Privy Council Appeal No. 38 of 1920.

Sri Chidambara Sivaprakasa Pandara Sannadhigal - - - *Appellant*

v.

Veerama Reddi *alias* Mooka Reddi - - - - - *Respondent*

Same - - - - - - - - *Appellant*

v.

Rangasami Reddi and another - - - - - *Respondents*

Same - - - - - - - - *Appellant*

v.

Sinnu Goundan and others - - - - - - *Respondents*

Same - - - - - - - - *Appellant*

v.

Karuppalagi Goundan - - - - - - *Respondent*

Same - - - - - - - - *Appellant*

v.

Karuman *alias* Mari - - - - - - *Respondent*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH MAY, 1922.

Present at the Hearing:

VISCOUNT CAVE.
LORD SHAW.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

These several consolidated appeals arise out of five suits brought by the plaintiff on the 27th July, 1904, in the Court of the District Munsif of Kulitalai in the Madras Presidency, in his capacity of head of a Mutt, to eject the defendants from the lands in

their occupation in the Village of Karappudayanpatti, which he alleged belonged to his Mutt. The defendants in the suit are cultivating tenants holding separate lands unconnected with each other. Accordingly, separate suits were brought against them.

The plaintiff's case is that in the year 1743 the Polygar of Turayur, who owned the estate within which the village is situated, granted to the head of the Mutt at the time the village in question ; and that since then the successive holders of the office have been in possession and enjoyment not only of the right to the receipt of the dues payable by the tenants to the landlord, usually called in the Madras Presidency the *melavaram*, but also of the right to the actual occupancy of the lands technically called the *kudiwaram*.

The five suits that were brought in the Munsif's Court were numbered 676, 677, 720, 721 and 722 of 1904. In suit No. 676 the plaintiff alleged that the particular tenant, for whose ejectment he was suing, held the land in dispute under a *muchilika* executed by the defendant's predecessor on the 18th June, 1880, by which he bound himself to surrender the land in his occupation on failure to pay rent. In suit No. 720 the plaintiff's action related to two items of land, in respect of which he alleged that the defendant's father had executed two *muchilikas* on the 19th April, 1894, and the 2nd June, 1894, respectively. With regard to suits 721 and 722, the plaintiff's suit rests on his general allegation that as under the grant he is entitled to both the rights he claimed in the land—viz., the right to receive the rent as well as the right to occupy the lands—he was entitled to eject the defendants, who were tenants at will. In suit No. 722 he appears to have also set up an oral lease. In suit No. 677 the plaintiff relied upon a *muchilika* executed on the 24th July, 1893, by the defendant's brother.

The defendants in all the cases denied the right of the plaintiff to eject them from the lands in their occupation and under their cultivation ; they alleged that he was only entitled to the *melavaram* and not to the *kudiwaram*, and that they and their predecessors had held their lands from times immemorial and possessed and exercised the full rights of occupancy tenants to the knowledge of, and with the acquiescence of, the plaintiff and his predecessors. They further charged that the *muchilikas* produced and relied upon by the plaintiff were fabricated documents concocted for the purpose of destroying their old and hereditary right in the lands in their occupation.

Upon these allegations the parties went to trial. The District Munsif framed two principal issues, which were common to all the cases, viz. :—

(1) Whether the plaintiff is entitled to the plaint land [that is, the land in suit] itself or only to the tirwa (rent) thereon ?

(2) Is the defendant entitled to the occupancy right in the land by custom and prescription ?

The other issues related to the genuineness of the *muchilikas* and to the amount of rent, &c.

The first two issues being common to all the suits, by consent of parties the five actions were tried together, and, as the trial Judge states at the beginning of his judgment, the whole evidence was adduced in suit No. 676, and was "used as evidence in all the connected suits."

The Inam grant on which the plaintiff's claim rests is Exhibit "A." After reciting by whom and to whom the gift is made, the document proceeds thus :—

