

APPELLATE CIVIL.

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

1888.
Oct. 16, 23.

ABDUL RAHIMAN SAHEB (PLAINTIFF), APPELLANT,

v.

ANNA PILLAI (DEFENDANT), RESPONDENT.*

Rent Recovery Act—(Madras)—Act VIII of 1865, ss. 9, 10—Suit to enforce acceptance of pattah—Bonâ fide denial by defendant of plaintiff's title—Jurisdiction of Revenue Court.

The plaintiff obtained a permanent lease of inam lands attached to a mosque from the four owners thereof. The defendant was a cultivating tenant on the lands, and the plaintiff duly offered the defendant a pattah. The defendant refused to execute corresponding muchilika on the ground that the plaintiff was not his landlord, since the first of the aforesaid owners had granted a lease for 35 years to a person who had sublet the land to the defendant. The plaintiff thereupon brought a suit to enforce acceptance of pattah under section 9 of Madras Act VIII of 1865. The Deputy Collector having decided the case in the plaintiff's favour, the defendant appealed and the District Judge dismissed the suit on the ground that the defendant's contention raised a *bonâ fide* question of title which ousted the jurisdiction of the Deputy Collector.

Held, that there is no provision in Madras Act VIII of 1865 that a *bonâ fide* denial of the relationship of landlord and tenant ousts the jurisdiction of the Revenue Courts, and, with regard to section 10 of the Act, that "whenever a Court is invested with jurisdiction to determine the existence of a particular legal relation, the intention must be taken to be to authorize it to adjudicate on every matter of fact or of law incidental to such adjudication." *Narayana Chavariar v. Ranga Ayyangar*(1) and *Ayappa v. Venkata Krishnamarazu*(2) cited and followed.

SECOND APPEAL against the decree of H. H. O'Farrell, District Judge of Trichinopoly, in appeal suit No. 79 of 1891, reversing the decision of the Court of the Deputy Collector in summary suit No. 4 of 1890.

The facts of this case appear sufficiently for the purposes of this report from the following judgment.

The plaintiff preferred this second appeal.

Balajee Rau for appellant.

Sunkara Menon for respondent.

* Second Appeal No. 1425 of 1892.

(1) I.L.R., 15 Mad., 223.

(2) I.L.R., 15 Mad., 486.

ABDUL
RAHIMAN
SABEB
v.
ANNA
PILLAI.

JUDGMENT.—This was a suit to enforce the acceptance of a pattah under Act VIII of 1865. The land in respect of which the pattah was tendered admittedly belongs to a mosque called Kazi Abdulla Asari's mosque. Appellant claimed to be respondent's landlord under a permanent lease granted to him by one Abdul Rahiman and his three sisters whom he described to be entitled to the land. He further alleged that respondent was a tenant cultivating about 4 acres of land. It was conceded that appellant duly tendered a pattah, but respondent denied that the former was his landlord. He contended that Abdul Rahiman granted a lease for 35 years to one Ragavendra Rao, who sublet the land to him. The first issue in the case was whether appellant's lessors were competent to execute the permanent lease in his favour, and the Deputy Collector decided the question in appellant's favour, observing that Abdul Rahiman, who granted the lease to Ragavendra Rao, was only one of four inamdars, whilst all the four inamdars granted the permanent lease to appellant, that Ragavendra's lease was further a benamee transaction and that it was never acted upon. On appeal, the Judge dismissed the suit and rested his decision on the ground that respondent's contention raised a *bonâ fide* question of title which ousted the jurisdiction of the Deputy Collector. It is argued on appellant's behalf that the Judge is in error in dismissing the suit for the reason that there was a *bonâ fide* dispute as to title and that he should have proceeded, as was done by the Deputy Collector, to adjudicate upon it. It is provided by section 10, Act VIII of 1865, that the Collector shall first inquire whether the party was bound to accept a pattah and give a muchilika and that, unless this is proved, the suit shall be dismissed with costs. Whilst it is thus clear that the Judge is bound to decide whether there is the relation of landholder and tenant for the year for which the pattah is tendered, there is no provision in the Act that a *bonâ fide* denial of that relation is a good defence or ousts the jurisdiction of Revenue Courts.

Whenever a Court is invested with jurisdiction to determine the existence of a particular legal relation, the intention must be taken to be to authorize it to adjudicate on every matter of fact or of law incidental to such adjudication. The Judge ought to have determined whether Raghavendra Rao's lease was acted upon, whether it was not a benamee transaction, or whether the actual relation of landlord and tenant existed as between appellant

ABDUL
RAHIMAN
SAHEB
v.
ANNA
PILLAI.

and respondent, otherwise a tenant who was originally let into possession by A. and paid him rent for a series of years may collude with an adverse claimant and render his landlord's right to tender a pattah infructuous.

The decision in *Narayana Chariar v. Ranga Ayyangar*(1) proceeds on this principle. There the suit was brought by the tenant and the landlord denied the tenancy. The Head Assistant Collector dismissed the suit observing "as a question regarding the existence or otherwise of the relationship of landlord and tenant has arisen in this case, the matter must be determined in the regular way."

The District Judge concurred in that opinion, but the High Court remanded the case for trial on the merits, and the learned Judges observed: "The Judge is to try the case. The plaintiff's case is that he is a tenant and entitled to a pattah which defendant denies. To say that the Collector is to hold his hand and make no further inquiry merely because the landholder denies that plaintiff is his tenant, is to put it in the power of the landholder always to deprive the tenant of the remedy by summary suit given him by section 8."

Again, in *Ayappa v. Venkata Krishnamarazu*(2), the tenant's defence was that, though he was a tenant in the zemindari, the plaintiff was a member of an undivided family together with three other persons, that the defendant had already accepted pattah and executed a muchilika made out in the names of the plaintiff and his two coparceners. The District Judge held that the plaintiff being the registered zemindar, had a right to compel defendant to accept the pattah, and the High Court upheld the decision as correct. These are the latest decisions on the question and the principle on which they rest appears to be open to no objection.

We set aside the decree of the District Court and remand the case for trial on the merits.

Costs of this appeal will abide and follow the result.

(1) I.L.R., 15 Mad., 223.

(2) I.L.R., 15 Mad., 485.