

(1891) 05 MAD CK 0011
In the Madras High Court

Ramaiyar

APPELLANT

Vs

Vedachela Mudallar

RESPONDENT

Date of Decision : 08-05-1891

Acts Referred:

Specific Relief Act, 1877 — Section 40

Citation : (1896) 6 MLJ 684

Hon'ble Judges : Shephard, J;Parker, J;Muthusami Aiyar, J;Arthur J.H. Collinns, J

Bench : Full Bench

Judgement

Muthusami Aiyar, J.—The first question referred for our decision is whether a suit to enforce the acceptance of a can be maintained in a

Civil Court and I think it should be answered in the affirmative. So early as 1879, it was held By a Division Bench of this Court in Karim v.

Muhammad Kadar ILR (1879) M. 90 that the suit is cognizable by a Civil Court. In 1889, however, another Divisional Bench expressed a doubt

in Narasimha v. Suryanarayana ILR (1879) M. 481 as to whether the suit would lie in a Civil Court, in as much as the duty of accepting a patta

and giving a muchilika was one imposed by statute, and a special remedy for enforcing it was prescribed by the same statute. It was, however,

observed that the object of Act VIII of 1865 in requiring the exchange of patta and muchilika was to insure the existence of evidence of the terms

of the holding, and as a landlord could, on a proper occasion arising, certainly maintain a declaratory suit, so, in such suit, he might obtain by way

of consequential relief, the delivery of a muchilika corresponding to the patta tendered by him.

2. The ground of this reference is the doubt expressed as stated above.

3. In the recent case of *Vallmice v. Falle* (1884) 13 Q.B.d. 109 it was pointed out by the Court of Queen's Bench that the question to be

considered in cases of this description is whether the provisions and the object of the particular enactment under consideration disclose an intention

to create a general right which forms the subject of an action, or to create a duty protected by a particular remedy. *Beckford v. Hood* (1798) 7 TR.

620 : 101 E.R. 1164 stated the general rule to be this--where a statute creates a new offence or gives "a new right and prescribes a particular

penalty or special remedy, no other remedy can in the absence of evidence of a contrary intention be resorted to ; but where a statute is

confirmatory of a pre-existing right, the new remedy is presumed as cumulative or alternative, unless an intention to the contrary appears from

some other part of the statute. The learned judges who decided the case of *Karim v. Muthammal* ILR (1879) M. 90 appear to me to have kept in

view the foregoing principles. After referring to Section 3 of Act VIII of 1865, and to the value of a patta as the pre-appointed evidence of a

tenancy and its terms, they say that, when the action of the tenant precludes the landlord from doing what the law enjoins upon him, and without

which he is disabled from making use of any of the summary remedies under the Act, he will have his right of action to compel the tenant to do that

which will enable the landlord to conform to the law, unless such right of action is taken away by the other provisions of the law.

4. Again Section 7 of Act VIII of 1865, which was held to be of general application by a Full Bench in *Gopalswamy Mudelly v. Mukkee Gopalier*

(1873) 7 M.H.C.R 313 constitutes the acceptance of a patta by the tenant or the tender by the landlord of a proper patta into a condition

precedent to the right to enforce the terms of a tenancy. Thus, the right which the section deals with is the ordinary civil right to recover rent or to

enforce the other terms of the tenancy, and the jural relation of which the contents are to be evidenced by the patta is that of landlord and tenant.

Both the right and the jural relation are not created by Act VIII of 1865, but are a pre-existing civil right and a legal relation over which the Civil

Courts have always exercised jurisdiction. Again, the duty to exchange patta and muchilika was not first created by [666] Act VIII of 1865 ; but it

was created in 1802 by Reg. XXX of 1802. Nor is the relation of that duty, as a pre-requisite of the right to recover rent, the creature of the Rent

Act in as much as Section 9 of Reg. V of 1822 directed that suits for arrears of rent be dismissed where no patta had been granted.

5. The question then before us is one of an Act of the legislature dealing with a pre-existing civil right, and confirming it together with a pre-requisite

of the right of action, by which that right is protected. It is therefore governed by the general rule that when a statute confirms a, pre-existing right,

the new remedy is to be considered as an alternative one in the absence of a provision of law to the contrary.