> "The village gifted to our Swami out of our several villages is Karappudayanpatti, to the north of Uppiliyapuram, east of Vayirichettipalayam, south of Kottapatti and west of Sokkapuram. As we have gifted it most willingly to the Swami, you shall for ever have dominion over and enjoy the wet and dry lands, tope, well, betel garden, &c., water, tree, stone, treasurers, &c., found therein and live happily. Further, what we command to be done for the Gurupooja day is this. We command that Gurupooja shall be conducted by collecting at the rate of 4 measures of grain per plough in respect of *Agraharam*, *Sarvamaniyam*, *Umbalam*, &c., including wet and dry lands in the whole of our Turaiyur State. You shall accordingly conduct Gurupooja every year and shall not omit to collect at the rate of 4 measures of grain in respect of dry and wet lands also in the whole of Turaiyur State. You shall enjoy the whole of Karuppudayanpatti Village. Further, you shall, as ordered by our predecessors, receive always *Mahamai* and allowance of rice and money for extra expenses. The Audeenam shall, in continuous succession, have dominion over and enjoy for ever, the village, Gurupooja kattalai, rice allowance, &c. He who helps this charity by thought, word or deed, will be blessed with happiness and live long in the same manner as one who establishes temple of several crores of *Sivalingams* in such holy places as Benares, Chidambaram, Tiruvalur, Arunachelam, Srikalahasti, Conjee, Kalugugundram, Kumbakonam, Rameswaram, &c."

The grant was recognized by the Inam authorities in 1865. But the Inam proceedings furnish no indication regarding the extent of the rights covered by it. Both sides in support of their respective contentions produced a mass of evidence, which the District Munsif, in a singularly well-balanced and exhaustive judgment, has analyzed with great industry. He held on the evidence that the defendants had proved they had been in occupation of their respective lands from very early times, and had been dealing with them as lands in which they had full occupancy rights, that they had been selling, mortgaging, making improvements, and that when any portion of the same was taken up for public purposes, they had claimed and received compensation from Government. He held further that the plaintiff had utterly failed to show that the defendants had been let into possession by his predecessors or by himself, or to rebut the testimony they had produced in establishment of their right of occupancy. His main judgment is in suit No. 676. He also found that the documents the plaintiff had produced in support of his claim, together with the *muchilikas* on which he relied in the three cases, had been fabricated with the object of destroying the tenants' right in their lands. He accordingly dismissed the five suits save and except as regards certain claims for rent.

The plaintiff appealed to the District Court of Trichinopoly against the District Munsif's decrees, and these appeals were numbered as follows :—

Appeal 39 of 1908 (suit No. 676) ;
Appeal 41 of 1908 (suit No. 720) ;
Appeal 42 of 1908 (suit No. 721) ;
Appeal 43 of 1908 (suit No. 722) ;
Appeal 40 of 1908 (suit No. 677).

It is necessary to give the numbers of the appeals as well as of the suits, in view of the complication that enters into the determination of the cases owing to the course the proceedings took in the subsequent stages.

In appeal No. 39 (suit No. 676) the officiating District Judge, Mr. Thornton, dismissed the appeal on the ground "that he did not consider the plaintiff had established he was entitled to both the *warams* in all the cultivated lands in the village, nor had he proved the terms of their tenancy." In appeal No. 40 (suit No. 677), in which the plaintiff had put forward a *muchilika* numbered in the Munsif's Court as Exhibit "O," the District Judge set aside the decree, and in reversal of the Munsiff's order made a decree in favour of the plaintiff for ejectment of the tenant. In appeal No. 41 (suit 720) he agreed with the Munsif as to item covered by *muchilika* "O 1," and accordingly dismissed the plaintiff's appeal with respect to that item, but he differed from the Munsif as to the item covered by *muchilika* "O 2," and accordingly decreed ejectment in respect thereof. In appeals Nos. 42 and 43 (suits Nos. 721 and 722) he affirmed the Munsif's decrees.

Both parties appealed to the High Court against the decrees, which operated severally against them. By the time the appeals reached the High Court, the Madras Estates Land Act (I. of 1908) had come into force, and accordingly the defendant, against whom a decree for ejectment had been made by the officiating District Judge and who was appellant in second appeal 544 of 1909, filed, on the 27th September, 1910, an additional ground of appeal against his order.

All these second appeals came on for hearing before the High Court on the 14th August, 1911, but in view of the provisions of Section 6 of Act I of 1908 and the contentions of the parties, the learned Judges considered it necessary to obtain from the officiating District Judge a finding on the following point :—

"Whether the grant to the plaintiff was of the land revenue or of the *kudivaram* also ? Opinions have no doubt been expressed in the judgments of the Lower Courts on the point, but the question was never tried with reference to Section 6 of the Madras Estates Land Act."

Section 6 will be referred to later on.

The cases accordingly went back to the officiating District Judge, who returned the appeals to the High Court with the following "finding":—

"But it seems to me that, seeing that Exhibit 'A' purports to grant all the land in the village absolutely to the plaintiff's predecessor-in-title, and that the plaintiff is admittedly entitled to both *warams* in 70 *cawnies* while there are no tenants on 77 of the remaining 185 *cawnies* in the village, the burden lies on the defendants to show that their predecessors-in-title were cultivating tenants at the time of the grant (*see also* the case reported at page 639 Madras Weekly Notes, 1910), and that in the absence of proof of this, there can be no presumption that there were any cultivating tenants in the village at the date of the grant, or that the Zamindar was not the owner of both *warams* in the land comprised in the grant. My finding on the issue sent down with reference to Section 6 of the Madras Estates Land Act therefore is that the grant to the plaintiff was an absolute grant of all the land in the village, and was not a grant of the land revenue alone to a person not owning the *kudiwaram* thereof."

