued for.

Srirangacharyár for respondent.

The two shrotriyamdárs constitute one landlord under the Rent Recovery Act and one of them is not entitled to enforce acceptance of a pattá by the tenants in respect of the proportionate rent payable to him. *Krishnama v. Gangaráu*(1).

The Court (Muttusámi Ayyar and Brandt, JJ.) delivered the following

JUDGMENT:—It is urged by the appellant's pleader and admitted for the respondent that for fasli 1288 the respondent accepted a pattá from the appellant, and executed a muchalká in respect of the half share of the shrotriyam claimed in the present suit. This being so, there was a distinct contract and holding in respect of that share, and all that was decided in the case reported in *Krishnama v. Gangaráu*(1) was that where the tenant held the land under several shrotriyamdárs and under a joint contract, and the shrotriyamdárs might be regarded as a single landlord, then none of the shrotriyamdárs could tender a pattá for acceptance otherwise than in conjunction with the others.

We set aside the decree of the Lower Appellate Court and remand the appeal for rehearing. Costs of this second appeal will abide and follow the result.

APPELLATE CIVIL.

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

KHADAR (PLAINTIFF), APPELLANT,

and

SUBRAMANYA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

*Rent Recovery Act (Madras)—Act VIII of 1865, ss. 3, 9, 79, 80—Yeomiah lands—
Unregistered holder rendering service and granting pattás—Estoppel by acquiescence
of person entitled to the yeomiah holding.*

A yeomiahdár died leaving a brother who was then out of India. Shortly before his death, he made an invalid assignment of his holding to a third person who performed the service, and granted pattás of the land. The holding was resumable

(1) I.L.R., 5 Mad., 229.

* Second Appeal No. 2 of 1886.

1887.
April 18.
July 11.

on failure of the service. The brother of the late yeomiahdár returned after three years and obtained registration of his title. He now filed this suit to enforce acceptance of pattás tendered by him to the raiyats who had already accepted pattás from and executed muchalkás to the assignee:

KHADAR
v.
SUBRAMANYA.

Held, that the suit was not maintainable, as under the circumstances the plaintiff's conduct justified the tenant's belief that the assignee was entitled to collect rent from them until the assignment was questioned by the plaintiff and notice of his title given to them.

SECOND appeal against the decree of J. Hope, District Judge of South Arcot, in Appeal Suit No. 71 of 1885, reversing the decree of W. S. Meyer, Acting Head Assistant Collector of South Arcot, in Summary Suit No. 3 of 1884.

This was a summary suit by the landlord under s. 9 of the Rent Recovery Act to enforce the acceptance of a pattá. The tenants defended the suit alleging *inter alia* that they had previously accepted a pattá for the same fasli from one Khadar Moidin.

The land in question was service yeomiah, which was held till 1881 by the plaintiff's brother. Shortly before his death in that year, the late yeomiahdár executed a deed of assignment to Khadar Moidin, which, however, was now held to be invalid. The plaintiff was at Singapore when the death of the late yeomiahdár took place; Khadar Moidin accordingly entered into possession and performed the yeomiah service to Government and granted pattás to tenants, but he never got a registered title. The plaintiff returned from Singapore and the yeomiah was registered in his name on 2nd April 1884; in May the tender of the pattás by the plaintiff to the defendants took place, the refusal of which occasioned the present suit.

The Court of first instance passed a decree in favor of the plaintiff: but this decree was reversed by the District Judge who observed:—"There was no *de jure* yeomiahdár at all prior to April 1884, but there was a *de facto* one to whom all the raiyats paid their kist and it would be a great hardship if they had to pay them over again."

The plaintiff preferred this second appeal.

Rámá Ráu for appellant.

Séshagiri Ayyar for respondents.

The 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.).

KHADAR
v.
SUBRAMANYA.

JUDGMENT.—The appellant is the registered holder of a service yeomiah at Bhuvanigiri in the district of South Arcot, and the respondents are raiyats holding some of the yeomiah lands and are as such under an obligation to pay the assessment due to Government to the yeomiahdár. The yeomiah was formerly held by the appellant's brother, Mohammad Ali Bibi, and he died in April, 1881 when the appellant was in Singapore. The service was since performed for some time by the deceased's brother-in-law, Khadar Moidin Saheb, apparently under a deed of assignment which was executed in his favor, but the yeomiah was never registered in his name. For fasli 1283, the respondents accepted a pattá from him, executed a muchalká in his favor, and paid him the assessment due by them. On the 2nd April 1884, the yeomiah was registered in the appellant's name under the Proceedings of the Board of Revenue, No. 1202, and on the 22nd May 1884, the appellant tendered the pattá F, but the respondents refused to accept it on two grounds, viz., that they had previously accepted a pattá from Khadar Moidin for the same fasli, and that the village cess should not be included in the pattá and the road-cess payable by them was half an anna and not one anna in the rupee as entered in the pattá. The Head Assistant Collector disallowed the first objection and decreed the acceptance of the pattá with the modification that the charge on account of the road-cess was half an anna instead of one anna in the rupee. On appeal, the Judge held that the first ground of defence was good in law and observed that the kist due for fasli 1283 had been paid to Khadar Moidin before May 1884 in pursuance of an arrangement which had been in force for three years, and which Government had not seen fit to question. The only ground argued in support of the second appeal is that the previous acceptance of a pattá from one who was neither a registered yeomiahdár nor lawfully entitled to the yeomiah was no valid defence as against the appellant, the lawful owner. It is conceded that the kist payable to Government was originally assigned to a former yeomiahdár. It is also not disputed that as between the appellant and Khadar Moidin, the former is the lawful owner. We take the finding of the Judge to be in substance that the assignment in favor of Khadar Moidin was, in the special circumstances of the case, only voidable by the appellant, and that until it was avoided by him and notice of his claim was given to the respondents, they were

entitled to treat the assignee, in the absence of any interference on the part of Government as a person entitled to recover rent from them either under s. 79 or s. 80 of Act VIII of 1865. It was held by the majority of the Judges of this Court in *Gouse v. Sundara* (1) that the term inamdár or landholder, as defined in s. 3, includes his heirs or legal representatives and assignees in cases in which the assignment amounts to a valid transfer of the assignor's *entire* interest. The yeomiah in question was a service yeomiah liable to be resumed by Government on discontinuance of the service. The performance of the service first by the appellant's brother during his life and after his death by Khadar Moidin until the appellant returned from Singapore and insisted on his right as lawful owner was an act beneficial to him; otherwise the Crown might have resumed the yeomiah. It is not alleged that the appellant made any arrangement for the enjoyment of the yeomiah or the performance of the service during his stay at Singapore and gave notice of it to the respondents either when his brother or Khadar Moidin entered into possession or until he returned from Singapore. There is reasonable ground for the inference that the appellant intended to allow the assignment to continue in force in his own interest until he should be able to return from Singapore and to render the service which he was bound to render. We cannot say that the Judge was in error in holding that the appellant's own conduct was such as to justify the respondents' belief that the assignee was authorized to collect rent from them until the assignment was questioned by the appellant and a notice of his title was given to them. We dismiss the second appeal with costs.

KHADAR
v.
SUBBRAMANYA.

(1) I.L.R., 8 Mad., 394.
