

## APPELLATE CIVIL.

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

ARUNACHELLAM CHETTI AND THREE OTHERS (PLAINTIFFS),  
APPELLANTS,

1905.  
January 5.

v.

GANAPATHI AYYAR (DEFENDANT), RESPONDENT.\*

*Rent Recovery Act (Madras) VIII of 1865, ss. 9, 51.—Limitation.*

The period of limitation of two months prescribed by sections 6 and 51 of the Rent Recovery Act for suits to enforce acceptance of puttahs runs from the date of tender of the second puttah where such puttah is substantially different from the puttah first tendered.

*Krishna Doss Balamukunda Doss v. Guruva Reddi*, (S.A. No. 831 of 1898, unreported), referred to and followed.

THE plaint village together with others which form part of the zamindari of Gandara Kotta had been mortgaged to the father of the plaintiffs Nos. 1 to 4 by the Zamindar. The defendant was a ryot of the village. The plaintiffs were the landlords entitled to the melvaram of the village and the defendant was a tenant entitled to the kudivaram of the lands held by him. In December 1900 puttah for fasli 1310 was tendered to the defendant by the agent of the plaintiffs, one of whom, *i.e.*, the fourth plaintiff, was then a minor. The puttah recited that the agent was authorised by the guardian of the fourth plaintiff to sign and tender the puttah. The defendant did not accept the puttah tendered and did not execute a muchilika. Subsequently, on 27th March 1901, a fresh puttah was tendered to the defendant by the plaintiffs, the fourth plaintiff having attained his majority in the interval. The plaintiffs brought this suit under section 9 of Act VIII of 1865 to enforce acceptance of the puttah and for the execution of a muchilika by the defendant. The suit was brought on the 25th May 1901, within two months of the tender of the second puttah but more than two months after the tender of the first puttah. The defendant pleaded *inter alia* that the suit was barred as more than two months had elapsed from the date of the first tender.

\* Second Appeal No. 556 of 1903, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 286 of 1902, presented against the decision of M.R.Ry. A Ramaacha Nedungadi, Deputy Collector of Tanjore Division, in Summary Suit No. 425 of 1901.

ARUNA-  
CHELLAM  
CHETTI  
v.  
GANAPATHI  
AYYAR.

The Deputy Collector passed a decree in favour of the plaintiffs but the District Judge on appeal reversed his decision and dismissed the suit on the ground that it was barred, there being no difference between the puttahs, except in the persons tendering them.

The plaintiffs preferred this second appeal.

*S. Srinivasa Ayyangar* for appellants.

The respondent was not represented.

JUDGMENT.—We think the learned Judge was wrong in his view that the suit was barred by limitation. The second puttah tendered in this case was substantially different from the first puttah, and that being so the two months period of limitation prescribed by sections 9 and 51 of the Rent Recovery Act runs from the tender of the second puttah. See the decision of this Court in *Krishna Doss Balamukunda Doss v. Guruva Reddi*(1). On the merits the findings of the lower Appellate Court are in the plaintiffs' favour.

We must set aside the decree of the lower Appellate Court and restore that of the Deputy Collector with costs in this Court and in the lower Appellate Court.

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## APPELLATE CIVIL.

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

VIBUDHAPRIYA TIRTHASWAMI (PLAINTIFF), APPELLANT

IN BOTH,

v.

YUSUF SAHIB (DEFENDANT), RESPONDENT IN SECOND APPEAL

No. 117 of 1903, AND

BANUBIBI (DEFENDANT), RESPONDENT IN SECOND APPEAL

No. 118 of 1903.\*

*Civil Procedure Code—Act XIV of 1882, ss. 276, 295—“Assets realised by sale or otherwise in execution of a decree,” what are.*

The words “assets realised by sale or otherwise in execution of a decree” in section 295 of the Code of Civil Procedure mean that the assets must be realised by some process of Court in execution and can apply only to a sale by the Court and not to a private sale by the judgment-debtor of properties attached.

(1) S.A. No. 831 of 1898 (unreported).

\* Second Appeals Nos. 117 and 118 of 1903, presented against the decree of J. W. F. Dumergue, Esq., District Judge of South Canara, in Appeal Suits Nos. 181 and 182 of 1901, presented against the decrees of M.R.Ry.M. Deva Row, District Munsif of Udipi, in Original Suits Nos. 797 and 798 of 1900.