

(1894) 04 MAD CK 0003
In the Madras High Court

Oliver		APPELLANT
	Vs	
Anantharamayyan		RESPONDENT

Date of Decision : 17-04-1894

Acts Referred:

Citation : (1895) ILR (Mad) 30

Hon'ble Judges : Arthur J.H. Collins, C.J;Parker, J

Bench : Division Bench

Judgement

1. The District Judge has reversed the decision of the Sub-Collector and dismissed the suit on the ground that there was no proper tender of patta

in the manner prescribed by law (Sections 7 and 89, Madras Act VIII of 1865).

2. Defendant was a clerk in the District Court of Cochin at Trichoor and was not residing in the Tanjore district. One Ganapathi Subbier was

looking after his cultivation for him in Tanjore, but had no power-of-attorney from him. Ganapathi Subbier denies that any patta was tendered to

him, and though the kurnam deposed that there was, there is no finding by the Judge upon that point.

3. The patta tendered was stuck up on the land in the manner prescribed by Section 39, and the question is whether this mode of service was

justifiable when the defendant was known to be living in foreign territory and had no authorised agent on the spot.

4. The procedure is only justifiable when service cannot be effected on the tenant himself or on some adult male member of his family at his usual

place of abode, or on his authorized agent (Section 39). the section must be construed reasonably and the words "at his usual place of abode"

would seem to denote that it was contemplated that the notice would ordinarily

be served upon the tenant himself, his relative or his authorized agent in the neighbourhood of the land in respect of which the patta was tendered. A tender through the post would not be effectual--see Venkatachellam Chetti v. Kadumthusi ILR 4 Mad. 145 and Saminatha v. Viranna ILR 13 Mad. 42 We do not think it could have been intended that a landlord should go himself or send an agent into foreign territory to tender a patta, and we, therefore, hold that the service contemplated in the first instance u/s 39 could not be effected, and hence that the service by affixing a copy on a conspicuous part of the land was under the circumstances a good and valid service. The decree of the District Judge must be reversed and the appeal remanded to be disposed of on the merits. Appellant is entitled to costs of this appeal, and the costs in the Lower Appellate Court will abide and follow the result.