to the exact amount which has been decreed by the High Court. Their Lordships see no reason for interfering with the decree of the High Court, and they will humbly advise Her Majesty to dismiss the appeal.

Appeal dismissed.

Solicitor for appellant : Mr. *R. T. Tasker.*

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

VENCATA MAHALAKSHMAMMA (PLAINTIFF), APPELLANT,

v.

RAMAJOGI (DEFENDANT), RESPONDENT. *

1892. October 18. December 23.

Rent Recovery Act—Act VIII of 1865 (*Madras*), *s.* 12—*Ejectment—Occupancy rights*—" onus probandi. "

A zamindarni having given to the defendant, who was a cultivating raiyat in the zamindari, a notice to quit, now sued to eject him from his holding. The defendant pleaded that he and his ancestors had been jirayati raiyats from time immemorial and it was found that their holding had lasted at least 150 years.

The defendant had executed and delivered to the plaintiff a muchalka for one year, and he had made no default in payment of rent :

Held, that the plaintiff having failed to prove that the defendant's tenancy had commenced under her or her ancestors, the suit should be dismissed.

Chockalinga Pillai v. *Vythealinga Pundara Sunnady* (6 M.H.C.R., 164) distinguished.

SECOND APPEAL from the judgment of H. R. Farmer, District Judge of Vizagapatam, in appeal No. 148 of 1890, confirming the decision of the District Munsif of Yellamanchili in suit No. 471 of 1889.

Suit in ejectment by a zamindarni against a cultivating raiyat on her estate. The defendant claimed a right of permanent occupancy alleging that he and his ancestors had been in possession as jirayati tenants from time immemorial. The plaintiff did not prove that the defendant's tenancy had commenced under her or

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* Second Appeal No. 1987 of 1891.

VENCATA MAHA-LAKSHMAMMA v. RAMAJOGI.

her ancestors and the suit was accordingly dismissed by the District Judge. The plaintiff preferred this second appeal.

The *Advocate-General* (Hon. Mr. *Spring Branson*) and *Pattabhirama Ayyar* for appellant.

Ramachandra Rau Sahib for respondent.

JUDGMENT :—The appellant is the zamindarni of Kasimkota and respondent is a raiyat in the zamindari. In fasli 1298 the former gave the latter notice to quit, and there is no dispute as to the sufficiency of the notice. The respondent, however, denied that he was a tenant from year to year and contended that he had occupancy right. Both the Courts below dismissed the plaintiff's suit. The District Munsif considered that it was for the plaintiff to show that defendant was a tenant from year to year and liable as such to be ejected after due notice. On appeal the District Judge held that, as between the zamindar and the raiyat, the former was merely the assignee of land revenue, whilst the latter was *primâ facie* the owner of the soil, and that the zamindar was not entitled to eject the raiyat. For the appellant it is contended that it was for the raiyat to establish his occupancy right, and that, as he failed to do so, the zamindar was entitled to a decree. The facts found by the District Judge are that defendant's family has been in possession for about 120 years, that about sixteen years ago defendant repaired an old well and formed a mango tope, that he executed the muchalka (exhibit C) for one year only, viz., for fasli 1298, and that plaintiff has not proved that the tenancy commenced under him or his ancestors. The question is whether upon these facts the zamindar is entitled to determine the tenure by notice to quit and to eject the defendant. We have been referred to the decision in second appeals Nos. 1627 and 1834 of 1888 and also to the decisions in *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady*(1), *Krishnasami* v. *Varadaraja*(2), *Thiagaraja* v. *Giyana Sambandha Pandara Sannadhi*(3) and *Baba* v. *Vishvanath Joshi*(4). It is clear from those decisions that in each of the cases the defendant conceded that the plaintiff or his ancestor was the original owner of the land. In the first case *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady*(1) it was admitted that the land was the property of the Mutt, and that the tenancy commenced under a muchalka executed

(1) 6 M.H.C.R., 164.
(2) I.L.R., 5 Mad., 345.
(3) I.L.R., 11 Mad., 77.
(4) I.L.R., 8 Bom., 228.

by the defendant's father in August 1837. In *Krishnasami* v. *Varadaraja*(1) the land was admitted to be the property of the temple. The same was the case in *Thiagaraja* v. *Giyana Sambandha Pandara Sannadhi*(2), and the tenancy commenced under the temple in 1827. Similarly, in the case of *Baba* v. *Vishvanath Joshi*(3) the plaintiff's title as owner was admitted and the tenancy set up was one which commenced under him. They are clear authorities for the proposition that when the plaintiff's family is acknowledged to be the owners of the land, and the tenancy set up is one which commenced under him or his ancestors, the *onus* of proving the permanency of the tenure is on the tenant, and that neither the Regulations nor Act VIII of 1865 operates to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it. In second appeals Nos. 1627 and 1834 of 1888 the defence was an alleged grant from a former zamindar of Jalantra, and the fact that the zamindar's ancestor was the owner when the defendant's holding commenced was admitted.

In the case before us, however, there is no such admission, the defence being that defendant and his ancestors have been *jirayati* raiyats from time immemorial. The finding of the Judge is that the duration of the holding is at least 120 years, and it is quite possible that the holding was as old as the zamindari itself. We do not consider, in cases in which the raiyats' holding is not shown to have commenced subsequent to the permanent settlement, and when upon the evidence it is possibly as ancient as the zamindari itself, the principle laid down with reference to tenancies which admittedly commenced under the zamindar has any application. It may be that the raiyat was in possession when the zamindari itself was created, or that the zamindar, as pointed out by the Judge, was a mere farmer of the revenue. In such cases it is not unreasonable to hold that the *onus* of showing that the tenancy commenced under the plaintiff or his ancestors rests on the zamindar, and that until he shows it, the zamindar may be fairly presumed to have been the assignee of Government revenue, and the tenant liable to pay a fair rent and entitled to continue in possession as long as he regularly pays rent.

As regards the muchalka executed in 1298 there is nothing in

(1) I.L.R., 5 Mad., 345. (2) I.L.R., 11 Mad., 77. (3) I.L.R., 8 Bom., 228.

VENCATA MAHA-LAKSHMAMMA *v.* RAMAJOGI.

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.

1892. February 29. July 14, 15.

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,

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* Letters Patent Appeal No. 43 of 1891.