

was neither unreasonable nor extortionate. It is not denied that appellant did violate the duty which he owed to first respondent by refusing to visit him. The provisional nature of the order shows that care was taken to see that the punishment by way of excommunication which, as ecclesiastical chief, first respondent was competent to inflict, was not more extensive than was necessary to enforce obedience to caste duties. As observed by the Subordinate Judge, if there has been no inquiry, its absence is due to appellant's contumacious refusal to attend for such inquiry. In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere.

The decision of the Courts below is open to no legal objection, and we dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

SOBHANADRI APPA RAU (PLAINTIFF), PETITIONER.,

v.

CHALAMANNA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1898.
April 6.
September 12.

Rent Recovery Act (Madras) — Act VIII of 1865, s.10—Suit to recover arrears of rent due under a decree given under s. 10—Limitation Act—Act XV of 1877, sched. II, art. 110—Whether limitation commences from date of decree or from the dates when the various sums in arrears were payable.

In a suit for arrears of rent due under a decree given under section 10 of the Rent Recovery Act (Madras Act VIII of 1865) the period of limitation in article 110, schedule II of the Limitation Act, commences from the date when the plaintiff was in a position to sue for rent, *i.e.*, the date of the decree.

THESE were petitions under section 25 of Act IX of 1887 praying the High Court to revise the decree of C. Rangayya, District Munsif of Bezwada, in Small Cause Suits Nos. 502, 503 and 505 to 511 of 1891.

The facts of the case (petition No. 42 of 1892) which governed the other petitions were as follows.

* Civil Revision Petitions Nos. 42 to 50 of 1892.

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On the refusal of a tenant to accept a patta tendered by his landlord for fasli 1296, the latter instituted in 1886 a suit to enforce acceptance thereof. The suit was finally decided on 15th May 1888, a decree being given under section 10 of the Rent Recovery Act modifying the terms of the patta. In the meanwhile the defendant had paid such rent from time to time as he thought he was bound to pay. On 15th May 1891 the landlord instituted the present suit to recover the difference between the rent due according to the amended patta and the amount paid by the defendant previous to the decree. The defendant pleaded that the suit was barred by limitation since it had been brought more than three years after the expiration of the dates upon which the rents should be paid according to the *kistbandi*. The District Munsif decided in favour of the defendant and the plaintiff preferred this petition.

Sundara Ayyar for petitioner.

Respondents were not represented.

JUDGMENT in Civil Revision Petition No. 42 of 1892.—The plaintiff is a minor zamindar under the care of the Court of Wards and the defendant is his tenant. The present suit was brought on the small cause side of the District Munsif's Court of Bezwada to recover the balance of rent due for fasli 1296. It was admitted by both parties that according to the *kistbandi*, rent was payable every year in instalments from October to March of each fasli. The plaintiff's father tendered patta for fasli 1296, but the defendant refused to accept it. Thereupon the plaintiff's father instituted a suit in the Revenue Court to enforce acceptance of the patta and the parties joined issue on the question whether the patta tendered was proper or such as the tenant was bound to accept. It was only in May 1888 that the summary suit instituted in 1886 before the Head Assistant Collector was dealt with by the District Judge on appeal. He held that the patta tendered was not a proper one and passed a decree under section 10 of Act VIII of 1865. In accordance with the provisions of that section, he declared the terms of the patta which ought to be offered, and passed a judgment ordering the defendant to execute a *muchilka* in accordance with it. The plaintiff then brought this suit to recover the difference between the rent due according to the patta as amended by the decree and the payments made on account of rent by the defendant previous to the decree. The defendant

resisted the claim and pleaded, *inter alia*, that it was barred by limitation. The District Munsif upheld the defendant's contention and dismissed the suit with costs. It is argued in revision that the suit was not barred by limitation and, in support of the contention, reliance is placed on the decisions in *Court of Wards v. Darmalinga*(1), *Kullayappa v. Lakshmiipathi*(2) and *Appayasami v. Subba*(3).

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As observed by the District Munsif, the petitioner is not entitled to any deduction of time under sections 14 and 15 of the Limitation Act. The cases contemplated by those sections are those in which a former suit failed from defect of jurisdiction or other cause of a like nature, or the former suit was stayed by injunction or order. In the case before me, the summary suit did not fail but was adjudicated upon. Nor was the cause of action or the relief claimed in the former suit the same as in the present suit. The District Munsif is also right in holding that the suit to recover arrears of rent is governed by article 110 of the Limitation Act, which prescribes three years from the time when the arrears become due. The substantial question, therefore, is when did the arrears become due and whether it was from the date when they should be paid according to the *kistbandi*, or from the date on which the plaintiff was in a position to sue for rent.

In *Court of Wards v. Darmalinga*(1) it was held that the landholder is not bound to tender a patta for acceptance as amended by the decree before suing to enforce the terms thereof, and no question of limitation arose in that suit. The point determined in *Kullayappa v. Lakshmiipathi*(2) was that a landlord could not attach the saleable interest of a defaulting tenant under section 38 of Act VIII of 1865 until the expiry of the current revenue year. The decision in *Appayasami v. Subba*(3) is only an authority for the proposition that the unit for the special rule of limitation prescribed by the Rent Recovery Act, s. 2, for proceedings by the landlord was the aggregate rent in arrears at the end of the fasli. This is not a suit falling under section 2 of Act VIII of 1865, and none of the cases cited appear to me to be in point.

The real question, as already observed, is when did the arrears of rent claimed by petitioner become due. By section 7 no suit

(1) I.L.R., 8 Mad., 2. (2) I.L.R., 12 Mad., 467. (3) I.L.R., 13 Mad., 433.

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can be sustained to recover rent until a patta is tendered and accepted or a proper patta is tendered, and the tender of a proper patta is a condition precedent to the contract between the parties becoming actionable. It is a contradiction in terms to say that rent is due before the landlord is in a position to sue. When the landlord may sue for rent must depend on the terms of the contract in each case, and when the Legislature renders any contract actionable only on the occurrence of a particular event, no obligation can arise till that event occurs. By section 10 the amended patta relates back to the date of the suit brought for the enforcement of acceptance of the patta. In cases in which the landlord sues in time to enforce the acceptance of a patta, the landlord is not in a position to sue for rent until the decree passed under section 10 either amends the patta or declares it to be a proper patta. Otherwise a suit to enforce the acceptance of a proper patta may be pending in a Revenue Court for several years, and the claim for rent may be barred before the landlord acquires a right of action.

I am therefore of opinion that this suit is not barred. I set aside the decree of the District Munsif and remand the case for disposal on the merits. The costs hitherto incurred will abide and follow the result and be provided for in the revised judgment.

Civil Revision Petitions Nos. 43 to 50 follow.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

SUNDARA GOPALAN (DEFENDANT), PETITIONER,

v.

VENKATAVARADA AYYANGAR AND ANOTHER
(PLAINTIFF AND HIS REPRESENTATIVE), RESPONDENTS.*

1893.
September
22, 25.

Execution sale—Portion of the property sold belonging to a stranger—Civil Procedure Code—Act XIV of 1882, ss. 313, 315 and 316—Rights of a purchaser in an execution sale.

Where a Court sale in execution of a decree is not vitiated by fraud, the only extent to which the purchaser can claim relief is that indicated by s. 315 of the

* Civil Revision Petition No. 458 of 1892.