

THANGAM  
PILLAI  
v.  
SUPPA  
PILLAI

share by insisting on partition. As regards the second objection, there is the averment in the plaint that the respondent was not maintained. The appellants persistently denied in the suit that the respondent was their brother, and that he was the offspring of adulterous intercourse. We cannot say that the respondent's interest in the joint property was not in danger at the date of the suit in being left under the management of the appellants.

We dismiss this second appeal with costs.

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## APPELLATE CIVIL.

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

THE COLLECTOR OF SALEM (DEFENDANT NO. 3), APPELLANT,

v.

RANGAPPA (PLAINTIFF), RESPONDENT.\*

*Jurisdiction—Suit to cancel patta of Government waste issued by Collector—Power of  
Collector to cancel patta granted by him—Standing Order.*

The plaintiff having obtained from the Revenue officers of the district a patta of Government waste, sued for the cancellation of a patta for the same land subsequently granted to other persons by the Collector who considered that the issue of the plaintiff's patta was not in accordance with the darkhast rules:

*Held*, (1) it was not competent to the Collector to issue the second patta in super-session of that issued to plaintiff.

(2) it was competent to a Civil Court to pass a decree declaring the second patta null and void, and the plaintiff was entitled to such a decree. *Kullappa Naik v. Ramanuja Chariyar* (4 M.H.C.R., 429), followed.

SECOND APPEAL against the decree of C. W. W. Martin, District Judge of Salem, in appeal suit No. 294 of 1886, affirming the decree of P. Ayyavayyar, District Munsif of Namakal, in original suit No. 221 of 1886.

The plaintiff stated that he had obtained from the Collector of Salem, defendant No. 3, a patta for certain land, and sued to cancel a patta granted subsequently by defendant No. 3 to defendants Nos. 1 and 2 for the same land.

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\* Second Appeal No. 1104 of 1888.

Defendants Nos. 1 and 2 pleaded that the Court had no jurisdiction to pass the decree prayed for on the ground that the land in question was Government waste, and that the Collector had full power to dispose of it under the darkhast rules. Defendant No. 3 pleaded that the issue of the patta to the plaintiff was not in accordance with the rules and was the result of a mistake and that the Government had right to cancel it.

The District Munsif held, on the authority of *Rajagopal Ayyangar v. Collector of (Chingleput)* and *Subbaraya v. The Sub-Collector of Chingleput*(2), that the Collector had no power to cancel the patta granted to plaintiff and accordingly passed a decree declaring that the patta granted to defendants Nos. 1 and 2 was null and void. This decree was affirmed on appeal by the District Judge.

Defendant No. 3 preferred this second appeal.

The *Acting Government Pleader (Subramanya Ayyar)* for the appellants.

*Thiruvankata Charyar* for respondent.

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 Shephard, J.).

JUDGMENT.—Two questions were argued in this appeal, viz., (1) whether it is competent to a Civil Court to make a decree declaring a patta issued by a Collector void, and (2) whether it was competent to the Collector to issue a patta to the second defendant in supersession of that issued to the plaintiff. We think the decision in *Kullappa Naik v. Ramanuja Chariyar*(3) is a distinct authority with regard to the first question. There the plaintiffs claimed by virtue of their preferential right, as Mirasidars, to the occupancy of waste land and they prayed for, and obtained, the cancellation of a patta issued by the Collector to third persons. That decree was affirmed on appeal in the High Court. Following this decision we think the first question must be answered in the affirmative. With regard to the other question, it has to be seen how it came to pass that the Collector issued a second patta. The plaintiff obtained a patta in his favor in May 1834. In March of the following year, there was an appeal by the second defendant and

(1) 7 M.H.C.R., 98.

(2) I.L.R., 6 Mad., 303.

(3) 4 M.H.C.R., 429.

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the patta was cancelled on the ground that the darkhast had not been properly published in the village. It is not disputed that the plaintiff had taken possession and is in possession under his patta. It is observed by the District Munsif that, according to the rules, no appeal can lie after the issue of a patta, or as the Judge puts it, that a patta can be issued only after the expiration of the time allowed for appeal. This view seems to be borne out by rule 10, printed at page 37 of the Standing Orders(1). It is not pretended that the patta issued to the plaintiff was issued conditionally, or that it was issued by an officer not competent to act in the matter. Nor is it alleged in the written statement that there was any fraud practised by the plaintiff on the defendant or the Collector. The case was simply one of mistake; the Tahsildar would not have issued the patta had he known all the facts. In our opinion allegation and proof of such mistake does not justify the cancelment of a patta issued by a competent officer in favor of one who has come into occupation of the land under it, when once possession has been taken under a patta unconditionally issued by a competent officer the pattadar can, we think, be evicted only under the provisions of the Revenue Act. Under these circumstances as the settlement with the defendant and the granting of a patta to him may have prejudiced the plaintiff's title, he was entitled to maintain the suit and we therefore dismiss the appeal with costs.

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(1) Standing Order of the Board of Revenue, No. 32, "Disposal of assessed lands," paragraph 10.—"Applications admitted by the Tahsildar are to be considered only conditionally granted, pending an appeal from any party, either to the Divisional officer, or to the Collector. From the Tahsildar's decision an appeal will lie to the Divisional officer if made within thirty days. As in the case of appeal in a civil suit the days will be reckoned from, and exclusive of, the day on which judgment was pronounced, and also exclusive of such time as may have been requisite for obtaining a copy of the decree appealed against. The date of the decision, the date of application for copy, and the date of copy being ready for delivery, should all be posted up on the back of the copy by the Tahsildar, with a note of the day on which appeal time expires. An appeal may be admitted after the period of limitation in this order prescribed for that purpose when the appellants satisfies the appellate authority that he had sufficient cause for not presenting the appeal within such period, and provided that a patta has not been issued for the land by a competent officer. Any person interested in the matter may appeal. A special appeal will lie from the decision of the Divisional officer to the Collector of the district. The time allowed will be thirty days, with the same provisions. In the case already named, a third appeal to the Board of Revenue will not be allowed; but in cases where a Collector has passed the decision on appeal from a Tahsildar within his own division, a special appeal will lie to the Board if made within forty days, that is to say, if the petition is received at the Board's office within that time, reckoning as aforesaid."