

**Appellate Jurisdiction (a.)***Referred Case No. 5 of 1869.*

KUMARA VENKATACHALA REDDIAR, } *Plaintiff.*  
 ZEMINDAR..... }

NARAYANA REDDY..... *Defendant.*

A suit was brought in the Small Cause Court by a Zemindar against a ryot for arrears of rent. The plaintiff alleged that he had tendered puttahs which the defendant was bound to accept, and the defendant alleged that the rent specified was such that he was not bound to accept the puttahs.

*Held*, that the suit was not cognizable by a Court of Small Causes, there being no contract between the parties for the payment of rent.

THE following case was stated under Section 22, Act XI of 1865, by Appaviyah, the District Munsif of Perambalore, in Small Cause Suit No. 559 of 1868 :—

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This is an action brought by the Zemindar to recover rupees 47-9-6, arrears of rent due by his tenant the defendant for Fuslies 1275 and 1276.

The case was heard before me a second time on the 25th instant, and was adjourned for further hearing subject to the decision of the High Court upon the following case :—

The plaintiff states that he tendered a puttah on the 20th April 1866 for Fusli 1275, and one on the 5th February 1867 for Fusli 1276; but that the defendant refused to accept either of them or to give in muchilka; that he then caused notices to be served upon the defendant that the latter did not attend to the requisition therein contained, and that hence this suit.

The defendant denies that any puttah was tendered by the plaintiff or notice served upon him, and asserts that the land in his (defendant's) possession is not liable to such a rate of rent as that claimed by the plaintiff.

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

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I am of opinion that this suit is not maintainable, for it involves an enquiry and decision of several of the points mentioned in Sections 10 and 11 of (Madras) Act VIII of 1865, forming the subject, I think, of a separate suit before the arrears of rent claimed can be determined; and the plaintiff should have either applied to the Collector as laid down in Section 9 or brought a suit in the Court to settle the rate of rent agreeably to the latter part of Section 87 of the said Act before he can claim arrears of rent, but he has not done one or the other. If it shall perhaps be thought that such a suit as this involving dispute regarding the rate of rent can lie, and that the Court trying the suit should incidentally determine the rate of rent before it can pronounce a decision on the arrears claimed, even then it occurs to me that such a suit should be excluded from the cognizance of a Small Cause Court, for no appeal lies from the decision of such Court, and the decision regarding the rate of rent is a very important point, and is in a separate suit appealable by the party dissatisfied with such decision.

The question on which the decision of the High Court is solicited is, whether this suit is maintainable?

No Counsel were instructed.

The Court delivered the following

JUDGMENT.—This is a suit by a Zemindar against a ryot for two years' rent in arrears, the Zemindar alleging that he duly tendered puttahs which the ryot refused to accept, and the ryot alleging that the rent specified was such that he was not bound to accept the puttahs. Assuming that the puttah tendered was such as the defendant was bound to accept, it has been decided by this Court (See 4, *Madras High Court Reports*, 149), that a suit will lie in a Court of Small Causes to recover arrears of ascertained rent on proof of a due tender of such puttah, and that it is not an essential preliminary to such a suit that the landholder should have availed himself of the summary remedy provided by Madras Act VIII of 1865 to enforce the exchange of puttahs and muchilkas. The

question in the present case is whether a landholder within Section 3 of Madras Act VIII of 1865 can, in the guise of a suit for arrears of rent, require a Court of Small Causes to decide between him and the occupying ryot upon his claim to compel the latter to occupy upon the terms of his paying rent at particular rates when no contract in respect of rent has been made between them. Section 7 of the Act clearly contemplates the existence of a contract as to the terms of a tenancy, and then enacts that there may be a suit "to enforce the contract," though there has been no exchange of agreements in the form of puttah and muchilka, provided that there has been a tender of such a puttah or muchilka as the other party was bound to accept, that is to say, one in accordance with the contract sought to be enforced. Where there has been no contract as to rent and the terms of the tenancy are unascertained and in dispute between the parties, Sections 8, 9, and 10 provide a summary remedy by a suit before a Collector; and looking to the general terms of Section 87 of the Act, it is apparently contemplated that the rights of the parties might be also enforced by regular suit in the ordinary Courts. But the jurisdiction of a Court of Small Causes is limited to the kinds of suits specified in Section 6, Act XI of 1865. One of those kinds is a suit for rent, and the word "rent" in that Section must be taken in its ordinary sense, and so taken, a suit for rent assumes the existence of a contract between the parties regarding rent. Now, in the present case, the defendant, the occupant of the land, has not entered into any contract with the plaintiff for the payment of rent at the rate which the plaintiff seeks to charge him with. The Zemindar has a right (by means at least of the summary suit provided by Madras Act VIII of 1865) to compel the occupying ryot to enter into a contract in writing, fixing the rent to be paid by him, but the right is subject to the peculiarity that, if the parties cannot agree upon the terms of the contract, the Court will, acting upon certain definite rules, settle the terms of the contract, and compel its execution and acceptance by the parties. As soon as such a contract has been entered into, there is an agreement regarding rent between the parties, and the arrears

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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.

1869.  
*July 13.*  
S. A. No. 129  
of 1869.

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.