

VENKATRAMA  
 AYYAR  
 v.  
 GOPALA-  
 KRISHNA  
 PILLAI.

first defendant has not appealed, but obviously if the interest is not due at all he cannot be held liable in law for it. Moreover as the appeal brought by second defendant alone is preferred against the whole decree on a ground common to both defendants, it may, under Order XLI, rule 4, be set aside against both. We may add that we do not understand why the Judge gave a personal decree against the second defendant. There was in his view no privity of contract between him and plaintiff.

We reverse the decree of the lower Court and dismiss the plaintiff's suit with costs to second defendant in this Court. We direct that in the lower Court all parties will pay their own costs as neither plaintiff nor second defendant put forward the whole truth and nothing but the truth, and first defendant has not appealed.

B.C.S.

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### APPELLATE CIVIL.

*Before Mr. Justice Phillips and Mr. Justice  
 Madhavan Nair.*

1928,  
 May 3.

RAJA RAJESWARA SETHUPATHI *alias* MUTHURAMA-  
 LINGA SETHUPATHI (DEFENDANT), APPELLANT,

v.

MUTHUDAYAN PILLAI (PLAINTIFF), RESPONDENT.\*

*Madras Estates Land Act (I of 1908), ss. 55 to 57 and 189 (3)  
 —Suit in a Revenue Court under sec. 55 of the Act—  
 Dismissal of suit on the ground that plaintiff was not a  
 tenant—Subsequent suit by same person in a Civil Court to  
 recover possession on the ground of occupancy right—Bar—  
 Res judicata—Exclusive jurisdiction of Revenue Court—  
 Issue as to title, necessary and not incidental for decision  
 under sec. 55.*

The decision of a Revenue Court in a suit by a tenant under section 55 of the Madras Estates Land Act, dismissing the suit

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\* Second Appeal No. 616 of 1925.

on the ground that the plaintiff was not entitled to demand a patta, is *res judicata*, under the provisions of section 189 (3) of the Act, in a suit instituted by the tenant in a Civil Court to recover possession of the land on the ground that he was the occupancy tenant. *Appa Rao v. Gurraju*, (1920) I.L.R., 43 Mad., 859, distinguished.

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SECOND APPEAL against the decree of the Court of the Subordinate Judge of Rāmnād at Madura in A.S. No. 61 of 1922, preferred against the decree of the Court of the District Munsif of Paramakudi in O.S. No. 155 of 1920.

This is a suit instituted by a person to recover possession of certain lands in a zamindari on the ground that he had occupancy rights thereto. He claimed title to the land under a sale in auction, held by the lessee of the portion of the zamindari estate. He had previously brought a suit in the Revenue Court to get a patta for the lands from the zamindar. The Revenue Court held that the sale in auction to the plaintiff was brought about by fraud and collusion on the part of the plaintiff, the lessee and the Tahsildar, that the zamindar was not bound by the sale and that consequently the plaintiff had no title to the holding and that his suit for getting a patta should be dismissed. This decision was affirmed, on appeal to the District Court, and on second appeal by the High Court. The tenant subsequently brought the present suit for a declaration of his title as occupancy tenant and for recovery of possession. The lower Courts decreed the suit. The defendant preferred this Second Appeal.

*S. Varada Acharya* (with *S. Soundararaja Ayyangar*) for appellants.—The suit in the Civil Court is barred by the rule of *res judicata*, contained in section 189 (3) of the Madras Estates Land Act. The rule in section 189 (3) goes beyond the provisions of section 11, Civil Procedure Code. The question of right to get a patta is within the exclusive jurisdiction of the Revenue Court under section 55 and section 189 (3). The question of title to the land is a necessary issue and not merely incidental, under section 57 of the Act. The decision is binding

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as *res judicata* in the Civil Court. The decision in *Appa Rao v. Gurraju*(1) is erroneous.

*K. Bhashyam Ayyangar* for respondent.—The decision of the Revenue Court on title is not *res judicata* in a Civil Court. See *Appa Rao v. Gurraju*(1). The suit in a Civil Court is to recover possession and is not for getting a patta, which alone is in the exclusive jurisdiction of the Revenue Court. The decision as to title is only incidental for the decision in the Revenue Court.

### JUDGMENT.

PHILLIPS, J.

PHILLIPS, J.—In this case the plaintiff (respondent) instituted a suit in a Revenue Court under section 53 of the Estates Land Act. His suit in respect of the plaint land was dismissed on the ground that he was not entitled to demand a patta. He has brought the present suit to obtain possession of the suit land, and the question that now arises for decision is whether the decision in the prior suit in the Revenue Court is *res judicata* or not. The section applicable is section 189(3) of the Estates Land Act. It says,

“The decision of a Revenue Court or of an appellate or revisional authority in any suit or proceeding under this Act on a matter falling within the exclusive jurisdiction of the Revenue Court shall be binding on the parties thereto and persons claiming under them, in any suit or proceeding in a Civil Court in which such matter may be in issue between them.”

