

(1916) 12 MAD CK 0018
In the Madras High Court

A. S. N. Naina Pillai Marakayar

APPELLANT

Vs

T. A. R A. R. M. Ramanathan Chettiar and Others

Gopala Thevan and Another Vs Ramanathan Chettiar
and Others
Pazanithevan and Others Vs Ramanathan
Chettiar and Others

RESPONDENT

Date of Decision : 22-12-1916

Acts Referred:

Citation : 41 Ind. Cas. 788

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Division Bench

Judgement

Sadasiva Aiyar, J.—These three appeals have arisen out of three suits brought, by the same plaintiffs. The suits were tried together and were disposed of by the Temporary Judge, District Court of Tanjore in the plaintiff's favour by one and the same judgment—Appeal Suit No. 248 of 1914 was filed directly in the High Court. The other two appeals were filed in the Tanjore District Court and were transferred to this Court to be heard along with Appeal Suit No. 248 of 1914.

2. (2) The suits were brought in ejectment by five of the six trustees of the Manthrapureeswaramswamy temple, the 6th trustee who did not care to join in the suits he being impleaded as one of the defendants in each suit (2nd, 3rd and 5th defendant respectively). He allowed all the three suits to proceed ex parte so far as he was concerned.

3. (3) The plaints and the written statements of the contesting defendants are very similar in all the suits. Thirteen issues are common to the three suits. In one of the suits (Appeal Suit No. 115 of 1915—Original Suit No. 42 of 1913), there is one issue: "Did first defendant execute a lease deed to the trustees in 1899 in respect of plaintiff item 12," which is peculiar to that suit. That issue was found in the affirmative by the lower court and the finding was not contested in the arguments on appeal before us. In the two other suits. (Appeal Suit No. 248 of 1914 and No. 116 of 1915, Original Suits Nos. 40, 41 and 61 of 1913

respectively), there is an issue as to whether improvements have been effected by the contesting defendants and if so, whether the said defendants are entitled to claim compensation for such improvements as a condition precedent to the passing of a decree in plaintiffs' favour in ejectment and, if so, what compensation amounts are due to them. In Original Suit No. 61, the defendants led in no evidence about improvements and the issue was found against them by the lower Court and no argument in the appeal was addressed to us on that question. In the other suit (Original Suit No. 40), the learned Subordinate Judge found (a) that the 1st defendant planted trees at a cost of about Rs. 150, but (b) that there was "no evidence as to when the new trees were planted and on what plots," and (c) that the 1st defendant had, when planting the trees, no bona fide belief that he was entitled to a permanent occupancy right in the lands, he and his father-in-law (who assigned his rights to him) having been speculative alienees from several recalcitrant cultivating tenants of their respective holdings. Section 51 of the Transfer of Property Act gives a right of compensation only to a transferee who bona fide believes himself to be "absolutely entitled" to a property and makes improvements in such belief. Assuming that by analogy even the person who believes himself to have a permanent occupancy right is also similarly entitled to compensation, the question of the 1st defendant's bona fide belief (in Original Suit No. 40) largely depends on the decision of the other important common issues in the three suits. One other peculiar issue in suit No. 61 is: "Does item No. 8 belong to the temple" That was decided by the lower Court in the plaintiffs' favour on the evidence of the plaintiffs' witnesses Nos. 3, 6 and 13 and nothing was urged before us which could induce us to give a different finding on that question.

4. (4) Of the 13 common issues, one is "what is the correct extent of the lands claimed in the plaint?" The correct extents were found by the Commissioner appointed by the lower Court and are set out in paragraph No. 143 of its judgment. The lower Court adopted the Commissioner's report and no question is raised in the appeals before us on that point. Another common issue was the general issue: "To what reliefs are plaintiffs entitled?" and it, therefore, needs no separate treatment. Another issue (7th issue) deals with the question whether proper notices to quit were given to the contesting defendants. The evidence of the plaintiff's 4th and 14th witnesses and the documents Exhibits N and 6 series establish the service of proper notices and the defendants did not venture into the witness-box to deny the receipt of such notices by them. The 9th and 10th issues deal with the question of the rate of rent and the mesne profits claimable by the plaintiffs and the periods for which profits are claimable provided, of course, the contesting defendants are found to have no right of occupancy. The findings of the lower Court on these issues were not attacked before us.