6. Turning again to the nature, the object and the provisions of Act VIII of 1865, there are distinct traces of an intention to create a cumulative

remedy only. It will be noted that both Sections 8 and 9 which prescribe suits to be instituted before Collectors declare them to be summary suits.

Seeing that, by Reg. V of 1822 summary jurisdiction was conferred upon Collectors without taking away the jurisdiction exercised by the Zillah

Courts, and seeing also that Act VIII of 1865 purports to consolidate and improve the preexisting rent law, the inference is that the word "

summary " negatives an intention to take away the jurisdiction which Civil Courts had therefore exercised and denotes on the contrary an intention

to create an alternative or expeditious remedy. There is another reason which appears to me to confirm this view. Section 7, which is of general

application, makes the exchange of patta and muchilika a condition precedent, not only to the landlord pursuing the special remedies available

under the Act but also to his instituting suits for arrears of rent and for rates of rent which are declared by Section 87 to be cognizable by Civil

Courts. If the view, that Sections 8 and 9 create an exclusive jurisdiction in Collectors over suits to enforce the acceptance of a patta, were to

prevail, it would contravene the ordinary rule that, when a Civil Court has jurisdiction in respect of a right, a suit to enforce a condition precedent

for the purpose of preserving that right is as much a suit of a civil nature as a suit to recover the produce of that right, or to recover compensation

for its infringement after it has become actionable. As regards the suggestion that Collectors may have been considered to possess a special

aptitude for dealing. [667] with rent suits, and determining rates of rent with reference to" the provisions of Section 11, I do not attach weight to it,

first because appeals are declared by the Act to lie from the decisions of Collectors to the District Courts, and secondly because Section 87

expressly saves the right of the landlord to sue in the Civil Courts for arrears of rent and for settling rates of rent. The strongest reason in support of

the view, that the remedy is cumulative, is the history of rent law in this Presidency prior to the enactment of 1865. In *Gopalaswamy Mudelly v.*

Gopalier (1874) 7 M.H.C.R. 312 which is a Full Bench decision, the learned judges discussed at length the relation of Act VIII of 1865 to the

prior state of law on the subject and all the judges agreed in the opinion that Act VIII of 1865 created only an alternative remedy and did not oust

the regular jurisdiction of Civil Courts. Mr. Justice Holloivay observed that the key to the construction of Act VIII of 1865 is the existence ,of two.

coincident processes, one called summary and the other regular. Again Mr. Justice Innes, who took part in the full Bench Case, said, in *Karim v.*

Muhammad Kadar ILR (1879) M. 89 that the language of Section 9 appeared to be merely permissive of the right of the landlord to adopt the

summary remedy and not to shut him out from the remedy by regular suit and that the remedy by summary suit was originally given as an

alternative, and that there is nothing in Act VIII of 1865 to show that the landlord is debarred the remedy by regular suit.

7. The improvement introduced by the Act consists only in allowing appeals from the decisions of Collectors and thereby giving a finality to such

decisions, instead of allowing them as was previously the case to be reversed in regular suits, thus converting what was under the prior law a

summary remedy in its strict sense into an alternative remedy.

8. Furthermore, it is incumbent on a Civil Court whenever the landlord sues to recover rent to ascertain by reason of Section 7 that the landlord

has tendered a proper patta and to decree rent or dismiss the claim according as it finds that the patta tendered is or is not a proper one. This

being so, it is not clear why the landlord cannot sue to have it declared that the patta tendered is a proper one, and to claim the execution of a

muchilka as the only consequential relief, which he is at ; the time of suit in a position to demand.

9. Again, it was open to the landlord under the Regulation of 1802, to eject a tenant for non-acceptance of a patta, and to the tenant to claim

damages for non-tender of a patta, and this shows that the observation, in *Narasiniha v. Suryanarayana* ILR (1889) 12 M. 481 that it was Act

VIII of 1865 that created a duty to accept a patta and execute a muchilika can " be supported only to the extent that it recognized a pre-existing duty, and provided summary suits as alternative remedies available for its enforcement. The conclusion to which I come is that the exchange of patta and muchilika is a statutory pre-requisite of the right to enforce the terms of a tenancy, that the duty to effect such exchange is an incident of the relation of landlord and tenant, that the suits prescribed by Sections 8 and 9 of Act VIII of 1865 are declared summary in the sense that they do not oust the ordinary jurisdiction of Civil Courts, ? and that these tribunals are competent to entertain suits for the acceptance of a patta on the ground that it is a specific relief necessary to keep alive the landlord's ordinary civil right to enforce the terms of the tenancy.