On the return of this "finding" to the High Court, the learned Judges considered it neither satisfactory nor sufficient. They express their views in the following terms:—

"The learned District Judge has not, so far as it appears to us, considered all this mass of evidence, and he seems to have based his conclusion on the language of Exhibit 'A' and on certain presumption which, according to him, arises from the facts that the plaintiff is admittedly entitled to both *warams* in 70 *cawnies* of land in the village and that about 77 other *cawnies* are waste. He throws the burden on the defendants to prove that their predecessors-in-title were cultivating tenants at the time of the grant. We are not disposed to express any opinion on the question of presumptions, because, as a matter of fact, there is considerable evidence upon which the points in issue can be decided one way or the other. But we wish to point out that there is no burden on the defendants to show that their predecessors-in-title were cultivating tenants at the time of the grant. If they succeed in showing that at the time of the grant the land was in the occupation of cultivating tenants, that might be sufficient to raise a presumption in their favour. We would therefore ask the District Judge to return a fresh finding, on the issue remitted to him, and he will also return a finding on the second issue in the case, namely, "Is the defendant entitled to the occupancy right in the land by custom or by prescription?""

The officiating District Judge does not appear to have applied his mind to the determination of the question involved in the second issue. It was now expressly and clearly brought to his notice.

On the return of the cases to the officiating District Judge, that officer, even with the fresh evidence the plaintiff was allowed to produce, found himself unable to come to any definite conclusion. The end of his judgment shows that he was not clear at all in his mind as to the conclusion to be derived from the evidence, and he expressed his difficulty in the following words:—

"I do not see therefore how it is possible to say whether the grant to the plaintiff was of land revenue or of *kudiwaram* also."

With these remarks the appeals were re-submitted to the High Court.

Upon the return of the appeals to the High Court the learned Judges again found that neither had the evidence been properly considered, nor had the issue to which the attention of the officiating District Judge had been expressly called been determined; and they expressed their view as follows:—

"We are not disposed to express any opinion on the question of presumption *because as a matter of fact there is considerable evidence upon which the issue can be decided one way or the other.*

"The finding again submitted by the District Judge after this remand order does not at all show that the District Judge addressed himself seriously to a consideration of the mass of evidence considered by the District Munsif. The Judge says he is 'in a position of some difficulty,' and in a short paragraph (paragraph 3 of the finding paper) says that it is not possible to say one way or the other on that point. We are unable to accept the findings and we request the present District Judge to submit fresh findings on the two issues mentioned in the second remand order after detailed consideration of the evidence and with reference to the above remarks, irrespective of the question of onus and presumption."

The case had accordingly to be remitted once more to the District Court for a proper finding. By that time the permanent incumbent of the office, Mr. Harding, seems to have resumed work. He considered the case on the evidence irrespective of any presumption, and on the 30th September, 1914, embodied his conclusions into definite findings of fact as required by the High Court. He found on the evidence, in agreement with the District Munsif, that the defendant tenants had been in occupation of the lands for a very long time, that they had been dealing with their holdings and the lands in their occupation as tenants entitled to occupancy rights, that they had been transferring their holdings, partitioning the same among themselves, making improvements on the land, receiving compensation for land taken up from their holdings by Government; and that the plaintiff had not only utterly failed to rebut the inference arising from those facts, but had fabricated the documents with which he came to support his claim. He accordingly returned the appeals with the finding as follows:—

"11. It is unnecessary to say more. A Zamindar could only gift the *melwaram* of occupied and both *warams* of unoccupied lands, and we find in actual fact that the holdings and dealings have been as they must be if that supposition is correct. From 1829 onwards, the ryots or tenants in many cases have partitioned their properties or sold them to Government or to one another, and plaintiff has accepted these things from 1870 onwards at any rate. Plaintiff now holds *kudiwaram* rights in many lands not by his grant but by some subsequent acquisitions. But he never held it in suit lands which are neither *pannai* nor waste, and in 1901 he was found by the Deputy Collector to be illegally taking possession of lands and this was upheld by the High Court. He is no doubt trying to get the *kudivaram* of the whole village, but his claim thereto is entirely baseless.