5. (5) Having thus cleared the ground of the subsidiary questions involved in the suits, I shall now proceed with the more important issues, namely, the issues Nos. 1 to 6, 8 and 11. The 1st issue is: "Does the temple own the entire interest (melvaram and kudivaram) in the plaint land? And is the temple entitled to eject

the 1st defendant?" The 2nd, 3rd and 4th issues raise the question whether the right of permanent occupancy belonged to the contesting defendant or defendants, in their respective holdings as transmitted from their predecessors-in-title and even if such a right did not originally vest in their predecessors-in-interest, whether it has been since acquired by prescription or by the limitation bar as against the plaintiffs. The 6th issue is: "Are the trustees of the temple estopped from claiming to eject the 1st defendant for the reasons set forth in the (written) statement?" The 8th issue raises the question "whether the Estates Land Act is applicable to the suit lands and has this Court" (the Civil Court as distinguished from the Revenue Court) "no jurisdiction to entertain the suit." It was conceded by the appellants' learned Vakil that the decision of this issue depends on the answer to the 1st issue. If the plaintiff temple owned the kudivaram right in all the village lands from the beginning, the lands do not fall within the definition of Estate in Section 3 (d) of the Estates Land Act.

(The subsequent acquisition by the tenants and their heirs and assignees by limitation or prescription of an occupancy right which was at the time of the inam grant vested in the inamdar and not in the tenants cannot, of course, oust the jurisdiction of the Civil Courts.)

6. (6) The plaintiffs relied in support of their claim, not only on the ancient Government records C and C 1 but also on the document, Exhibit A. This latter document is a muchilika which was executed in August 1831 by the nine principal Karaigar cultivators of the plaintiff Mangal village, acting as representatives of the Ullur Karayeedu cultivators. The 5th issue framed in the suits relates to this muchilika. That issue as framed in Original Suit No. 40 of 1913 is as follows: Is the muchilika of 1831 genuine and binding on the 1st defendant or his predecessors-in title; if so, are the plaintiffs entitled by virtue of the muchilika to eject the 1st defendant from the plaintiff properties." So far as the genuineness of the muchilika is concerned, no question was raised in the lower Court at the trial of the suits. (See also paragraph 6 of the 1st defendant's written statement which indicates that the genuineness of the muchilika was not seriously intended to be called in question even from the beginning). Its genuineness was not deputed before us. It is a document more than 30 years old and it was executed in favour of the District Collector who, as Agent of the East India Company, was the Manager of the plaintiff Hindu temple and other Hindu public temples in the Tanjore District between 1806 and 1847. He became the Agent of the Board of Revenue in 1817 under Regulation VII of 1817 which vested the superintendence of such temples in the Board. The document comes from proper custody, the Collector having handed over charge of all the affairs of temple to two Hindu trustees in 1847 (See Exhibit A 2). This document Exhibit A was obtained by the Tahsildar from the nine executants and was sent to the Collector along with the Tahsildar's report Exhibit P which expressly refers to Exhibit A.

7. This muchilika, Exhibit A, of August 1837, was preceded by a document

Exhibit L, dated July 1831, which is an agreement executed between all the village Karaigar cultivators. The genuineness of this ancient document, Exhibit L, also cannot be reasonably called in question. (See as to its production from proper custody P. W. No. 7) Exhibit L was clearly executed in anticipation of the karaigars being able to obtain the taram faisal lease of the cultivable lands in the village from the Collector Exhibit L makes provision for the following matters, (1) the manner in which the Karayeedu tenants are to divide the village lands (to be so obtained from the Collector) for purposes of cultivation, (2) the mode of paying the Sircar assessment and the swamibhogam due to the temple, (3) the collection of rents from Purakkudies who do not belong to the karai and who might cultivate some of the village lands as sub lessees of the Karaigar lessees, (4) the disposition of all the income and expenditure ; connected with the lands, and (5) the division of the net assets realized from the lands in Faslies 1241 and 1242 (July 1831 to June 1832 and July 1832 to June 1833).

8. (8) It is well known that in the Tanjore District, the Collector, Mr. Kindersley, introduced during the decade 1831 to 1840, in respect of the temple lands under his management, what is called the taram faisal muchilika system under which lands were leased for cultivation at an annual paddy rent fixed on the then cultivable extent with provision for the commutation of such paddy rent to money value, the leases containing other characteristic terms and conditions. In: the plaintiff village, before this taram faisal muchilika, Exhibit A, was obtained in 1831 what was known as the "proposal," ijara lease system prevailed during the 11 years 1820 to 1830. In the still earlier period, that is before 1820, the profits (from the lands) due to the temple were, as regards lands not directly under the temple Pannai Farm cultivation, collected from the cultivating, tenants in the shape of a share of the gross grain outturn as regards grain growing lands (50 per cent, being the land-holder's share of the produce from nanja lands and 40 per cent, from punia lands). Under the "proposal" system (1820 to 1830), the lands were let for cultivation to that "proposal" lessee who offered the highest rent, each letting being for a very short term of three to five years. (See Exhibits A1, A3, A4 and A5 which are documents executed to Government in connection with these "proposal" leases between 1820 and 1830) Under the taram faisal muchilika system introduced in 1831, the lessees held for an indefinite term paying an annual, money rent calculated at a fixed commutation value as regards paddy rent. For excess area cultivated in a particular year, for waste lands brought under cultivation for the raising of garden crops and so on, provisions are inserted for payment of additional rents. The lessees are also bound to supply labour on the occasions of the temple festivals and when repairs have to be done to the temple lands, channels, etc; (It has to be here stated that the translations in the printed paper book of several documents like Exhibits A, C, L, F, etc., in this case contain many inaccuracies and are in some places even unintelligible. Correct translations accepted by both sides were, however, placed before us during the hearing of these appeals). The muchilika Exhibit A mentions about 67 velies of nanja land and 16 velies of Punja land as granted for

