

**Appellate Jurisdiction. (a)***Referred Case No. 10 of 1873.*VENKATASAMI NAIK *against* SETUPATI AMBALAM

In order to enable a landholder to maintain a suit in the Civil Courts for rent where Madras Act VIII of 1865 requires that pattahs should be tendered, such tender must be made within the Fasli for which rent is sought to be recovered.

**T**HIS was a case referred for the opinion of the High Court by P. P. Hutchins, Acting Civil Judge of Madura, in Appeal Suit No. 184 of 1872. 1874.  
May 26.  
R. C. No. 10  
of 1873.

The suit was brought by the lessee of the Shivaganga Zamindári against a ryot for rent and was dismissed by the Munsif on the ground that a pattah had not been tendered within the Fasli for which rent was claimed. The District Judge referred the question:—Is a suit for rent, brought by a landholder who is bound to give or tender pattahs by Madras Act VIII of 1865, barred if the tender has taken place after the expiration of the Fasli and after a reasonable time has elapsed since its expiration, but within the three years allowed by Clause 1, Section 8 of Act XIV of 1859? In this case tender was made after the expiration of the Fasli, but within the period prescribed by the Limitation Act for suits for rent.

*O'Sullivan*, for the plaintiff.

The Court delivered the following

JUDGMENT:—According to the opinion of a majority of the Full Bench (b) a landholder is bound to give or tender a pattah within the Fasli.

**Appellate Jurisdiction. (c)***Special Appeal No. 279 of 1874.*KUMARASAMY REDDI..... *Special Appellant.*PANNA SOONA MOOROGAPPA CHETTY. *Special Respondent.*

The plaintiff purchased certain property from the 1st and 2nd defendants. The property was subsequently put up for sale by order of the Civil Court in execution of a decree against the 1st and 2nd defendants and was purchased by the 3rd defendant. When the property was

(a) Present: Morgan, C. J. and Kindersley, J.

(b) See ante, page 313.

(c) Present: Innes and Kindersley, JJ.

about to be sold under the decree the plaintiff presented to the Court a petition objecting to the sale, but his Vakil withdrew the petition with his consent before the sale. In a suit by the plaintiff for the recovery of the land.

*Held*, that the plaintiff was not precluded from recovering the land by reason of his having withdrawn the petition.

1874.  
June 3.  
S. A. No. 279  
of 1874.

THIS was a Special Appeal from the decree of F. C. Carr, the District Judge of Tinnevely in Appeal Suit No. 566 of 1872, reversing the decree of the Court of the Principal Sadr Amin of Tinnevely, in Original Suit No. 308 of 1871.

*Scharlieb*, for the special appellant, the plaintiff.

*Shephard*, for the special respondent, the 3rd defendant.

The Court delivered the following

JUDGMENT:—Plaintiff sued to recover certain landed property which had been sold to him by 1st and 2nd defendants on the 26th June 1870, but which had been put up to auction and sold by order of the Court in execution of the decree against 1st and 2nd defendants in Original Suit No. 9 of 1870.

The present 3rd defendant was the decree-holder in that suit and became the purchaser. The property was not put up to sale by the Court till some date in December 1870, subsequent to sale to plaintiff by 1st and 2nd defendants.

The land had been attached before judgment in the suit, but at a date subsequent to that of the sale to plaintiff, and the Courts below have found that there is no ground for suspecting that the sale to plaintiff was other than a real *bonâ fide* sale.

When plaintiff became aware after decree that it was intended to sell the property under the attachment obtained before judgment, he put in an objecting petition, which, it is found by the Lower Appellate Court, was afterwards withdrawn by plaintiff's Vakil with his consent.

The District Judge considered that the withdrawal of the objection amounted to a consent on plaintiff's part to the sale of the land and that he was therefore not entitled to bring this suit.

This is the only question fairly before us in the Special Appeal, and we are clearly of opinion that the view taken by the District Judge is wrong. Had plaintiff not formally objected to the sale, no doubt could be entertained of his right to institute a suit to enforce as against the purchaser at the Court sale the prior sale to him by 1st and 2nd defendants; and the making and afterwards withdrawing the objection can have no greater effect than would have followed the abstaining from making it. What happened was that the sale took place and 3rd defendant purchased the right, title and interest of the 1st and 2nd defendants, and from the finding as to the sale to plaintiff it follows that, in so doing, he took no title, as the title was already vested in plaintiff.

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We concur in the judgment of the Principal Sadr Amin that plaintiff is entitled to recover the property from the 3rd defendant, and we must reverse the decree of the District Judge and restore that of the Principal Sadr Amin.

The 3rd defendant will pay the costs throughout.

*Appeal allowed.*

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**Appellate Jurisdiction. (a)**

*Referred Case No. 17 of 1874.*

CHINNA PERUMAL NAICKER

*against*

ANNAMMAL AND ANOTHER.

A promissory note upon a one anna stamp dated in August 1870 provided for the repayment of the amount mentioned in it on or before the 12th July 1871. In a suit upon the promissory note, *Held* that it was not receivable in evidence upon payment of a penalty.

**T**HIS was a case referred for the opinion of the High Court by A. Annoosamy, the Subordinate Judge of Tinnevely, in Suit No. 1778 of 1873.

1874.  
June 17.  
R. C. No. 17  
of 1874.

(a) Present : Morgan, C. J., Holloway and Innes, JJ.