

proviso that if rent is not paid within a further period of three months allowed as a period of grace, the lease shall stand cancelled. In a similar case of *Narayana Kamti v. Nandu Shetty*(1) where also there was a grace period allowed, it was held by this Court that the case was distinguishable from the reported cases in which relief against forfeiture had been given by the Court for non-payment of rent on the ground that, in those cases, the lease provided no period of grace.

NARAINA  
NAIKA  
v.  
VASUDEVA  
BHATTA.

Following that decision we hold that the decree of the District Judge is right.

We may add that, even under section 114 of the Transfer of Property Act, the exercise of the discretion to relieve against forfeiture may depend upon the circumstance whether the lease allows a period of grace or not, and in the former case, whether the period of grace is a reasonable period having regard to the nature and terms of the lease.

This second appeal fails and is dismissed with costs.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Benson.*

NARASIMHA CHARI (PLAINTIFF), APPELLANT,

v.

GOPALA AYYANGAR (DEFENDANT),

RESPONDENT.\*

1905.  
January 5.

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*Hindu Law—Religious Endowment—Trustee, creation of tenure by—Cancellation by succeeding Trustee—Notice to tenure-holder—Tender of patta at end of fasli not reasonable notice.*

A trustee of a religious endowment cannot, except on special grounds, create a perpetual tenure binding on his successors in office.

*Mayandi Chettiar v. Chokkalingam Pillay*, (I.L.R., 27 Mad., 295) and *Vidya-purna Tirtha Swami v. Vidyanidhi Tirtha Swami*, (I.L.R., 27 Mad., 435), followed.

Where however a long succession of trustees had acquiesced, a succeeding trustee cannot sue to eject the tenure-holder without giving him reasonable notice of the determination of the tenure; and the tender of a patta at the end of a fasli for which it is tendered is not a reasonable notice.

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(1) S.A. No. 89 of 1900 (unreported).

\* Second Appeal No. 716 of 1903, presented against the decree of D. Broadfoot, Esq., District Judge of South Arcot, in Appeal Suit No. 313 of 1902 presented against the decision of M.R.Ry. K. Krishna Ayyar, Deputy Collector of Chidambaram Division, in Summary Suit No. 1 of 1902.

NARASIMHA  
CHARI  
v.  
GOPALA  
AYYANGAR.

THE suit out of which this appeal arose was instituted by the Receiver of the Aghobilam Mutt, under section 9 of Act VIII of 1865, to compel the defendant as tenant of the plaintiff mutt to accept a patta in respect of certain land in the village of Kavanoor, for fasli 1311. The land in question formed part of an inam belonging to the mutt. The defendant pleaded that he and his forefathers had been enjoying the land paying no rent, but spending a sum of money for an annual festival in connection with the mutt. The Deputy Collector decided in favour of the plaintiff. On appeal the District Judge found that the defendant was a tenant under a service tenure, the service being the performance of a festival at a cost of Rs. 21, and that he could only be ejected for non-performance of such service. It was admitted on behalf of the appellant that the land belonged to the mutt and that the tenure was created by a former Jir. The District Judge dismissed the plaintiff's suit.

Plaintiff preferred this second appeal.

*S. Kasturiranga Ayyangar* for appellant.

*V. Krishnaswami Ayyar* and *N. Rajagopalachariar* for respondent.

JUDGMENT.—The finding of the lower Appellate Court is that the condition of the defendant's tenure was that he should perform an annual festival at a cost of Rs. 21. This was in accordance with an arrangement entered into in 1835 by the Jir then in office and which has been continued down to the present time without objection. We are of opinion that, as a matter of law, the Jir, who entered into this arrangement being a trustee, had no power to bind his successors in perpetuity, except on very special grounds which are not alleged in this case, and that it was open to a succeeding Jir to alter this arrangement. See the judgment of the Privy Council in the case reported in *Mayandi Cheltiar v. Chokkalingam Pillay*(1) and the decision of this Court in *Vidyapurna Tirtha Swami v. Vidyavidhi Thirtha Swami*(2). The defendant, however, was in possession of the land on certain terms which had been acquiesced in by successive Jirs for a long period, and the plaintiff was bound to give him notice of the determination of his existing tenancy. The tender of the patta cannot be treated as notice since it was only tendered on June 26th, 1902, whereas the

(1) I.L.R., 27 Mad., 291 at p. 295.

(2) I.L.R., 27 Mad., 435.

fasli for which the patta was tendered expired on June 30th of that year. We think the suit ought to have been dismissed upon the ground that no notice was given to the defendant of the change in the conditions of his tenure, and not on the ground taken by the learned Judge.

We dismiss the appeal on the ground that no notice was given. As the plaintiff was in default in not giving notice and the defendant was in default in setting up that he was the absolute owner of the land as to which the findings are against him, we direct that each party do bear his own costs throughout.

NARASIMHA  
CHARI.  
v.  
GOPALA  
AYYANGAR.

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## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Boddam.*

FISHER (PLAINTIFF), APPELLANT,

v.

RAMASWAMY UDAYAN AND ANOTHER (DEFENDANTS),  
RESPONDENTS.\*

1904.  
November 2,  
3, 4, 8, 11.

*Rent Recovery Act (Madras) VIII of 1865, s. 9—Tender of patta to one of several joint pattadars—One of several joint pattadars not agent for the others.*

A tender of patta to one of several joint pattadars is not a sufficient tender for the purposes of section 9 of the Rent Recovery Act of 1865. Each pattadar cannot be regarded as the agent of his co-pattadars for the purpose of receiving tender of patta.

THE plaintiff as mortgagee with possession of the Salem zamindari brought this suit to enforce acceptance of patta by defendants for fasli 1308 in respect of lands in their possession in the said zamindari. It was alleged in the plaint that patta was tendered to the defendants in May 1899.

The second issue in the case was, "whether plaintiff tendered a patta and defendants refused to accept it in the fasli."

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\* Second Appeal No. 764 of 1902, presented against the decree of L. C. Miller, Esq., District Judge of Salem, in Appeal Suit No. 341 of 1900, presented against the decision of M.R.By. Vijiaragava Chariar, Personal Assistant Deputy Collector of Salem, in Summary Suit No. 26 of 1900.