10. The second question referred for our decision is whether the Civil Courts "are competent to amend the patta tendered, when it is not a proper patta. The ground of reference is the conflict between *Narasiniha v. Suryanarayana* ILR (1889) 12 M. 481 and *Easiuara Doss v. Pungavanacharfi* ILR (1890) M. 361. The only form, in which Civil Courts can award specific relief under, the general law, is by passing a decree when no consequential relief can be demanded. u/s 7 of Act VIII of 1865, it is competent to ask for a declaration that the patta tendered is a proper one as part of a decree for arrears of rent. Under the concluding part of Section 87 of the same Act, suits may be instituted in Civil Courts regarding rates of rent. It is also competent to a landlord to institute a suit to have it declared that a patta tendered is a proper one u/s 40 of the Specific Relief Act.

11. In suits in which it has to be decided whether a patta tendered is a proper one, it is often necessary to come to a finding as to what a proper patta is. If the plaint asks for a declaration that the patta tendered is a proper one, and if not, what a proper patta is, there is. no apparent reason why the court should not make the alternative declaration if necessary. But it is only by making a declaration that Civil Courts can indicate the necessary amendment, [669] although they are not at liberty to direct under the general law, that the patta be amended in a particular manner, and that the tenant to execute a muchilika corresponding to the amended patta. Under the general law, the tenant is under no obligation to execute a

muehilika until a proper patta has been tendered, and the power to substitute for the patta actually tendered a proper patta, and thereupon to direct

the execution of a muchilika corresponding to it is a statutory power conferred only on Collectors as a matter of procedure prescribed by Section

10.

12. I would therefore answer the 2nd question by saying that a Civil Court can declare what a proper patta is, in a suit properly framed for that

purpose, but cannot amend the patta and direct the tenants to execute a muehilika corresponding to the amended patta.

Arthur J.H. Collinns, Kt. C.J.

13. I concur in the above opinion of Mr. Justice. Muthusami Aiyar.

Parker, J.

14. The question referred to the Full Bench are:--(1) "Whether an ordinary Civil Court has jurisdiction to entertain a suit for acceptance of patta

and execution of muchilika? (2) Whether an ordinary Civil Court has power to amend a patta?

15. The reference has become necessary in consequence of the decision in *Narasimha v. Suryanarayana* ILR (1889) M. 481 that a Civil Court has

not the same power to amend a patta, as a Collector has u/s 10, Madras Act VIII of 1865, which appears to be in conflict with the course of

decisions in this Presidency. The duty of exchanging pattas and muchilkaffr" was not first imposed by the Act of 1865, but was a" statutory

obligation first imposed on landholders by Section 14, Reg. XXX of 1802, such landholders being by that section rendered liable to suit in the

Adawlut for failure to comply with the obligation. Regulation . XXX of 1802 authorized a prosecution in the court for refusal to deliver a patta.

Reg. XXVIII of 1802 dealt with recovery of arrears of rent by summary process, and powers of sum-" mary enquiry and by regular suit were

vested in the Zillah Courts. Reg. V of 1822 enable Collector for the first time to take primary cognizance of summary suits cognizable by Zillah

Courts, and made the tender of a proper patta a pre-requisite of the right to recover rent, but the jurisdiction of the Zillah Courts was not taken

away. These Regulations were repealed by Madras Act VIII of 1865, the preamble of which states that it is expedient to " consolidate and

simplify" various laws which have been passed relative to [670] landholders and

their tenants, and to provide a uniform process for the recovery of rent. There is no section in the Act which expressly takes away the jurisdiction hitherto vesting in the Civil Courts, and Section 87 expressly reserves the right to sue in the Civil Courts for arrears of rent or revenue. The concluding part of the section moreover clearly indicates that there is another class of suits (other than suits for arrears of rent or revenue) which will still remain cognizable by the Civil Courts, viz.:--suits regarding rates of rent, and it is difficult to see what class of suits can be here referred to unless it be suits to settle or declare the terms of a tenancy, in other words to decide on the correctness and propriety of a patta.

