

(1903) 10 MAD CK 0007
In the Madras High Court

Bashyakarlu Naidu

APPELLANT

Vs

Gundapaneni Subbanna

RESPONDENT

Date of Decision : 13-10-1903

Acts Referred:

Citation : (1904) ILR (Mad) 4 : (1903) 13 MLJ 469

Judgement

1. If the pattah which had been originally tendered before the Summary Suit u/s 9 of the Rent Recovery Act was one that the tenant was bound to

accept, the landlord might by virtue of Section 7 sue for the recovery of rent on the strength of such tender alone, without any fresh tender of a

pattah, or the execution of a muchilika after judgment.

2. But if the pattah originally tendered was not such as the tenant was bound to accept, and if it had been modified by the judgment in the summary

suit, and if before the expiry of the fusli to which the pattah relates, the landlord tendered the pattah as amended, he could also maintain a suit for

rent u/s 7, relying on such tender. If, however, no such tender was made (and even in cases where it could not have been made by reason of the

expiry of the fusli before the judgment was passed), the landlord could sue for rent only if the tenant had executed a muchilika, which he was

directed to execute by the judgment, or if he had refused to execute the same. In the latter case Section 72 provides that certified copy of the

judgment of the Collector shall have the same force and effect as a muchilika executed by the tenant himself; but we are clearly of opinion that he

cannot be said to have refused to execute the muchilika unless before suing for rent the landlord made a requisition or demand on the tenant calling

upon him to execute a muchilika in accordance with the judgment then in force.

We dissent from the contrary view taken in Court of Wards v.

Darmalinga ILR 8 M. 2. The view we have taken is, we think, in accordance with that taken in the recent Full Bench decision of this Court in

Shanmuga Mudaly v. Palnati Kuppu Chetty ILR 25 M. 613 although the proceedings in that case related to the ejectment of the tenant in

execution of a decree u/s 10.

3. In C.R.P. 494 there is no allegation of any such demand as is required by law, and there is therefore no ground for revision in that case. It is

dismissed with costs.

4. In C.R.P. Nos. 492 and 493 however the plaint distinctly alleges such demand and refusal. We therefore set aside the decrees of the District

Munsif in these two cases and remand the suits for disposal according to law. Costs in this Court will be costs in the cause.