"I find that the grant was of the *melwaram* only of occupied lands and of both *warams* of unoccupied lands. Defendants or their predecessors have always had the occupancy rights in their holdings, and were not affected by the gift from the Zamindar to the Inamdar."

The learned Judges of the High Court, upon the return of the above finding, held as follows :—

"It must be conceded in favour of the plaintiff that we expected the learned District Judge to discuss the evidence at somewhat greater length than he has done, we having indicated in our remand order that the District Munsif had devoted about 85 paragraphs to the consideration of that evidence, and that we required to be reasonably satisfied that the conclusions of the learned District Judge are arrived at after a careful consideration of the whole evidence.

"But we do not think that we are entitled to hold that full consideration has not been bestowed by the District Judge on the whole evidence before he arrived at the findings now submitted by him, and we therefore accept the same.

"The result is that second appeals Nos. 515 to 518 will stand dismissed with costs, while second appeal No. 544 of 1909 will be allowed with costs in this and in the lower Appellate Court."

From these decrees the plaintiff has now appealed to His Majesty in Council, and it is contended on his behalf that the High Court acted without jurisdiction in remitting the appeals to the District Judge for a proper finding. The argument proceeds on the same misapprehension of the law, as was pointed out by the Board in the case of *Seturatnam Aiyar* v. *Venkatachala Gounden*.* It is to be observed that the Indian legislature, in its anxiety to prevent the High Court from being inundated with second appeals in trifling matters, has provided in Section 100 of the Civil Procedure Code that such appeals shall lie to the High Court only on the following grounds :—

"(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely :—

"(*a*) the decision being contrary to law or to some usage having the force of law.

"(*b*) the decision having failed to determine some material issue of law or usage having the force of law.

"(*c*) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

At the same time, in order to avoid gross miscarriage of justice resulting from the omission by the lower Appellate Court to determine any issue of fact or to come to a definite conclusion on a set of facts, it has made two distinct provisions. By Section 103 the High Court itself is vested with the power when the evidence on the record is sufficient, to determine any issue of fact necessary for the disposal of the appeal, but not determined by the lower Appellate Court.

By Rule 25, Order XLI, it is further provided :—

"Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears

* L.R. 47, I.A. 76.

to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

"And such Court shall proceed to try such issues and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor."

The High Court had thus the power of determining the issue left undetermined by the officiating District Judge on the evidence on the record, or of remitting the case to the lower Court for a finding on that issue, with liberty to the parties to adduce additional evidence if they chose to do so. The learned Judges of the High Court chose the latter, which, under the law, was fully within their competence. The case was remitted three times because the officiating District Judge in the first instance misunderstood the order of the High Court, and in the second instance expressed himself as unable to come to a definite conclusion. The High Court did not in the present case, as in *Seturatnam Aiyar* v. *Venkatachala Goundan*, remand it under Order XLI, Rule 23, of the Civil Procedure Code, but under Rule 25. The remarks that follow in the judgment in *Seturatnam Aiyar's* case explain the reason why the remand in that case, as in the present, became necessary. "In the opinion of the learned Judges of the High Court," say their Lordships, "the District Judge had omitted to determine a question of fact which appeared to them essential to the right decision of the suit on the merits; he had failed to consider whether, apart from the particular contract to which his attention was exclusively directed, there was evidence on which to hold that from their inception the holdings of the defendants were permanent or in the nature of occupancy rights."

As already observed, the Madras Act I of 1908 had come into force on the 1st July of that year, whilst the appeals in these cases were pending before the High Court. In view of the plaintiff's contentions, which have travelled over a wide range, and also of the question relating to the grant, it becomes necessary to examine briefly the provisions of the statute. The preamble states the object of the enactment in the following words:—

"Whereas it is expedient to amend and declare the law relating to the holding of land in estates in the Presidency of Madras; It is hereby enacted as follows, &c.:"

Clause *d* in Section 3 defines the expression "estate" in the Act to mean—

"Any village of which the land revenue alone has been granted in Inam to a person not owning the *kudivaram* thereof provided that the grant has been made confirmed or recognized by the British Government or any separate part of such village."

Section 3 gives a definition of the words "private land" as meaning the "domain or home-farm land" [expressions borrowed

from English law] of a landholder by whatever designation known, such as *kambatcam, khas, sir* or *pannai*. It defines the words "ryot" and "occupancy ryot," and declares "ryoti land" to mean "cultivatable land in an estate other than private land." This definition includes other varieties of land to which no specific reference is necessary.

