

## APPELLATE CIVIL.

*Before Sir S Subrahmania Ayyar, Officiating Chief Justice,  
and Mr. Justice Sankaran Nair.*

ORR AND OTHERS (DEFENDANTS), APPELLANTS,

v.

RAKKUMARATHI (PLAINTIFF), RESPONDENT.\*

1905  
July 27.

*Rest Recovery Act (Madras) VIII of 1865, s. 8—Landlord and tenant—  
Insertion of unreasonable terms in patta.*

Where a tenant disputes the validity of a transfer made by himself to a third party, it is not open to the landlord to recognise the rights of the transferee until the transferee establishes his rights in a way which is binding on the original tenant; and the insertion of words in the patta tendered to the tenant recognising the rights of the transferee will be unreasonable.

SUMMARY suit brought by the plaintiff a tenant to compel the defendants, who were her landlords, to tender a proper patta for the lands in her possession. The plaintiff alleged that the defendants fraudulently and without her consent transferred some of her lands to the patta of another tenant, Pattadar No. 57. The defendants pleaded that a proper patta was tendered and accepted by the plaintiff and that the lands alleged to have been transferred to another patta were so transferred, because such lands had passed to the other pattadar under a registered sale-deed by the husband of the plaintiff and under a sale in execution of a decree against him. The Assistant Collector found that the defendants had tendered a patta to the plaintiff in which the words 'sold to No. 57' were entered against the lands alleged to have been alienated. He held that the insertion of these words was reasonable and directed the defendants to tender the plaintiff a patta with the words inserted. On appeal the decree was modified and the words 'sold to No. 57' were ordered to be expunged from the patta.

Defendants preferred this second appeal.

The Hon. Mr. P. S. Sivaswami Ayyar for appellants.

The Hon. Mr. V. C. Desikachariar for respondent.

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\* Second Appeal No. 538 of 1904, presented against the decree of H. Moberly, Esq., District Judge of Madura, in Appeal Suit No. 214 of 1903, presented against the decision of J. R. Huggins, Esq., Head Assistant Collector of Ramnad, in Summary Suit No. 13 of 1903.

ORE  
v.  
RAKKUMA-  
RATHI.

JUDGMENT.—Admittedly the relation of landholder and tenant subsisted between the parties to the suit and even in these proceedings it is not the defendant's case that such relation has terminated. They tender a patta which implies the continuance of that relation. It is difficult to understand how they can insert in the patta words implying that any land or lands comprised therein belong not to the tenant but to another person, viz., Pattadar No. 57. To compel the plaintiff to accept such a patta would be to compel her to accept a document denying her right to the property. No doubt where there has been a transfer of a tenant's interest to a third party and the transfer is admitted by the parties concerned, it is competent to, and may be the duty of, the landholder to treat the transferee as the tenant; but where there is a dispute as to the transfer of the rights it is not competent to the landholder to determine the question for himself and refuse to grant patta to the party who was the tenant prior to the dispute. He is to proceed on the footing that the tenancy continues until the third party setting up the cessation of the tenancy establishes it in a way binding upon the original tenant. The appeal therefore fails, and is dismissed with costs.

## APPELLATE CIVIL.

*Before Sir S. Subrahmanya Ayyar, Officiating Chief Justice,  
and Mr. Justice Benson.*

SRINIVASA RAO SAHEB AND OTHERS (DEFENDANTS  
NOS. 1 TO 7), APPELLANTS,

v.

YAMUNABHAI AMMALL AND OTHERS (PLAINTIFFS AND  
DEFENDANTS NOS. 8 AND 9), RESPONDENTS.\*

*Transfer of Property Act IV of 1882, ss. 85, 96—Mortgage decree need not reserve rights admitted by all parties—Decree must be construed with reference to pleadings.*

There is nothing in the provisions of the Transfer of Property Act, which requires that a decree in a mortgage suit should in terms reserve rights admitted

\*Civil Miscellaneous Appeal No. 289 of 1904, presented against the order of K. C. Manavedan Raja, Esq., District Judge of North Arcot, in Civil Miscellaneous Petition No. 269 of 1904 in Execution Petition No. 16 of 1903 connected with Original Suit No. 11 of 1900.

1905.  
April 28,  
September 8.