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of 1869.

of the rent subsequently accruing due may be sued for in a Court of Small Cause. In the present case, the suit is for rent, and it is admitted by the plaintiff that there never has been any contract by the defendant to pay the rent sued for. Our answer therefore to the question submitted is that the suit is not maintainable, and that the Zemindar should be left to pursue his remedy to enforce the peculiar right which he has of compelling the ryot to enter into a contract in writing for the payment of rent.

Appellate Jurisdiction (a.)

Special Appeal No. 129 of 1869.

KONDAPPA NAIK..... *Special Appellant.*

ANNAMALAY CHETTY and another... *Special Respondents.*

A permanent lease of a village in a muttah by the Muttahdar (plaintiff's father) is not invalidated by Section 8 of Regulation XXV of 1802, although the lease has not been registered as required by that Section.

Subrayalu Naick v. Rama Reddy, 1 Madras High Court Reports, 143 overruled.

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THIS was a Special Appeal against the decision of C. F. Chamier, the Civil Judge of Salem, in Regular Appeal No. 296 of 1868, confirming the decree of the Court of the Principal Sadr Amin of Salem in Original Suit No. 141 of 1867.

This suit was brought to cancel the lease of the village of Garegapully, attached to Luckanaickenputty muttah, and also to recover the arrears of rent rupees 400-9-0 due for Fuslies 1274 and 1275.

The plaintiff alleged that, on the 28th March 1843, the village was obtained on lease by defendant from the late Muttahdar, Chinna Chetty, father of 1st plaintiff, and grandfather of 2nd plaintiff, at an annual rent of rupees 161; that on the death of Chinna Chetty, the muttah was registered in the names of plaintiffs in 1863; that the

(a) Present:—Scotland, C. J. and Collett, J.

lease is prejudicial to the plaintiff's interest ; that the lessor is dead, and his successors the plaintiffs are unwilling to continue the lease ; that as the lease is invalid and ineffectual under the rulings of the High Court in Special Appeal No. 15 of 1862, the plaintiffs asked defendant to give up the leased village, but to no effect.

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The Principal Sadr Amin gave judgment for the plaintiffs.

Upon appeal, the Civil Judge confirmed the judgment of the Lower Court. A Special Appeal to the High Court was thereupon preferred by the defendant.

Scharlieb, for the special appellant, the defendant.

Miller, for the 2nd special respondent, the 2nd plaintiff.

The Court delivered the following

JUDGMENT.—This is a suit brought to recover possession of a village in the plaintiff's muttah which had been leased permanently to the defendant by the late Muttahdar, the father of the 1st plaintiff, on the ground that the lease, not having been registered as required by Section 8, Regulation XXV of 1802, was not binding on the plaintiff. The Civil Court, affirming the decree of the Court of First Instance, held on the authority of the decision of this Court in *Subbarayulu Naik v. Rama Reddy 1, Madras High Court Reports*, 143, that the lease was invalid and decreed possession to the plaintiffs. From the decree of the Civil Court the defendant has appealed, and the ground urged on his behalf is that the decision of the Privy Council in the case of *Venkateswara Yettiappa Naiker v. Allagoo Moottoo Servugaren 8, Moore I. A. C. 327*, has established that a permanent lease is not a disposition within the provisions of Section 8, Regulation XXV of 1802, and should govern this case.

It is certainly a distinct decision upon the point adverse to the decision of this Court and directly supports the validity of the defendant's lease, and this Court is

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bound to accept and apply the construction of the law as therein laid down. There were no doubt special circumstances in that case which do not exist here; but the decision as to the construction of the Regulation was distinct that a permanent lease of a portion of a zemindary is not within the terms of the Section. The Court was not aware of the decision when judgment was given in the case of *Subbarayalu Naik v. Rama Reddy*, nor until the general question as to the construction of the same Section arose, which was ultimately decided in the case reported in 3, *Madras High Court Reports*, 5. We must now consider the decision of this Court as overruled and hold on the authority of the decision of the highest Court of appeal that the permanent lease made to the defendant is not invalidated by Section 8 of Regulation XXV of 1802.

There will be a decree reversing the decrees of both the Lower Courts and dismissing the suit, and ordering restoration of the village to the defendant.

The parties should, we think, bear their own costs throughout.

Appellate Jurisdiction (a.)

Special Appeal No. 512 of 1868.

MUTTUSAMY MUDALY..... *Special Appellant.*

SADAGOPA GRAMANY..... *Special Respondent.*

Under Madras Act VIII of 1865 a landlord may compel a tenant to accept a puttah for palmyra trees.

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July 19.
S. A. No. 512
of 1868.

THIS was a Special Appeal against the decision of W. S. Whiteside, the Acting Civil Judge of Chingleput, in Regular Appeal No. 120 of 1867, confirming the decision of the Acting Sub-Collector of the Madras District in Original Suit No. 70 of 1867.

It was stated in the plaint that the defendant refused to execute a muchilka and receive either a tirva or a varæ puttah for Fusly 1276 for 52 palmyra trees which are in the defendant's possession, and chargeable with an annual rent of rupees 3-4-0.

(a) Present : Scotland, C. J. and Collett, J.