It also defines "old waste" as meaning any land in the estate which, not being private land,

"(1) has as the time of letting by the landholder been owned and possessed by him or his predecessors in title for a continuous period of not less than ten years and has continuously remained uncultivated during the time, such period being either after or partly before and partly after the passing of this Act, or within twenty years before the passing of this Act, or

"(2) has at the time of any letting by the landholder after the passing of this Act remained without any occupancy rights, being held therein at any time within a continuous period of not less than ten years immediately prior to such letting."

Section 8 deals with what is called "the merger of occupancy right." It declares :—

"(1) Whenever before or after the commencement of this Act the entire interests of the landholder and the occupancy ryot in any land in the holding have become united by transfer, succession or otherwise in the same person, such person shall have no right to hold the land as a ryot but shall hold it as a landholder ; but nothing in this sub-section shall prejudicially affect the rights of any third person."

And Clause (3) provides :—

"The merger of the occupancy right under sub-sections (1) and (2) shall not have the effect of converting ryoti land into private land."

Section 10, Clause 1, declares that "all rights of occupancy shall be heritable, and shall be transferable by sale, gift or otherwise."

Clause 2 provides :—

"If a ryot dies intestate in respect of a right of occupancy and without leaving any heirs except the Crown, his right of occupancy shall be extinguished, but the land in respect of which he had such right of occupancy shall not cease to be ryoti land."

Section 13 declares the right of the occupancy ryot to make improvements on the land in his occupation or "in respect of his holding."

Coming now to Section 6, Clause 1, it runs thus :—

"Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land not being old waste situated in the estate of such landholder shall have a permanent right of occupancy in his holding ; but nothing contained in this sub-section shall affect any permanent right of occupancy that may have been acquired in land which was old waste before the commencement of this Act."

Chapter XII of the Act deals with the landlord's private land. Section 181 provides that nothing in the previous sections will confer a right of occupancy in the landlord's "private lands," but that nothing in that section shall prevent a landholder from

converting his private land into ryoti land. Chapter XIV provides that no contract between the landlord and a ryot shall take away the right of an occupancy ryot, or limit his right to use the land as provided by law.

In declaring the rights of the occupancy ryots and emphasizing the distinction between the landlord's "private lands" and "the ryoti" lands, the new Act affirmed the old customary law that had always been recognized by the British administration. Apart from rules relating to procedure and the jurisdiction of the Revenue Courts, it created one new right in order to settle the constant disputes between landlords and tenants which had been going on for nearly a century; it gave occupancy rights to all ryots in occupation of lands within an "estate" at the time of the passing of the Act. It also gave some security to non-occupancy ryots in the enjoyment of their lands. In other respects, generally speaking, it declared and gave statutory recognition to existing rights and status. One important feature of the Act is worthy of note: it throws into relief the component parts which, from immemorial times, go to constitute a village; *first*, the lands in the direct cultivation of the proprietor (called by various names); *second*, lands occupied by tenants or ryots; and *third*, old waste lands over which by custom the landlord possessed certain specific rights now crystallized in the statute. These remarks do not apply to ryotwari tracts in the direct possession of Government which are let out to *mirasidari* or hereditary ryots for purposes of cultivation.

The existence in a village of *pannai* lands in which the tenant cannot acquire occupancy rights except by contract, connote the existence of lands in which he can acquire such rights by prescription.

In the present case the grant itself does not convey in express terms the *kudivaram* to the grantee. Nor does the term Inam, an Arabic word meaning "a reward," give any indication of the intention of the donor, even if he had the right to bestow it on the donee. *Prima facie* a zemindar or polygar is a rent-receiver; or, to use the language of Section 4 of Act I of 1908, he has the right to collect the rent from his tenants. *Prima facie,* his right of direct possession of the lands is confined to his "private lands" and the old waste land; it does not extend to "ryoti land."

The place of the cultivating ryots in the agricultural economy of Southern India is thus described in a Proceeding of the Board of Revenue of Fort St. George (Madras), dated 5th January, 1818.*

"The universally distinguishing character, as well as the chief privilege of this class of people, is their exclusive right to the hereditary possession and usufruct of the soil, so long as they render a certain portion of the produce of the land, in kind or money, as public revenue; and whether rendered in service, in money, or in kind, and whether paid to rajahs, jageerdars, zemindars, polygars, motahdars, shrotriemdars, inamdars or Government officers, such as tahsildars, amildars, aumeens, or

* MS. copy of the India Office.

tanadars, the payments which have always been made by the ryot are universally termed and considered the dues of the Government."

It has been urged on behalf of the plaintiff that the onus was wrongly placed upon him, and in support of this contention the judgments of this Board, in *Suryanarayana and others* v. *Patanna and others* (L.R. 45, I.A. 209), and in *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu and others* (L.R. 46, I.A. 123), were relied upon.

