

APPELLATE CIVIL.

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

VENKATACHARLU (PLAINTIFF), APPELLANT,

v.

KANDAPPA (DEFENDANT), RESPONDENT.*

1891.
September 8.

Landlord and tenant—Suit for ejectment—Burden of proof.

In an ejectment suit by a landlord against his tenant the plaintiff cannot succeed unless he shows that under the terms of the tenancy and in the circumstances that exist he has a right to eject the defendant, although the latter may allege and fail to establish a right of permanent occupancy.

SECOND APPEAL against the decree of H. H. O'Farrell, Acting District Judge of North Arcot, in appeal suit No. 135 of 1889, reversing the decree of C. Rama Rau, District Munsif of Tirupati, in original suit No. 387 of 1888.

Plaintiff, as Inamdar of the village of Athur, sued to eject defendant from certain lands occupied by him in that village, and for damages for cultivating them for the years 1884-85, 1885-86, 1886-87, without plaintiff's consent.

It appeared that defendant had been in possession of the disputed land for the last 40 or 50 years, and that in the year 1874-75 he obtained a lease (exhibit A) for a term of ten years from the plaintiff expiring 1883-84, and paid plaintiff rent for these years. On the expiry of this lease, defendant continued in possession of the lands in question, but refused to execute a muchalka in consequence of a dispute with the plaintiff as to its terms. In consequence of this refusal and non-payment of rent since 1883-84, the present suit was filed. The defendant claimed to have a permanent right of occupancy. An issue was framed as to this claim, but the finding of the District Munsif which was accepted by the District Judge was adverse to the defendant.

The Munsif held that plaintiff had not proved his right to eject, but passed a decree for damages on the ground that defendant had not paid rent for the three years 1884-87.

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The District Judge reversed this decree and dismissed the suit throughout on the ground that plaintiff had not established his right to eject, there being no stipulation to that effect in exhibit A. or any evidence on the point.

The plaintiff appealed on the grounds that, (1) the District Court was wrong in law in holding that the burden of proof of the fact that the tenants had no right of occupancy was on plaintiff; (2) there was no evidence in this case sufficient in law to hold that the tenants had permanent rights of occupancy.

The other grounds of appeal are not material for the purposes of this report.

Mr. *Subramanyam* for appellant.

Parthasaradi Ayyangar for respondent.

JUDGMENT.—In our opinion the District Judge was right in holding that plaintiff had not proved his right to eject defendant. On the findings of both courts, it must be taken that the only facts proved are that plaintiff is the Inamdar of the village, that defendant and his father have been in occupation of the lands for 40 or 50 years as tenants. Plaintiff's case, as set up in his plaint, was that of an occupancy commencing with the execution by defendant of a muchalka for 10 years in 1874-75. This is clearly not supported by the evidence. It was for plaintiff to show that, under the terms of the tenancy and in the circumstances that exist, he has a right to eject defendant, and this he has not shown. The cases of *Appa Rau v. Subbanna*(1), and *Venkan v. Kesavalu*(2) there referred to, are distinct authorities for the position that, when the plaintiff does not prove what the terms of the tenancy are, he cannot eject, although defendant may fail to prove his right of occupancy. *Achayya v. Hanumantrayudu*(3) does not, in our opinion, conflict with this decision. We agree with the District Judge that the muchalka (exhibit A) does not of itself show that plaintiff has any right to eject defendant.

The appeal fails, and is dismissed with costs.

(1) I.L.R., 13 Mad., 60. (2) S.A. No. 1078 of 1887 unreported.

(3) I.L.R., 14 Mad., 269.