

SREE  
SANKARA-  
CHARI  
SWAMIAR  
v.  
VARADA  
PILLAI.

BODDAM, J.—I am not prepared to hold that the allegations made on behalf of the plaintiff are incapable of supporting a case of estoppel by conduct on the part of the defendant; but I am not by any means clear that they are sufficient to constitute such an estoppel, unless upon evidence being taken it is proved that the plaintiff's position has been altered in consequence of the alleged conduct of the defendant upon which the estoppel is based. I think therefore that evidence should be taken and the exact facts established before the case is disposed of and I agree that the District Munsif was wrong, in the circumstances, to dismiss the suit without taking any evidence that might be tendered on either side.

As regards the objections to the patta I agree in the observations of Sir Subrahmaniam Ayyar.

I would set aside the decree of the District Munsif and remand the case for disposal according to law. The costs of this petition will abide and follow the event.

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## APPELLATE CIVIL.

*Before Mr. Justice Bhashyam Ayyangar.*

CHINNASAMY AYYAR (PLAINTIFF), PETITIONER,

v.

RATHNASABAPATHY PILLAY AND ANOTHER (DEFENDANTS),  
RESPONDENTS.\*

*Contract Act—IX of 1872, s. 69—Payment by one interested—Decree for land in plaintiff's favour—Land withheld pending appeals—Payment of kist by plaintiff—Suit for amount paid.*

Plaintiff had obtained decrees for possession of certain lands, but, pending an appeal and second appeal, the lands were withheld from him. He, however, paid the kist, and now sued to recover the amount so paid:

*Held*, that he was entitled to recover. It was a payment by one interested in it, which the defendants, as the persons in actual possession, were bound by law to pay.

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\* Civil Revision Petition No. 123 of 1903 presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of K. Ramachandra Ayyar, Subordinate Judge of Negapatam, in Small Cause Suit No. 402 of 1902.

SUIT for Rs. 413-5-9, being the amount of cist paid by plaintiff in respect of certain lands. Plaintiff had sued for the lands in Original Suit No. 69 and Original Suit No. 71 of 1895, in the Court of the District Munsif at Negapatam, and obtained decrees for possession in June 1896, and the lands were delivered to him in March 1899 and May 1901, respectively, having been withheld from him in the interval, pending an appeal and a second appeal. The District Munsif dismissed the suit, holding that plaintiff had paid the cist as a voluntary payment to protect his own property.

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 PILLAY.

Plaintiff preferred this civil revision petition.

*K. Kuppuswami Ayyar* for petitioner.

*P. K. Singarachariar* for respondent.

JUDGMENT.—The payment of cist made by the petitioner to Government in respect of lands decreed to him but withheld from him by the respondents pending an appeal and second appeal preferred by the latter is certainly not an officious payment made by the petitioner but a payment made by one interested in such payment which the respondents, as the persons in actual possession were bound by law to pay. The petitioner, while recovering possession of the land with mesne profits, gave credit to the respondents for the proportionate cist chargeable on the land, in assessing mesne profits for the fasli in question, viz., 1308. He is therefore clearly entitled to the amount sued for which he paid to Government as the cist due for fasli 1308 for the land decreed to him as well as the land belonging to the respondents, both of which were subject to a consolidated assessment. The revision petition is allowed with costs throughout and the plaintiff will have a decree for Rs. 304-5-9 with interest thereon at 6 per cent. from the dates of the respective payments until this date with further interest at 6 per cent. on the aggregate amount including costs until date of payment.