

**Ramayyar Vs. Vedachalla**

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**Court :** Chennai

**Decided On :** Dec-13-1890

**Reported in :** (1891)ILR14Mad441

**Judge :** Arthur J.H. Collins, Kt., C.J., ;Muttusami Ayyar, ;Parker and ;Shephard, JJ.

**Appellant :** Ramayyar

**Respondent :** Vedachalla

**Judgement :**

**Muttusami Ayyar, J.**

1. The first question referred for our decision is whether a suit to enforce the acceptance of a patta 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 I.L.R. 2 Mad. 89 that the suit is cognizable by a Civil Court. In 1889, however, another Divisional Bench expressed a doubt in Narasimha v. Suryanarayana I.L.R. 12 Mad. 481 as to whether the suit would lie in a Civil Court inasmuch as the duty of accepting a patta and giving a muchalka 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 muchalka 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 muchalka 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 *Vallance v. Falle* 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 may form the subject of an action or to create a duty protected by a particular remedy. *Beckford v. Hood* 7 T.R., 620 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 *Karim v. Muhammad Kadar* I.L.R. 2 Mad. 89, 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 *Gopalasawmy Mudelly v. Mukkee Gapalier* 7 M.H.C.R. 312, 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 muchalka was not first created by Act VIII of 1865, but it was created in 1802 by Regulation 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, inasmuch as Section 9 of Regulation 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 Regulation 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 pre-existing rent law, the inference is that the word 'summary' negatives an intention to take away the jurisdiction, which the Civil Courts had theretofore 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 muchalka, 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 civil 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 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 *Gopalasawmy Mudelly v. Mukkee Gopalier* 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 the Civil Courts. Mr. Justice HOLLOWAY 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* I.L.R. 2 Mad. 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 muchalka, 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 *Narasimha v. Suryanarayana* I.L.R. 12 Mad. 481, that it was Act VIII of 1865 that created a duty to accept a patta and execute a muchalka 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 muchalka is a statutory prerequisite 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 *Narasimha v. Suryanarayana* I.L.R. 12 Mad. 481 and *Easwara Doss v. Pungavana Chari* I.L.R. 13 Mad. 361. The only form in which Civil Courts can award specific relief under the general law is by passing a declaratory decree when no consequential relief can be demanded. Under Section 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 under Section 42 of the Specific Relief Act. 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 the Civil Courts can indicate the necessary amendment, 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 do execute a muchalka corresponding to the amended patta. Under the general law, the tenant is under no obligation to execute a muchalka 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 muchalka corresponding to it, is a statutory power conferred only on Collectors as a matter of procedure prescribed by Section 10.

11. I would therefore answer the second 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 muchalka corresponding to the amended patta.

Collins, C.J.

12. I concur in the above opinion of Mr. Justice Muttusami Ayyar.

**Parker, J.**

13. The questions 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 muchalka?

(2) Whether an ordinary Civil Court has power to amend a patta?

14. The reference has become necessary in consequence of the decision in *Narasimha v. Suryanarayana* I.L.R. 12 Mad. 481 that a Civil Court had not the same power to amend a patta, as a Collector has under Section 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 much-alkas was not first imposed by the Act of 1865, but was a statutory obligation first imposed on landholders by Regulation XXV of 1802, Section 14, such landlords 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. Regulation XXVIII of 1802 dealt with recovery of arrears of rent by summary process, and powers of summary inquiry and by regular suit were vested in the Zillah Courts. Regulation V of 1822 enabled Collectors 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 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.

15. 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 by 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).

16. I can see no reason to dissent from the principles laid down by the Full Bench of this Court in 1874, *Gopalasawmy Mudelly v. Mukkee Gopalier* 7 M.H.C.R. 312,

and since followed in *Karim v. Muhammad Kadar* I.L.R. 2 Mad. 89, which decisions do not appear to have been brought to the notice of the learned Judges who decided *Narasimha v. Suryanarayana* I.L.R. 12 Mad. 481. I would answer the first question referred in the affirmative.

17. Upon the second question I agree with Muttusami Ayyar, 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.**

18. 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 muchalkas. Sections 8 and 9 indicate the remedy available to the tenant in case of the landlord's default and to 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 muchalka 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 setting 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 by 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 *Mahasingavastha Ayyar v. Gopala Ayyan* 6 M.H.C.R. 239, which may include 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 *Gopalasawmy Mu-delly v. Mukkee Gopalier* 7 M.H.C.E. 312, where the applicability of Section 7 of the Act to suits for rent in a Civil Court was considered, there was in favour of the view adopted by the majority of the Court the strong circumstances 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 under Section 11 of the Act and make certain between the parties the terms of the holding, which terms may previously 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.

19. 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 muchalkas. 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, etc.'

20. 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 Zillah, 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 Sections 17, 29, 40 of Regulation XXVIII and Section 14 of Regulation XXX). The action was not of a summary nature, such as that provided in Section 34 of Regulation XXVIII. There was no corresponding provision for an action for damages against the tenant.

21. By 1822 it was found that the Regulation of 1802 was insufficient for the due protection of the raiyats, 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 raiyats 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 the jurisdiction of the Zillah Court and the Collector, and an appeal to the Judge from the decision of the Collector passed under the Regulation is granted. By Section 2, Collectors were authorized 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 inquiry into the rates of rent and under that section the inquiry is to be conducted by the Collector. 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 muchalka 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 Section 2 of the Regulation of 1822, because it does not appear that any of the suits mentioned in Regulation XXX were summary suits, and because the language used in Section 2 does not positively take away pre-existing jurisdiction. With regard to this latter point there is in favour of the view that the Collector was intended to have exclusive jurisdiction in summary suits the circumstance that, while Section 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 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 under Section 2 of the Regulation of 1822, it is not necessary in my opinion to consider it. In framing the Consolidating Act of 1865, 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.

22. I have already referred to the significant provision made by Section 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.

23. By the question 'whether an ordinary Civil Court has jurisdiction to entertain a suit for acceptance of patta and execution of muchalka,' I understand that it is asked whether the suit provided for in Section 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.