cultivation to its executants total 83 velies. (A veli is $6 \frac{2}{3}$ acres). It is clear from the ancient records (see Exhibit C and C 1) that in the year 1723 or so, the extent of cultivable land was only 10 velies of nanja and) 5 velies of punja, total 25 velies. It also appears from these records that the whole village was held on what was known in the Mahratta regime as Rokka Kuthagai tenure more than 20 years ago, that the Mahratta King of Tanjore for some reason altered the original favourable Rokkakuthagai tenure into the ordinary "sanjayitha" or profit sharing tenure under which the Government obtained its assessment in the shape of a share of the grain produce, that the trustee of the temple complained about the year 1723 that this conversion of that favourable tenure into the ordinary tenure diminished the income of the temple to such; an extent that it was unable to meet the expenses properly and that he prayed for the restoration of the original Rokkakuthagai settlement tenure. The old favourable tenure was accordingly restored by the Rajah on the auspicious occasion of the solar eclipse in the Soorsan year 1124 (1723 A. D.) at the holy seaside shrine of Vedaranyam, though the Rokkakuthagai cash assessment was increased from 100 chakrams to 125 chakrams (chakram is equal to Re. 1-9-0). The old Rajahs used to give what is called Mohini allowances to the temples as pious gifts annually and the Mohini allowance for this temple is 72 chakrams, which was deducted by the temple from the Rokkakuthagai or cash assessment of 125 chakrams.

9. As I said before, the original cultivation extent. seems to have been only 25 velies, though, of course, the temple owned the entire lands in the village including waste (sic)mboke, house sites, etc. In 1809, when the Collector prepared the Register, Exhibit C, the extend actually found under cultivation was estimated according to the old rough measurement to be 37 and odd velies of nanja and 43 and odd velies of punja, about $80 \frac{1}{2}$ velies on the whole, and the temple is entered in the register as owner of these $80 \frac{1}{2}$ velies besides the remaining waste lands whose extent was estimated (again very roughly) at about $16 \frac{1}{2}$ velies. (See last clause of Column 8 in Exhibit C). The pymash measurement accounts Exhibits F (1816-17) and Exhibit F-1 (1828-29) give the extent of the cultivated lands including tope as about 93 or 94 velies. [The translation of the term "Rokkakuthagai" in Exhibit F, F-1, and other documents as "cash lease" found in the printed paper book is very misleading. As I have said already, it is a technical revenue term used for a particular kind of revenue settlement made by the Tanjore Kingdom as regards some of the lands assessed to revenue. In the Tanjore District Manual, page 487, Rokkakuthagai is defined as assessment also (that is, like shrotriain) fixed on favourable rates either from favour or as an inducement to reclaim waste." I might also state here that the portions of Exhibit F-1 which contain entries about pymash Nos 419 to 500 are irrelevant as they relate to another village altogether)]. The "pripasal" ijara document between 1820 and 1831 and the taram faisal muchilika Exhibit A also indicate that the cultivated area ranged in those years between 80 and 90 velies. It is well known that owing to the internal political disturbances, waste lands in mirasi districts like Tanjore and Chingleput which could have been cultivated so

as to benefit both the mirasidars and Government were not, in the olden times, brought under cultivation and that the mirasidars were expected by the Government to settle cultivators in their villages as permanent residents for bringing lands under cultivation and even to induce residents of other villages to migrate during the Cultivation season temporarily, the former class of cultivators becoming Ullur Purakkudies and the latter continuing to be Asalur Purakkudies. The "proposal" lessees were eventually unable to extend the area of cultivation so as to benefit the temple which was being managed by the Collector. The taram faisal muchilika system was then introduced and it has resulted in the cultivated area being increased to 140 velies, there being practically now no waste area to be brought under cultivation.