In the first case the grant appears to have been made somewhere in the fourteenth century of the Christian era, and it was conclusively proved, on behalf of the plaintiff, in that suit, that he and his predecessors had since then been in actual occupation of the lands, extending over centuries ; they had further produced documents showing they had been actually cultivating the land. It was also established from the Inam Register that the grant not only included the revenue but also the soil. The Munsif had found on these facts in favour of the plaintiff, but his judgment was reversed by the District Judge, whose decree was affirmed on second appeal by the High Court. The Board upon a review of the facts established in the case declared that it could not under the above circumstances be assumed that the grant was only a grant of the king's share in the produce of the soil, and did not include the *kudivaram*. It was a presumption which was certainly not warranted by the facts of the case.

In the subsequent case of *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu and others* it was again found upon the evidence that the grant included the *kudivaram*. Their Lordships say in their judgment delivered by Viscount Cave :—

> " There is not in any of the documents above referred to any trace of a claim by any person other than the inamdar to a permanent right of occupancy ; and the fact that by the terms of the grant the grantee is desired to cultivate the lands, and that he is referred to as residing in the village, tend to show that no such right existed in any other person."
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> * * * * * * *
>
> " And when the subsequent history of the estate comes to be examined, it is found to be wholly inconsistent with the existence of any permanent occupancy rights. Tenancies have been continually granted by the inamdars for short periods and at variable rents. When tenancy lands were compulsorily acquired by Government and compensation was paid to the agrahamdar, no claim to compensation was put forward by the tenants. In the year 1904 all the tenants formally relinquished their lands to the plaintiff and put them in his possession, and from that date until tenancies were granted in the year 1907 the property remained vacant."

In view of those facts the Board overruled the objection that the civil Court had no jurisdiction to entertain the suit, and that under the provisions of Section 189 of the Act the Revenue Courts only had the power to deal with the matter. In dealing with the judgments of the District Judge and of the High Court, their Lordships observed that the two Appellate Courts in India had acted on a supposed presumption of law, that

an Inam grant of a village, particularly if made to a Brahman, is *prima facie* a grant of the *melavaram* right only and does not include the *kudiwaram*, and they pointed out that in the previous case, already referred to,* it was held that no such presumption exists. And then they add :—

> "Each case must therefore be considered on its own facts; and in order to ascertain the effect of the grant in the present case, resort must be had to the terms of the grant itself and to the whole circumstances as far as they can now be ascertained."

The question came up again for consideration before the Board in the subsequent case of *Seturatnam Aiyar* v. *Venkatachala Gounden*, to which reference has been made before. That was a suit for ejectment by a mirasidar against the tenants in occupation of the lands in a village granted to him many years ago. As already observed, the mirasidar is himself a cultivating ryot, and the land which is granted to him is for purposes of cultivation in a ryotwari tract. The defendants contested the claim for ejectment, and alleged that they possessed occupancy rights. A considerable body of evidence was produced on both sides. The District Munsif dismissed the suits, holding that the defendants had established their prescriptive occupancy rights in the lands in their occupation and under their cultivation. The Munsif found that the plaintiff's claim to eject the defendants from the lands in actual cultivation was "barred," but decreed the claim in respect of the pasture land. The decree of the District Munsif was set aside by the District Judge, as he considered the question for consideration in the case was "whether the defendants had shown that the plaintiff or his predecessor-in-title had contracted the right of tenancy should be changed into a right of permanent occupancy." And his conclusion was that "in those circumstances I think it clear that the defendants have not established any contract on the part of the plaintiff or his predecessor-in-title to convey to them a right of permanent occupancy," and he had accordingly decreed the plaintiff's claim for possession of the suit lands.

On the appeal of the defendants, the High Court set aside the decision of the District Judge and remitted the case for a finding on the real point involved in the determination of the case. The learned Judges considered that the question which the District Judge had to consider was whether "on the admitted and undoubted facts of the cases, and the evidence on both sides, the defendants held the lands in their possession as tenants from year to year or as persons having a right of permanent occupancy."

On the return of his finding the learned Judges of the High Court found that he had omitted to consider the question that had been remitted to him. The following remarks are pertinent to the present case. The learned Judges observed :—

> "The District Judge in his order submitting his findings had, notwithstanding the caution given by the High Court, again assumed that the defendants' original right was that of tenants from year to year, and that

* L.R. 45 I.A.

it lay on them to prove an express or implied contract by which the right of tenancy from year to year was changed into a right of permanent occupancy."

