

(1901) 10 MAD CK 0017
In the Madras High Court

Venkata Rao

APPELLANT

Vs

Vaithilinga Udayan and Others

RESPONDENT

Date of Decision : 29-10-1901

Acts Referred:

Citation : (1902) 12 MLJ 22

Judgement

1. In our judgment the proviso which appears as the last proviso but one to Section 11 of the Rent Recovery Act, has no application to the present

case. The question in the present case, as the case of Thangammal v. Mutta in ILR 10 M. 282 is whether the landlord has a right to charge water

rate when a wet crop is cultivated on dry land by means of water taken from the landlord's land. We think the payment referred to in the patta in

respect of the cultivation of wet crop with the landlord's water is rent and was properly included in the patta, and we agree with the observation of

the judges in Sattappa Pillai v. Raman Ghatti ILR 17 M. 1 that it is not improper to include in a patta the terms by which it is intended the parties

shall be bound with reference to a possible contingency which may arise. We think the Deputy Collector was wrong in dismissing the suit. The

proper course for him to have adopted would have been to decide in the mode prescribed in Section 11 of the Rent Recovery Act what the terms

of the patta ought to be with regard to the amount of the rate to be paid in the event of the tenant cultivating a wet crop in a portion of the punja

mentioned in the patta with the landlord's water. In other words it is for the Collector to fix the rate chargeable for the use of the water.

2. The decrees of the lower Courts must be set aside and the case remanded to the Deputy Collector's to be dealt with according to law.

3. Costs of this second appeal will abide and follow the result.