

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Benson, Mr. Justice Bhashyam Ayyangar and
Mr. Justice Russell.

BASHYAKARLU NAIDU (PLAINTIFF), PETITIONER
IN ALL CASES,

v.

GUNDAPANENI SUBBĀNNA (DEFENDANT),
RESPONDENT IN C.R.P. No. 492 of 1902.*

*Rent Recovery Act (Madras)—VIII of 1865, ss. 7, 9 and 72—Tender of patta—
Landlord's right to sue.*

Where the patta which has been originally tendered prior to summary suit under section 9 of the Rent Recovery Act was one which the tenant was bound to accept, the landlord can sue on the strength of such tender alone, without any fresh tender of patta, or execution of a muchilka after judgment.

If the patta which has been originally tendered was not such as the tenant was bound to accept and if it has been modified by a judgment in a summary suit, and if before the expiry of the fasli to which it relates the landlord has tendered the patta as amended, the landlord can also maintain a suit for rent under section 7, relying on such tender.

But if no such tender has been made (and even in a case where it could not have been made by reason of the expiry of the fasli before the judgment was passed), the landlord can sue for rent only if the tenant has executed a muchilka which he was directed to execute by the judgment, or if he has refused to execute it.

Though section 72 of the Rent Recovery Act provides that a certified copy of the judgment of the Collector shall have the same force and effect as a muchilka executed by the tenant himself, the tenant cannot be said to have refused to execute the muchilka unless, prior to suing for rent, the landlord has made a requisition or demand on the tenant calling upon him to execute a muchilka in accordance with the judgment then in force.

Court of Wards v. Darmalinga, (I.L.R., 8 Mad., 2), dissented from.

Shanmuga Mudaly v. Palnati Kuppu Chetti, (I.L.R., 25 Mad., 613), followed.

Suits to recover Rs. 48-3-1 being cist due for fasli 1308. The District Munsif's judgment was as follows:—

Defendant objects *inter alia* that the plaintiff's suit cannot be maintained as no proper patta as amended by the Collector has been tendered. The question is—Is the suit maintainable without

* Civil Revision Petitions Nos. 492 to 494 of 1902 presented under section 25 of Act IX of 1887, praying the High Court to revise the decrees of B. Hanumanta Row, District Munsif of Ellore, in Small Cause suits Nos. 195, 196 and 967 of 1902.

a proper patta as amended by the Collector being tendered? Admitting that he had recourse to a summary suit for the acceptance, by defendant, of a patta for the suit fasli, the plaintiff does not pretend to state in his plaint that he had tendered an amended patta which the defendant is bound to accept. He cannot therefore seek to enforce the terms of tenancy under section 7 of the Rent Recovery Act. The suit is therefore dismissed with costs.

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Plaintiff filed these Civil Revision Petitions. The petitions first came before Mr. Justice Benson, who made the following

ORDER OF REFERENCE TO A FULL BENCH.—The decision of the District Munsif is opposed to the decision in the case of *Court of Wards v. Darmalinga*(1), and this decision has not been overruled generally by the Full Bench decision in *Shanmuga Mudaly v. Palnati Kuppu Chetti*(2) but only as regards cases in which it is sought to eject the tenant. The reasoning in the Full Bench Case, however, seems to me to apply to cases like the present, in which the suit is for rent, equally with cases in which ejectment is sued for.

The petitions again came on for hearing before the Full Bench constituted as above.

S. Gopalaswami Ayyangar and *M. R. Ramakrishna Ayyar* for petitioner.

N. Rajagopala Chariar and *V. Ramesam* for counter-petitioners.

JUDGMENT.—If the patta which had been originally tendered before the summary suit under section 9 of the Rent Recovery Act was one that the tenant was bound to accept, the landlord might, by virtue of section 7, sue for the recovery of rent on the strength of such tender alone, without any fresh tender of a patta, or the execution of a muchilka after judgment.

But if the patta originally tendered was not such as the tenant was bound to accept, and if it had been modified by the judgment in the summary suit, and if before the expiry of the fasli to which the patta relates the landlord tendered the patta as amended, he could also maintain a suit for rent under section 7, relying on such tender. If, however, no such tender was made (and even in cases where it could not have been made by reason of the expiry of the fasli before the judgment was passed), the landlord could sue

(1) I.L.R., 8 Mad., 2.

(2) I.L.R., 25 Mad., 613.

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for rent only if the tenant had executed a muchilka which he was directed to execute by the judgment, or if he had refused to execute the same.

In the latter case section 72 provides that the certified copy of the judgment of the Collector shall have the same force and effect as a muchilka executed by the tenant himself; but we are clearly of opinion that he cannot be said to have refused to execute the muchilka unless before suing for rent the landlord made a requisition or demand on the tenant calling upon him to execute a muchilka in accordance with the judgment then in force.

We dissent from the contrary view taken in *Court of Wards v. Darmalinga*(1).

The view we have taken is, we think, in accordance with that taken in the recent Full Bench decision of this Court in *Shanmuga Mudaly v. Palnati Kuppu Chetty*(2) although the proceedings in that case related to the ejection of the tenant in execution of a decree under section 10.

In C.R.P. No. 494, there is no allegation of any such demand as is required by law, and there is therefore no ground for revision in that case. It is dismissed with costs.

In C.R.P. Nos. 495 and 493, however, the plaint distinctly alleges such demand and refusal. We therefore set aside the decrees of the District Munsif in these two cases and remand the suits for disposal according to law.

(1) I.L.R., 8 Mad., 2.

(2) I.L.R., 25 Mad., 613.