16. The whole history of the rent laws in this Presidency seems to me to show the intention of the legislature has been to provide alternative remedies--summary and regular suit; and it is difficult to suppose that if the legislature in 1865, intended to take away a remedy which had been in existence for half a century, it would not have done so in express terms instead of leaving the matter obscure and to be gathered by mere inference and implication. The purport of the Act was -merely to consolidate and simplify existing laws and to provide a uniform process for the recovery of rent. The providing of a uniform process to recover rent was clearly regarded as consistent with the alternative remedy of suits for rent in a Civil Court (Section 87).

17. I can see no reason to dissent from the principles laid down by the Full Bench of this Court in *Gopalaram v. Mukke Gopalaiyar* (1874) 7 M.H.C.R. 312 and since followed in *Karim v. Mahomed Kadar* ILR (1879) M. 89 which (decisions do not appear to have been brought to the notice of the learned judges who decided *Narasimha v. Suryanarayana* ILR (1889) M. 481. I would answer the first question referred in the affirmative.

18. Upon the second question I agree with Muthusami Aiyar-J., that if the patta which has been tendered is found not to be a proper one, a Civil Court cannot decree that the landlord shall tender an amended patta, but should simply pass a declaratory decree.

Shephard J.

19. The questions raised by this reference turn on the construction to be placed on the Act VIII of 1865 and the Regulations superseded by that

Act. By Sections 3 and 4 of the Act of 1865, the duty is imposed on the Zamindar on the one hand and the tenant on the other of exchanging

written engagements in the shape of pattas and muchilkas. Sections 8 and 9 indicate the remedy [671] available to the tenant in case of the

landlord's default, and the landlord in case of the tenant's default,. the remedy in either case being by summary suit before the Collector. The

following section declares the course to be adopted by the Collector in dealing with such suits. The three sections taken together show that the

aggrieved party is to have his remedy by way of specific relief. If the patta or muchilika tendered by the aggrieved party is not a proper one, there

is to be an inquiry in the manner prescribed in the 11th section according to which in the absence of evidence of express or implied contract or of

usage, the Collector is in settling the terms of the holding to have regard "" to the rates established or paid for neighbouring lands of similar

description and quality."" The patta thus settled by the Collector, the defaulting party is to be directed to accept, considering the Act itself and

without reference to previous. legislation, I think there can be no doubt that the specific relief provided for by the sections just mentioned, was

intended to be sought only in the Court of the Collector. In view of the peculiar nature of the inquiry which may include 6 M.H.C.R.244 the

question what under the circumstances of the case is a fair and just rate of rent, One can well understand that the duty of entering upon it should be

cast upon the ? Collector and not upon a Civil Court. In *Gopdhasami v. Mukhe Gopala Aiyar* (1874) 7 M.H.C.R. 312 where the applicability of

Section 7 of the Act to suits for rent in a Civil Court was considered, there was in favor of the view adopted by the majority of the court the strong

circumstance that in the section itself there were no words indicating an intention to restrict the operation of the section, and on the contrary Section

87 expressly saves the jurisdiction of the Civil Courts in the case of suits for rent. In the present case it is otherwise, for the Collector is named in

each one of the sections mentioned, and there is no such saving clause. It is to be remembered that it is not the ordinary remedy for the breach of a

statutory duty that is in question. It may well be that a landlord has his action for damages on the tenant's refusal to accept a proper patta and that

for that purpose the Civil Court is open to him; while it is only the Collector that can be called upon to adjudicate on the questions which may be

raised u/s 11 of the Act and make certain between the parties the terms of the holding which terms may previously [672] have been utterly

indefinite. The cases turning on the " construction of statutes prescribing a penalty for the breach of some duty imposed thereby have not therefore

much bearing on the case. The previous legislation is contained in the Regulations XXVIII and XXX of 1802 and V of 1822, all of them repealed

by the Act of 1865, which act according to the preamble was passed in order to consolidate and simplify various laws which have been passed

relative to landholders and their tenants.

20. The Regulations XXVIII and XXX of 1802 were passed on the same day and the object of the latter was the protection of the tenants. For

that purpose it was provided by Section 2, as it is in Section 3 of "the present Act, that Zamindars and their tenants should exchange pattas and

muchilikas. In the case of the tenant refusing to perform this duty, it was provided that the proprietor should be entitled to grant the land to other

persons, (Section 10). In the case of default on the part of the landlords provision was made in Section 8 that they shall ""be liable to prosecution in

the court and shall on proof of such refusal or delay be also liable to pay such damages, &c.

