

requisite is dispensed with, in cases where a suit is transferred from one Court to another and where there is a change of Judge in the trying Court owing to death, transfer or other cause : see order 18, rule 4, Civil Procedure Code. We do not think that the circumstance that the Appellate Court in the previous suit held that the Munsif who recorded the evidence had no jurisdiction to try the suit is material. That does not affect the validity of the consent of the parties which is the reason for the admission of evidence not recorded in the suit. It is unnecessary to express an opinion on the question whether in cases falling under section 33 of the Evidence Act, evidence recorded by a Court can be regarded as not given in a judicial proceeding on the mere ground that the decree of the Court was subsequently set aside for defect of jurisdiction, over the causes although *In the matter of Rami Reddi*(1), is an authority against the admission of such evidence in subsequent proceedings between the parties. We hold that the Subordinate Judge was justified in acting on the evidence recorded in the previous suit, set aside the order of the District Judge, and remand the appeal for fresh disposal according to law. The costs of this appeal will abide the result.

SRI RAJAH
 PRAKASARA-
 YANIM GARU
 v.
 VENKATA
 RAO,
 ———
 BENSON AND
 SUNDARA
 AYYAR, JJ.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

ATOHAPARAJU (DEFENDANT), APPELLANT IN BOTH CASES,

1913.
 February 13.

v.

RAJAH VELUGOTI GOVINDA KRISHNAYACHENDRU-
 LAVARU, RESPONDENT.*

Madras Estates Land Act (I of 1908), ss. 3 (7), 153 and 157—Proviso to section 153, effect of—'Old waste', tenant of—Ejectment from, grounds of.

The combined effect of section 153 of the Madras Estates Land Act (I of 1908) even as amended by section 8 of Madras Act IV of 1909, and of section 157

(1) (1881) I.L.R., 3 Mad., 48.

* Second Appeals Nos. 158 and 174 of 1912.

ATCHAPARAJU ^{v.} of the Estates Land Act is that a ryot of old waste cannot be ejected on the ground of expiry of a term of lease contained in a contract entered into before the Act came into force.

RAJAH V. G.
KRISHNAYA
CHENDRUGA-
VARU.

SECOND APPEALS against the decrees of F. A. COLERIDGE, the Acting District Judge of Kistna, at Masulipatam in Appeals Nos. 501 and 502 of 1909 respectively preferred against the decrees of C. S. ANANTARAMA AYYAR (the Deputy Collector of Ellore) in Summary Suits Nos. 97 and 98 of 1909.

The plaintiff, a landholder, brought this suit under section 153 of the Madras Estates Land Act as amended by section 8 of Act IV of 1909 to eject a non-occupancy tenant on the expiry of his one year's lease. The lower Appellate Court holding that the land was "old waste" as per section 3 of clause (7) of the Act agreed with the first Court in granting a decree for ejectment under section 153 of the Act.

Defendant, the tenant, preferred these Second Appeals.

V. Ramadoss for the appellants.

K. S. Krishnaswami Ayyangar for *S. Subrahmanya Ayyar* for the respondent.

BENSON AND
SUNDARA
AYYAR, JJ.

JUDGMENT.—The first point argued in this Second Appeal is that, supposing the defendant is a ryot of 'old waste' as defined in section 3 of the Madras Estates Land Act, the landholder has no right to eject him, as none of the grounds mentioned in section 157 of the Act, which relates to the ejectment of such a ryot, has been alleged to exist by the plaintiff. Section 157 enacts that such a ryot cannot be ejected except on the grounds mentioned in section 153 (and certain other grounds which are immaterial for the present case) which refers to the ejectment of non-occupancy ryots generally. Five grounds for ejectment were mentioned in section 153 as it originally stood. A proviso was added to the section by section 8 of Madras Act IV of 1909 in these terms "nothing in this section shall affect the liability of a non-occupancy ryot to be ejected on the ground of expiry of the term of a lease granted before the passing of this Act." The effect of the proviso was of course to entitle a landholder to eject a non-occupancy ryot on the ground of the expiry of a lease granted before the passing of the Act. The ground of the ejectment in such a case is the expiry of the lease. Section 153 does not make the expiry of the lease a ground of ejectment but leaves it to have the effect which it would have but for the

provision in the first part of the section that the ryot shall not be liable to ejection except on the grounds enumerated in the section. It leaves the contract of tenancy which gives the landholder the right to eject to have the operation which it would ordinarily have. Section 157 expressly deprives a contract entitling the landholder to eject a ryot of old waste of its ordinary legal effect. It also provides that the only valid grounds for the ejection of such a ryot are those mentioned in section 153 as grounds for ejecting a non-occupancy ryot. The expiry of a lease made before the Act came into force is not one of the grounds given by section 153 for ejection. The result is that a ryot of old waste cannot be ejected on the grounds of a contract entered into before the Act came into force. The plaintiff's suit must therefore fail if the defendant be a ryot of old waste. If the land be *kamatam*, the suit could not be maintained in the Revenue Court. In either view therefore this suit must fail. We leave the question whether the land is *kamatam* or not undecided. We reverse the decrees of the Lower Courts and dismiss the suits with costs throughout on the grounds mentioned above.

ATCHAPARAJU
 v.
 RAJAH V. G.
 KRISHNAYA-
 CHENDRULA-
 VARU.
 ———
 BENSON AND
 SUNDARA
 AYYAR, JJ.