

VENGATA
MAHA-
LARSHAMMA
v.
RAMAJOOI.

it inconsistent with the defendant's contention. Neither a patta nor a muchalka granted or executed under Act VIII of 1865 during the continuance of the holding is conclusive evidence that the holding is a tenancy from year to year. A patta or muchalka is ordinarily nothing more than a record of what the tenant has to pay for a particular year with reference to the pre-existing relation of landlord and tenant. We must also observe that the term tenant is defined in Act VIII of 1865 only for the purposes of that Act and means nothing more than that the holding is subject to the payment of rent. It does not necessarily imply that the tenant was originally let into possession by the plaintiff's ancestor, and it may be that the payment was due in consequence of the *status* of the zamindar as the farmer of public revenue. Under the circumstances we are not prepared to reverse the decrees of the Courts below and we dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SAMINADHA (PLAINTIFF), APPELLANT,

v.

SAMBAN (DEFENDANT), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 14—Previous suit—Deduction of time.

In August 1886 the plaintiff and defendant entered into an agreement of partnership in a certain venture. On the 2nd September 1887 the plaintiff filed a suit against the defendant in a District Munsif's Court to recover his share of the profits under the agreement. In his evidence the plaintiff stated that there had been a settlement of the accounts between himself and defendant. The suit was thereupon dismissed as being cognizable by the Court of Small Causes, and the plaint was returned on the 1st March 1889. On the 27th the plaint was filed in the Court of Small Causes, an addition having been made to it. The Court held that the addition was irregular and on the 19th November permitted the plaintiff to withdraw his suit with permission to bring a fresh one. He accordingly instituted the present suit on 6th December 1889.

Held, that in computing the period of limitation, the period from 2nd September 1887 to 1st March 1889 should be deducted under Limitation Act, s. 14.

APPEAL under Letters Patent, s. 15, against the order of Mr. Justice PARKER made on civil revision petition No. 228 of 1890,

* Letters Patent Appeal No. 43 of 1891.

confirming the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in small cause suit No. 1276 of 1889. SAMINADHA
v.
SAMBAN.

The plaintiff sued to recover Rs. 174-14-0 as his share of profits realized under an agreement of partnership, dated the 20th August 1885, and made between the plaintiff and defendant. Within three years of the date of the agreement proceedings had been instituted by the plaintiff against the defendants in respect of the plaintiff's claim under the agreement. The nature of these proceedings appears sufficiently from the judgment of the High Court.

The Subordinate Judge dismissed the suit as being barred by limitation, and the civil revision petition above referred to, which was presented against his decree, was dismissed by Mr. Justice PARKER.

The plaintiff preferred this appeal under the Letters Patent. Mr. *Subramanyam* and *Panchapagesa Sastri* for appellant. *Krishnasami Ayyar* for respondent.

ORDER:—"It is contended that if the periods during which suits were pending in other Courts be deducted, the suit would be within time. There is an allegation in the plaint that such suits were instituted. The Subordinate Judge has not noticed this. We shall, therefore, ask him to return a finding as to whether plaintiff is entitled to any deduction of time on this account, and, if so, how much, and would such deduction save the suit from the limitation bar? One month's time is allowed for submission of the findings and seven days will be allowed for filing objections. The necessary evidence may be admitted on either side."

The Subordinate Judge then submitted his finding which was to the effect that the plaintiff was not entitled to any deduction of time on account of the previous suits.

He referred to the following cases:—*Chunder Madhub Chuckerbutty v. Bissessuree Debea*(1), *Nobin Chunder Kurr v. Rojomoye Dossee*(2), *Jibunti Nath Khan v. Shib Nath Chuckerbutty*(3), *Nonoo Singh Monda v. Anand Singh Monda*(4).

The appeal having come on for final disposal, the Court delivered judgment as follows:—

JUDGMENT:—The question is whether the suit has been rightly dismissed as being out of time. The facts are as follow :

(1) 6 W.R., 184.

(2) I.L.R., 11 Cal., 264.

(3) I.L.R., 8 Cal., 819.

(4) I.L.R., 12 Cal., 291.

SAMINADHA
 21.
 SAMBAN.

The appellant, claiming to be entitled to a sum of Rs. 174-14-0 as his share of moneys realized under an agreement, dated 28th August 1885, entered into between himself and defendant for taking emigrants to Burmah, instituted against defendant on the 2nd September 1887 original suit No. 91 of 1888 on the file of the District Munsif of Negapatam. That suit was pending on the Negapatam Munsif's file till 5th March 1888, when it was transferred to the District Munsif of Tiruturaipundi. The suit as brought was silent as to any settlement of accounts and if there had been no such settlement, it was properly instituted as a regular suit and having been brought within three years from the date of commencement of the partnership was well within time, even if the date of the agreement be taken as that from which the period of limitation should be calculated. But in the course of his examination as a witness in the Tiruturaipundi Munsif's Court plaintiff stated that there had been a settlement of accounts between himself and defendant after the latter's return to this country from Rangoon in June-July 1887. In consequence of this alleged settlement the suit was one triable in a Court of Small Causes. It was, therefore, dismissed and the plaint returned to the appellant for presentation in the proper Court. This was on the 1st March 1889.

On the 27th idem appellant filed his suit in the Subordinate Court at Negapatam—on the Small Cause side—having added to the plaint that there had been a settlement of accounts in August 1887 when the balance of Rs. 174-12-0 was found against the defendant which the latter agreed to pay within one week. Objection was then taken on behalf of defendant that as by these additions the nature of the suit had been altered, “it was not competent for him (plaintiff) to use the Court fee already paid “on the plaint”—the meaning of which appears to be that the original plaint which had been returned for the very purpose of presentation in a Court of Small Causes was no longer available for the purpose, because of the addition thereto of the clause showing how the suit came to be one cognizable by such a Court! However, the objection was allowed to prevail and plaintiff allowed to withdraw the suit “with permission to bring a fresh suit “writing the plaint on a new stamp.” This was on the 19th November 1889, and the new suit was filed on the 6th of the following month.

Under these circumstances, is plaintiff entitled to a deduction, under section 14 of the Limitation Act, of the period from 2nd September 1887 to 1st March 1889, during which his original suit No. 91 of 1888 was pending on the files of the District Munsifs of Negapatam and Tiruturaipundi? It must here be observed, however, that even without this deduction the suit is within time if the cause of action be taken to have been in August 1887, when according to the plaint a settlement of accounts took place. It is only in case of the cause of action being held to have arisen in June 1885 that the deduction in question is necessary; and if the suit is one that is otherwise maintainable in a Court of Small Causes, we are of opinion that plaintiff is entitled to a deduction of the time during which his regular suit was pending on the files of the District Munsifs of Negapatam and Tiruturaipundi.

The cases referred to by the Subordinate Judge are not in point. There was in neither of those cases a suit pending in a Court which was unable to entertain it "from defect of jurisdiction or other cause of a like nature"—and we do not think there is ground for holding the appellant to have been wanting in due diligence. We allow this appeal therefore and setting aside both the learned Judge's order and the Subordinate Judge's decree, remand the suit for replacement on the file and disposal on merits.

Respondent should pay appellant's costs of this appeal and also of revision petition No. 228 of 1890 and bear his own costs in both the cases before this Court.

The other costs will be costs in the suit.