21. The next section provides a rule for the settlement of disputes * about rent, similar to that now provided in Section 11. The court named in the

regulation, was the Adawlut of the Zilla, the only court of original jurisdiction then in existence. There is nothing to show that the form of action or

the remedy contemplated by Section 10 was any other than the ordinary remedy of an action for damages similar to that mentioned in other

sections of the two Regulations of 1802; (see Ss 17, 29 & 40 of Regulation XXVIII and S, 14 of Reg. XXX). The action was not of a summary

nature such as that provided in Section 34 of Reg. XXVIII. There was no corresponding provision for an action for damages against the tenant.

22. By Reg. V of 1822, it was found that the Regulation of 1802 was insufficient for the due protection of the ryots inasmuch as the powers they

vest in landholders are prompt and summary, while efficient redress for the abuse of those powers must frequently be sought by the institution of a

regular suit, to the expense of which the means of ryots in general are inadequate; and it was deemed expedient to invest Collectors with authority

to take primary cognizance of all cases, which under the provisions of those Regulations were cognizable by summary suits in the Courts of

Adawlut. By this Regulation a clear distinction is made between [673] the jurisdiction of the Zilla Court and the Collector and an appeal to the

judge from the decision of Collector passed under the Regulation is granted. By Section 2 Collectors were authorised to take primary cognizance

by summary process of all cases which under the regulation of 1802 were summarily cognizable by the Zillah Courts. Except in ,Section 8 there is

no provision for an enquiry into the rates of rent and under that section the inquiry is to be conducted by the Collectors. There was no such

provision in the regulation of 1802, nor was there any absolute necessity for a suit having for its object the ascertainment of the terms of the

tenant's holding, because the landlord had his remedy by ejectment and the tenant his remedy, in damages, and under those Regulations the

exchange of patta and muchilika was not made a condition precedent to the maintenance of a suit for rent. If then it is the case, as I think it is, that

the particular proceeding indicated by Sections 8 and 9 of the present Act originated only with the Regulation of 1822, it may be said that the

legislature has been consistent throughout in making the Collector the tribunal before which such proceedings are to be conducted. If this is not the

case, I would still say that the evident intention of the legislature has been to give the Collector exclusive cognizance in proceedings having for their

object the ascertainment of the terms of the tenant's holding. It may be said that this intention was not effectively carried out by S, 2 of the

Regulation of 1822, because it does not appear that any of the suits mentioned in Reg. XXX were summary suits and because the language used in

Section 2 does not positively take away the pre-existing jurisdiction. With regard to this latter point there is in favor of the view that the Collector

was intended to, have exclusive jurisdiction in summary suits the circumstances that while S, 2 expressly gives him primary cognizance of the suits

that were theretofore cognizable by the Zillah Courts, a later section* gives to the latter an appeal from his decision. It is hardly to be supposed that

the Zillah Court, not then any longer the only court of original jurisdiction, should have been intended to retain the primary cognizance of suits in

respect of which, when tried by a Collector, an appeal lay to it. With regard to the question as to what suits it was intended to transfer to the

Collector u/s 2 of the Regulation of 1822, it is not in my opinion to consider it. In framing the consolidating Act of 1865, [674] it would appear that

the legislature either assumed that the Collector had hitherto had jurisdiction in the suits mentioned in Sections 8 and 9 of the Act, or designed to

give the Collector such jurisdiction, In either view I think it is clear that it was intended that the jurisdiction should be exclusive.

23. I have already referred to the significant provision made by S, 87 of the Act saving the jurisdiction of the Civil Courts in suits for arrears of rent

or revenue only. In my opinion a consideration of the previous enactments strengthen the view which I should have taken on a perusal of the Act of

1865, taken by itself.

24. By the question "" whether an ordinary Civil Court has jurisdiction to entertain a suit for acceptance of patta or muchilka,"" I understand that it is

asked whether the suit provided for in S, 8 or Section 9 of the Act can be entertained by a Civil Court. That question I think for the reasons given

should be answered in the negative.

25. It follows that the second question must also be answered in the negative.