This question has been considered in several cases, but in most of these cases the circumstances were not the same as here. In *Ramadina Das Gosayiji Garu v. Bosihamo Mundalo*(2), and Second Appeals Nos. 1002 and 1213 of 1916 on the file of the High Court, the prior litigation in the Revenue Court had been in respect of commutation of rent and it was held, in a subsequent suit in a Civil Court, that the decision as to title in the Revenue Court did not constitute *res judicata* as it was a decision on a matter which did not fall within the exclusive jurisdiction of the Revenue Court. Second

(1) (1920) I.L.R., 43 Mad., 859.

(2) (1921) 14 L.W., 251.

Appeal No. 786 of 1919 on the file of the High Court was concerned with the decision in a suit for rent for a particular fasli and the same view was held. In all these cases it is clear that the question decided in the Revenue Court was not one falling within its exclusive jurisdiction so far as those suits were concerned. There is, however, a decision in *Appa Rao v. Gurraju*(1), in which the facts are very similar to the present, the suit in the Revenue Court in that case being one under section 56 of the Estates Land Act for enforcing a patta ; and it was there held that the decision of the Revenue Court on the title to the land or occupancy rights was not *res judicata* in a subsequent suit in a Civil Court. SADASIVA AYYAR, J., who delivered the leading judgment, has unfortunately based his judgment on a misapprehension that section 11 of the Civil Procedure Code is not applicable to proceedings under the Estates Land Act, although it is expressly made applicable under section 192. He accordingly came to the conclusion that section 189 (3) was enacted in the place of section 11, Civil Procedure Code, and was not intended to go beyond section 11 and to constitute the decisions on issues arrived at in the Revenue Court in suits cognizable exclusively by the Revenue Court binding on a Civil Court as *res judicata*. SPENCER, J, no doubt held that the decision as to title in the Revenue Court was a decision on an incidental matter inasmuch as the patta had been ordered and its provisions were settled. If in the present case the decision as to the occupancy right of the plaintiff can be deemed to be on an incidental matter, I entirely agree that it would not constitute *res judicata* in subsequent civil proceedings. I am, however, of opinion that it is not a decision on a mere incidental matter but a decision on a matter falling within the exclusive jurisdiction of the Revenue Court.

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Under section 57 "In adjudicating suits under sections 55 and 56 the Collector shall first inquire whether the party sued is bound to grant or accept a patta and, unless this be proved, the suit shall be dismissed." A suit for the grant of a patta lies within the jurisdiction of the Revenue Courts and cannot be brought in a Civil Court under section 189 (1) of the Estates Land Act. When the Legislature lays down that in such a suit the Revenue Court must decide in the first place whether the party sued is bound to grant or accept a patta, it seems to me to indicate that the question is one within the exclusive jurisdiction of that Court; that is to say, section 189 (3) is applicable and the decision is *res judicata* in subsequent Civil proceedings. It is argued that only a suit for a patta is within the exclusive jurisdiction of Revenue Courts and that a suit may be brought in a Civil Court to establish occupancy right. If the land is ryoti land, the ryot is bound to accept patta and execute a muchilika. If therefore he brought a suit in a Civil Court for a declaration of his right of occupancy, he would be entitled to further relief of the grant of patta. If he asks for this further relief he would have to be referred to a Revenue Court and if he failed to ask for such relief, the Court would not grant a bare declaration. This difficulty has been met by the Legislature by enacting that the Revenue Court shall determine the right of a party to the grant of patta in a suit under section 55 or 56, and consequently that question must be deemed to be one exclusively within the jurisdiction of the Revenue Court.

In order to test the correctness of this view the result of a contrary conclusion may be considered. In the present case it has been held that the plaintiff is not entitled to a patta and consequently is not bound to execute a muchilika. If, however, the lower Courts' decision is correct, the plaintiff will be entitled to possession of certain lands which are ryoti lands within

the meaning of the Estates Land Act, but he will not be bound by any patta or muchilika. In fact his possession would be one of absolute ownership, for it has been finally decided that he is not entitled to be a tenant. The result therefore of holding that the prior decision is not *res judicata* would result in making the plaintiff, who only claims occupancy rights, the absolute owner of the land. It is to prevent such absurdity that the legislature has enacted section 57 and section 189 (3).

A further point has been raised by the appellant and that is that the finding of the lower Courts as to the plaintiff's occupancy right is wrong in law and should be reversed, but in the view I have taken on the question of *res judicata* it is unnecessary to discuss this point.

In the result the appeal is allowed and the plaintiff's suit dismissed with the costs throughout.

MADHAVAN NAIR, J.—I agree and have nothing to add.

K.R.

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### APPELLATE CIVIL.

*Before Sir Murray Coultts Trotter, Kt., Chief Justice and  
Mr. Justice Pakenham Walsh.*

SAMBAMURTHI AYYAR (PETITIONER—15TH CREDITOR),  
\* APPELLANT,

1928,  
September  
13.

v.

E. RAMAKRISHNA AYYAR AND TWO OTHERS  
(RESPONDENTS—INSOLVENTS), RESPONDENTS.\*

*Provincial Insolvency Act (V of 1920), ss. 41, 27 (2), 75 (1) (2)  
—Order extending time to apply for discharge, by Subordinate Court—Appeal to District Court—No Second Appeal to High Court.*

From an order of a District Court on appeal from an order of a Subordinate Court which extended under section 27 (2) of

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\* Letters Patent Appeal No. 183 of 1927.