

**(1899) 11 MAD CK 0017**

**Madras High Court**

**Case No:** None

Munisami Naidu

APPELLANT

Vs

Krishna Reddi

RESPONDENT

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**Date of Decision:** Nov. 15, 1899

**Citation:** (1900) ILR (Mad) 474 : (1900) 10 MLJ 258

**Hon'ble Judges:** Subrahmania Aiyar, J; Boddam, J

**Bench:** Full Bench

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### **Judgement**

Boddam, J.

The only important question raised in this appeal depends upon the construction of Sections 9 and 51 of the Rent Recovery

Act (VIII of 1865).

2. The appellant tendered a patta to the respondent on the 17th June 1897, which the respondent on the same day refused to accept." On the 5th

August 1897, the appellant brought this. suit under the Rent Recovery Act to enforce the acceptance of patta., The acting Head Assistant

Collector after varying the patta in some particulars ordered the defendant to accept it holding that the suit was not barred by limitation. On appeal

the District Judge overruled all the objections to the patta except with regard to the rights as to indigo as settled by the acting Head Assistant

Collector, but dismissed the suit on the ground that it was barred having been brought more than 30 days after the respondent's refusal to accept

the patta. He held that the landlord's rights to sue arose upon the tenant's refusal to accept the patta, and that the landlord had only one month

from the date of the refusal to bring his suit. In other words that the cause of action arose eo instanti upon the refusal.

3. Section 9 of the Rent Recovery Act (so far as is material) says, ""when a tenant shall, for one month after demand have refused to accept \* \* \*

patta \* \* \* it shall be lawful for such landholder to proceed by summary suit before the Collector to enforce acceptance of the patta,"" and Section

51 says, ""summary suits under this Act must be brought within "60 days from the date of the cause of action.

4. The question, therefore, is when does the cause of action arise? Is it upon the refusal by the tenant to accept the patta or at any other time, and if

at any other time at what time? This must depend upon the wording of Section 9.

5. I am of opinion that the cause of action does not arise upon the tenant's refusal eo instanti. In order to place that interpretation upon the section,

it would be necessary to strike out the word ""for one month after demand"" and read the section without them. This cannot be done Effect must be

given to the whole of the section, for unless it were intended that these words should have some effect they would not have been inserted. Neither

can it be read as meaning anything different to what it says. The words are perfectly clear and unambiguous and must be construed as meaning

what they say. They say that a landlord may proceed by summary suit if the tenant shall have refused for one month after demand. The landlord,

therefore, is not entitled to proceed by summary suit until the tenant has, refused and until a month has elapsed from the date of demand made by

the landlord. He has no cause of action by summary suit until a month after his demand has been made, no matter, when the tenant refused to

accept a patta.

6. The object of the section is to give the tenant a locus penitentie. It gives him a clear month from the date of the demand to determine whether

or not he will accept the patta, and even if he did, on demand being made refuse to accept the patta, the landlord is not allowed to proceed against

him by summary suit until he has had any opportunity of re-considering the matter, and if he should think fit to do so, of changing his mind. The

cause of action does not arise until that period has elapsed, and the landlord then must bring his suit within 30 days.

7. The decision in Papamma v. Subbanna was to this effect and, I think, is right. The case was not decided until after judgment appealed from.

8. I would, therefore, allow this appeal and reverse the decree of the District Judge except in so far as it relates to indigo, and remand the appeal

for disposal of the objections of the tenants raised in the appeals other than those relating to indigo with reference to the observation of the High

Court in Second Appeal No. 201 of 1398. Costs in the Lower Appellate Court and in this Court will be provided for in the revised decree.

Subrahmania Aiyar, J.

9. The question raised in this case is not altogether free from difficulty. The language of Section 9 of the Rent Recovery Act, on the proper

construction of which the point turns is, however, somewhat peculiar and seems to require us to hold that a landholder is not at liberty to sue a

tenant to compel the latter to accept a patta until 30 days from the date of the tender of the patta have expired, even where the tenant has at time

of the tender expressed his unwillingness to accept the patta. If that was not the intention of the legislature, it is not easy to see why the words when

a tenant shall for one month after demand have refused to accept"" were introduced in the section. If, as suggested for the respondent, the

legislature meant to lay down that a landholder is entitled to bring a suit to enforce the acceptance of a patta as soon as the tenant communicated

his unwillingness to take the patta and when he does not do so, on the expiry of a month from the date of the tender, there was nothing to prevent

such meaning being made plain.

10. I, therefore, concur in the order proposed by my learned colleague.