

## APPELLATE CIVIL.

*Before Mr. Justice Wallis and Mr. Justice Miller.*

KIDAMBI VENKATACHARIAR (PETITIONER),  
APPELLANT,

v.

LAKSHMI DOSS (RESPONDENT), RESPONDENT.\*

*Res judicata*—*Finding of Revenue Court that there was no proper tender of patta is not res judicata in a civil suit for rent for the fasli.*

A landlord tendered a patta twice to his tenant, the second tender being made two months after the first. In an action by the landlord in the Revenue Court to enforce acceptance of the second patta, the Revenue Court held that the second tender made more than a month after the first with a view to taking proceedings under section 9 of the Madras Rent Recovery Act, was not legal. In a suit in the Civil Court by the landlord under section 7 of the Rent Recovery Act to recover rent for the fasli on proving the second tender :

*Held*, that the decision of the Revenue Court, even if it amounted to a decision that there was no proper tender of patta, would not operate as *res judicata*, as the Revenue Court had no jurisdiction to decide the suit brought in the Civil Court.

*Vedachella Gramany v. Boomiappa Mudaliar*, (I.L.R., 27 Mad., 65), distinguished.

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

The facts are fully stated in the learned Judge's order which was as follows :—

"I think the decree is right. The landlord appears to have twice tendered a patta to the defendant, the second patta being tendered two months after the first. Having done so, he brought an action against the defendant to enforce the acceptance of the second patta, and the Deputy Collector dismissed his suit holding that he could not, for the purpose of proceedings under section 9 of the Rent Recovery Act, tender a second patta having already allowed a month to expire after the first patta was tendered. The landlord now sues the tenant for rent and proves the second tender of patta. The defendant contends that the landlord is estopped by the decision of the Deputy Collector whose decision on this point is *res judicata*. The decision of the Deputy Collector,

\* Appeal No. 26 of 1907, presented under section 15 of the Letters Patent against the order of Mr. Justice Boddam in Civil Revision Petition No. 393 of 1906.

however, has nothing to do with the question now at issue. It was only for the purpose of determining whether the suit under section 9 was maintainable that the question of the plaintiff's right to tender a second patta was decided, and the Deputy Collector did not decide the question which now arises between the parties, nor does his decision in any way estop the plaintiff from maintaining this action. He did not decide that it was illegal to tender a second patta, nor, is it the law, so far as I know, that because a landlord has tendered a patta he cannot in the same fasli tender another patta (See *Krishna Doss Balumukunda Doss v. Guruva Reddi*, (9 M.L.J., 183) and\* *Arunachellam Chetti v. Ganapathi Aiyar*, (I.L.R., 28 Mad., 379).

The only question in a suit under section 7 of the Rent Recovery Act is, whether the landlord has tendered a patta which the tenant was bound to accept, and he is not the less able to prove this if in fact he has tendered more than one. The petition is dismissed with costs.

*T. Rangachariar* for *T. Narasimha Ayyangar* for appellant.

*M. K. Narayanasami Ayyar* for *K. Kuppuswami Ayyar* for respondent.

JUDGMENT.—We think the conclusion at which the learned Judge arrived is correct. Even supposing, as has been argued before us, that the judgment of the Revenue Court amounts to a decision that there had been no proper tender of patta by the plaintiff, we do not think it would operate as *res judicata* in the present suit in the Civil Court to recover rent leased on the tender of the patta. The revenue Court had no jurisdiction to decide a suit for rent such as the present, and its decision cannot operate as *res judicata* in the present suit (*Rangayya Appa Row v. Ratnam and others*(1), *Gokul Mandar v. Padmanund Singh*(2) and *Gomti Kumwar v. Gudri*(3). If instead of dismissing the plaintiff's suit to enforce the acceptance of a patta, the Revenue Court had settled the terms of the patta the terms so settled would have constituted the final contract between the parties as to rent for the fasli, and this the Civil Courts would have been bound to enforce by virtue of section 72 of the Rent Recovery Act. In *Vedachala Gramani v. Boomiappa Mudaliar*(4) the learned Judges did not, in our opinion,

(1) I.L.R., 20 Mad., 392.

(2) I.L.B., 29 Cal., 707 (P.O.).

(3) I.L.R., 25 All., 139.

(4) I.L.R., 27 Mad., 65.

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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.