Without, however, remitting the matter for a proper finding, the High Court proceeded themselves to determine, upon the evidence on the record, the issue. To use the words of Sir Lawrence Jenkins, who delivered the judgment of the Board :—

"If and so far as this was an issue of fact—a point on which it is not necessary to express a definite opinion in the circumstances of this case—the Court had power to deal with it under s. 103 of the Civil Procedure Code, 1908."

The conclusion of the High Court was that the defendants had established occupancy rights in the land they held ; and this Board affirmed its decree.

It will be noticed that neither in the case of *Suryanarayana and others* v. *Patanna and others*, nor in *Seturatnam Aiyar and others* v. *Venkatachala Gounden and others*, is there a suggestion of a presumption in favour of the inamdar or pattadar on the one side or of the ryot on the other. It was further distinctly pointed out in *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu and others* that—

"Each case must, therefore, be considered on its own facts ; and in order to ascertain the effect of the grant in the present case [that is the case with which the Board was dealing] resort must be had to the terms of the grant itself and to the whole circumstances so far as they can now be ascertained."

A Full Bench of the Madras High Court, however, has in a recent case (*Muthu Goundan* v. *Perumal Iyen* (L.R. 44 Mad. 588)) held that underlying the exposition of their Lordships such an initial presumption is to be inferred. Their Lordships cannot help observing that in drawing this inference the learned Judges are clearly in error. Each case must be dealt with upon its own facts, with special regard to the evidence and circumstances therein.

When the entire evidence on both sides is once before the Court the debate as to onus is purely academical. On this point they desire to associate themselves with the observation of the Board in *Seturatnam Aiyar and others* v. *Venkatachala Gounden and others* : "The controversy had passed the stage at which discussion as to the burden of proof was pertinent ; the relevant facts were before the Court, and all that remained for decision was what inference should be drawn from them."

Dealing now with the facts of the present case, there is first the grant in favour of the plaintiff-appellant, the terms of which have already been set out. It does not in express terms grant to the inamdar both rights, *melavaram* and *kudivaram*. It speaks of other villages held by the grantor which it might be inferred from the document were occupied by tenants, nor does it expressly say that only the *melavaram* right

was granted to the donee. The defendants contended that they had been from time immemorial in possession of their holdings. They alleged they had been transferring their holdings, whole or in part, from time to time; that the lands had descended to their heirs in succession, and the descendants of the transferees were in possession; that they had partitioned the holdings amongst themselves; that they had made improvements, sunk wells and erected buildings thereon for husbandry and dwelling purposes, and had received compensation when any portion of their holdings were taken by Government for public purposes. Under these circumstances it became essential to have the evidence on both sides in support of the propositions they advanced, and to draw therefrom the right inference. Both sides, as already stated, produced a volume of evidence. The District Munsif considered it in the most exhaustive manner. He found that the village that had been granted to the plaintiff covered three classes of lands; one was in his own possession and cultivation, another was waste or pasturage, and the third was in the occupation of tenants. He found also that the plaintiff had for a number of years been fabricating evidence to defeat the rights of the tenants, and had in the course of the trial suppressed material evidence. He found, further, that the defendants had fully established their contentions that they had been in possession and occupation from before 1829 at least; they had dealt with those lands as occupancy ryots, partitioning their holdings, transferring and mortgaging them with the knowledge and acquiescence of the plaintiff and his agents; and that they had, in fact, received compensation for lands taken up by Government for part of their holding which had been acquired for public purposes. From these facts and circumstances he drew the inference that the defendants had fully established their prescriptive rights of occupancy, and accordingly dismissed the suits by the plaintiff. His conclusion amounts to this, that, assuming that the onus was on the defendants, they had fully discharged it.

The officiating Judge, Mr. Thornton, on appeal was apparently bewildered by the volume of decided cases, often inconsistent with each other, of his own High Court, and, therefore, unable to come to a definite conclusion on the facts as established by evidence; he accordingly dealt with the appeals, principally on the basis of onus and presumption.

A part of his judgment in suit No. 676 (Appeal No. 139 of 1908), throws light on some of the salient facts of the case:—

