

KIDĀMBI
VENKATA-
CHARIĀB
v.
LAKSHMI
DOSS.

mean to proceed on any ground of *res judicata*, but merely, as they say, to give due effect to the provisions of section 72 of the Rent Recovery Act. The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Wallis.

VADLAMANNATI VENKATRAMIAH PANTULU
(PETITIONER—FIRST PLAINTIFF), APPELLANT,

v.

SRI RAJAH VENKATA RANGIAH APPA ROW
(RESPONDENT—DEFENDANT), RESPONDENT.*

Landlord and Tenant—Patta, grant of—Where tenant's interest is transferred to another, the transferee is entitled to a grant of patta if his transfer is in proper order and if the old tenant, after notice from the Zamindar, does not object.

A person who claims to have a patta granted to him as transferee from a tenant is bound to produce the transfer for the inspection of the landlord, if so desired. When such transfer is in proper order and the old tenant, to whom the landlord is bound to and did give notice, does not appear to contest the validity of the transfer, it is the duty of the landlord to grant a patta to the new tenant.

Orr v. Rakkumathira, (I.L.R., 29 Mad., 23), explained.

THIS was an appeal presented under section 15 of the Letters Patent against an order passed by Boddam, J.

The facts are sufficiently set out in the judgement.

P. Nagabhushanan for appellant.

K. Subrahmania Sastri for *V. Ramesam* for respondent.

JUDGMENT.—In this case the Subordinate Judge of Kistna at Ellore dismissed the plaintiffs' suit without taking evidence, apparently, on the ground that, on the admitted facts, the plaintiffs had no cause of action. The suit was brought to recover damages for the wrongful attachment of the plaintiffs' crops for arrears of rent, for fasli 1314, without a previous tender of patta, and the plaintiffs alleged that they were persons to whom the tender ought to have been made because the rights of the previous tenants had been

* Appeal No. 25 of 1907, presented under section 16 of the Letters Patent against the order of Mr. Justice Boddam in Civil Revision Petition No. 542 of 1906.

1907,
October 11
November
11.

transferred to them before the beginning of the fasli, and that they had frequently called upon the defendant to tender a patta to them. The defendant pleaded that there had been a good tender to the previous tenants, and, whilst not denying the alleged transfer nor averring that there was any dispute about it, pleaded in paragraph 6 of the written statement, that the plaintiffs, in answer apparently to an application for a patta, had been informed that, on production of the sale certificates and other instruments of transfer, their names would be entered in the village accounts and a patta granted, but that they had failed to produce them. It was the duty of the plaintiffs to produce the documents of transfer and get the names of the former pattadars removed, and the plaintiffs' names entered in the accounts. In this state of the pleadings the Subordinate Judge dismissed the plaintiffs' suit without taking evidence, holding on the authority of *Orr v. Rakkumarathi* (1), that a landholder could not, of his own authority, and without being moved by the registered tenant, recognize a third party as tenant and grant a patta to him, and that until so moved the landholder was entitled to go on tendering pattas to the registered tenant. All that is decided in *Orr v. Rakkumarathi* (1) is, that where there is a *bond fide* dispute as to the transfer of the tenancy the landlord cannot refuse to grant a patta to the old tenant on the ground of such transfer, until the new tenant has established his right to recognition in a Court of law. The rule so laid down does not rest on any statutory basis, but is in accordance with the custom of the country, and in conformity with the practice of Government as to transfers of ryotwari holdings. The rule must, however in our opinion, be confined to cases where there is a *bond fide* dispute between the old and new tenants. A person claiming to have a patta tendered him as transferred from a tenant is, no doubt, bound, if called on, to produce the transfer in his favour for the Zamindar's inspection in proof of his claim, but if it is apparently in order and if after notice, which it is the Zamindar's duty to give, the old tenant does not contest the validity of the transfer, it is, we think, the duty of the Zamindar to grant a patta to the new tenant, even though there is no petition from the old tenant asking him to recognize the transfer. Under these circumstances we think the Subordinate

VENKATRAJ
MIAH
v.
RAJAH
VENKATA
RANGIAH
APPA ROW.

(1) I.L.B., 29 Mad., 83.

VENKATEA- Judge was wrong in dismissing the plaintiffs' suit without taking
 MIAH evidence and recording findings, and we accordingly set aside his
 v. decree and remand the case to him for disposal according to law
 RAJAH The costs in this Court will abide and follow the result.
 VENKATA
 RANGIAH
 APPA ROW.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Miller.

1907.
 September.

VAIDISWARA AYYAR AND OTHERS (CONTRIBUTORIES),
 APPELLANTS,

v.

SIVA SUBRAMANIA MUDALIAR AND ANOTHER
 (PETITIONERS AND OFFICIAL LIQUIDATOR), RESPONDENTS.*

Indian Companies Act, Act VI of 1892 s. 61—Contributory liable in respect of unpaid portions of calls even when the company's right to recover them is barred by limitation.

Section 61 of the Indian Companies Act creates a new liability in the shareholders in respect of unpaid calls; and such calls can be recovered though barred by limitation before the order for winding up was made.

THE Tinnevelly Sarangapani Sugar Mills Company was ordered to be compulsorily wound up and an official liquidator was appointed. A list of contributories was submitted to the Court and the appellants who were placed on the list applied to the Court to be removed from the list on the ground, *inter alia*, that they had committed default in respect of calls prior to 1897, and proceedings in winding up having commenced only after the lapse of more than six years after such default, the right of the Company to recover such calls was barred at the commencement of the winding up and the official liquidator was not in a better position than the Company. This application was rejected by the District Judge.

The contributories appealed to the High Court.

K. Ramchandra Ayyar for P. B. Sundara Ayyar for appellant.

Mr. K. Ramchandra Shenai for respondents.

* Civil Miscellaneous Appeal Nos. 159 to 162 of 1906, presented against the order of C. G. Spencer, Esq., District Judge of Tinnevelly, dated 18th October 1906, declining to exclude the names of the appellants in these appeals from the list of contributories passed in the course of the proceedings in Civil Miscellaneous Petition No. 265 of 1903.