"9. I do not think the mere circumstance that the plaintiff admittedly enjoys both *warams* in the whole of the wet land considering the very small proportion this bears to land under cultivation in the village, is by any means a conclusive argument in his favour. A proprietor almost invariably has some *pannai* land, and there is no reason why in the case of the plaint village the wet land granted to the plaint *Mutt* should have not been the Zemindar's *pannai* at the time of the grant. The village consists of 255 *cawnies*, of which 22 *cawnies* are *poramboke* and 55 *cawnies* waste, and even including

the land for which *machilikas* have been executed on the terms of a year to year tenancy, the plaintiff is not shown to have both *warams* in more than about 70 *cawnies* of the cultivable lands. As the District Munsif points out, the plaintiff's predecessor-in-title cannot have obtained greater rights from the Zemindar in respect of the tenants who were in possession at the time of the copper-plate grant than he enjoyed himself, and it is not suggested the Turayur Zemindar owned both *warams* in other villages in his *zemin*, nor is there anything to show that he was entitled to greater rights in the plaint village than in other villages. Nor can the existence of *muchilikas* for about 16 *cawnies*, of which 4 *cawnies* are described in the plaintiff's *adangal* (Exhibit VII) as *Mattam Sontham*, offer any evidence as to plaintiff's rights in other lands in the village. The *muchilikas*, Exhibit N series, are almost all dated after 1893, and little value can attach to documents which came into existence long after the dispute about occupancy right had arisen.

"10. I do not think the defendants can properly be described as *purakkudis*, as contemplated in XI Madras page 77, for both in the present case and in the connected cases, with the exception of the tenant who cultivates the land included in the registers of Uppiliapuram village, the tenants are all residents of the neighbouring village of Koppampatti, of which the plaint village is shown to form part in the Settlement Register of 1896 (Exhibit XXI). Again, though the rates of rent may be higher in the plaint village than in neighbouring villages, now it is clear from Exhibit B (1)—the Inam Register of 1864—that the rates were fixed at the average rate prevailing in the neighbouring villages, and I agree with the District Munsif in thinking plaintiff can derive but little support from Exhibits E, J, and H. Lastly, with regard to the land taken up by Government for the road: though the plaintiff received the full value of 96 *kulis* under Exhibit K, it is doubtful whether Exhibit K (1), which comprises the much large extent of 2 acres 78 *kulis*, relates to both *warams*. The recital in the document is that compensation is settled at Rs. 100 on account of income and *tirwa* lost to the plaintiff, and it is suggested by the plaintiff's vakil that the expression income and *tirwa* should be construed to mean both the *Kudivaram* and *Melvaram*. But I see no reason why this should not have been more definitely expressed had it been intended to award compensation for both *warams*, and the expressions used may, as urged by the defendant's vakil, be construed with equal fairness to mean that compensation was paid only for the *Melvaram*. I do not consider the plaintiff has established he is entitled to both *warams* in all the cultivated lands in the village, and as he has not proved what the terms of the tenancy are under which the defendants have cultivated the plaint land, I dismiss the appeal with costs throughout."

In his consideration of the Exhibits O 1, O 2 and O 3, which he, differing from the Munsif, considered to be genuine, he gave little attention to the reasons the lower Court had assigned for considering them to be fabricated. In these circumstances the High Court deemed it necessary to call upon the officiating District Judge to record another finding on the evidence. The case had to go back twice for the purpose, and in the result Mr. Thornton expressed himself unable to come to any definite conclusion. The High Court were compelled to send down the case again, and it was then taken up by the permanent incumbent, who came to a definite conclusion upon the evidence of the record, and that finding has been affirmed by the High Court.

The case has now been before three Courts in India, and all the Courts have come to the conclusion upon a full consideration of the evidence and all the circumstances that the plaintiff

does not possess the *kudivaram* which he claimed against the defendants, in respect of the lands in their occupation. The defendants have shown conclusively how they have been dealing with the property for at least a hundred years. They have also shown (and the Munsif has dealt with the subject most exhaustively) that they had received compensation from the Government for lands taken out of their holdings for public purposes. The plaintiff's evidence has been found to be mostly false or fabricated. In this view of the case their Lordships do not consider it necessary to express any opinion as to whether Act I of 1908 applied to rights in litigation at the time of the passing of the Act. The defendants clearly acquired their occupancy rights by prescription long before the statute came into force.

Under these circumstances their Lordships think that the conclusion of the High Court is correct, and that these consolidated appeals should be dismissed. In accordance with the terms under which special leave to appeal was granted, the appellant will pay the respondents' costs as between solicitor and client. Their Lordships will therefore humbly advise His Majesty accordingly.

In the Privy Council.

SRI CHIDAMBARA SIVAPRAKASA PANDARA SANNADHIGAL

v.

VEERAMA REDDI *alias* MOOKA REDDI.

SAME

v.

RANGASAMI REDDI AND ANOTHER.

SAME

v.

SINNU GOUNDAN AND OTHERS.

SAME

v.

KARUPPALAGI GOUNDAN.

SAME

v.

KARUMAN *alias* MARI.

(*Consolidated Appeals.*)

DELIVERED BY MR. AMEER ALI.

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