10. It was admitted on behalf of the appellants (and it could not be well denied as the very portions of Exhibit F-1---on which the appellants relied disclosed the fact) that at least in 21 velies out of 64 velies of wet land cultivated before 1820, the plaintiff temple owned both the melvaram and kudivaram interest and was cultivating that area with the temple's own farm or pannaiparakkudi servants and its own ploughs. (See description of pymash Nos. 387, 388, 521, 524, 535, 537, 538 and 527 in Exhibit F-1). It was, however, found by the Collector that it was convenient to have even these 21 velies let out to the taram faisal muchilika lessees and to have the direct pannai cultivation discontinued altogether. The appellants are unable to explain how the temple came to own the kudivaram in the 21 velies or in only 21 velies. It is also significant that when a small area of waste lands in the village was acquired by the Government in 1883 under the Land Acquisition Act, no person other than the temple claimed or was awarded any part of the compensation value, the whole being paid to the temple (See Exhibit E). The appellants' learned Vakil contended that the undertaking, Exhibit A-2, given in 1847 by two respectable Hindus to the Collector indicated that the cultivating lessees of the temple lands owned permanent occupancy rights. It is a matter of well-known history that the East India Company, about the year 1840, directed the Board of Revenue and the Collectors to give up the management of the Hindu temples under their control. According to such directions, the Collector of Tanjore, between 1847 and 1857, transferred the management of the temples under him to Hindu trustees who gave undertakings like Exhibit A 2 to him. The 7th Clause of Exhibit A2 on which the appellant's learned Vakil relies is as follows:---In regard to the purakkudies of the said Sarvamanyam villages, we shall, following the custom in vogue in each village and the custom in the Samasthanam, acquit ourselves properly as had been hitherto done following the custom or practice, with, out violating or encroaching their rights, Now, "purakkudies" as such have no occupancy rights and this vague clause in a document to which the purakkudi tenants were no parties cannot confer any rights upon them. The 11th issue, namely, Are plaintiffs disentitled to eject 1st defendant by reason of the muchilika of 1847 executed to Government," was, therefore, rightly decided by the Subordinate Judge against the appellants.

11. I think that the defendants who claim as alienees and representatives of the

original tenants of the temple during the time of its management by the Collector are clearly bound by the terms of Exhibit A executed by their predecessors-in title and that the terms of Exhibit A clearly negative any occupancy right in them. The learned Subordinate Judge has dealt with Exhibit A and the other evidence in the case in a very careful well-considered and exhaustive judgment. Notwithstanding the long and elaborate arguments advanced by the appellant's learned Vakils before us, they have failed to show that the statements. in that judgment as to the contents and construction of the documentary and other evidence disclose any material inaccuracies. The only error of importance pointed out is that the lower Court relied on the cadjan accounts, Exhibit M series which are contended to be inadmissible in evidence. These accounts purport to relate to the incomes, derived from the plaint village lands by the temple between 1712 and 1823 and to the expenditure incurred out of that income. If these documents are admissible in evidence, they almost conclusively establish the plaintiffs' case on the first issue. The documents, however, are not signed by any person and do not purport to be in the handwriting of any person. Section 90 of the Evidence Act says: "Where any document purporting or proved to be 30 years old, is produced from any custody which the Court in any particular case considers proper, the Court may presume that the signature and every other part of such document which purports to be in the handwriting of any particular person is in that person's handwriting and, in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed and attested." I do not think that this Section enables the Court to presume that unsigned accounts which do not purport to be in the handwriting of any particular person or persons were written by the authorised accountants of the temple to which the accounts purport to relate. I at first thought that Section 114 of the Evidence Act might enable the Court to presume, "regard being had to the common course of natural events" that these elaborate accounts were really written by accountants employed by the trustees of the temple. But on further consideration, and having regard to the decisions in *Sheo Nandan Ahir v. Ram Lagan Singh* 30 Ind. Cas. 908; *Basi Nath Pal v. Jagat Kishore Acharjee* 35 Ind. Cas. 298.; *Ubilack Rai v. Dallial Rai* 1 Ind. Dec. 939. and *Uggrakant Chowdhry v. Hurro Chunder Shickdar* 3 Ind Dec. 137.; See also *Airey In re: Airey v. Stapleton* (1897) 1 Ch. 164. as to the limits of the presumption permitted to be raised by Section 90 of the Evidence Act, I do not think that I would be justified in doing so. Vague expressions are used in some decisions to the effect that a document more than 30 years old and coming from proper custody might be "presumed to be genuine." The use of such vague language (instead of following the words of the Section which deal with the signature, handwriting, execution and attestation found in such documents and purporting to be those of particular persons) is likely to lead to confusion of thought and to the Court raising presumptions as to the existence of facts not within the scope of Section 90. I would, therefore, exclude Exhibit M series altogether from consideration as evidence in this case. In this connection I might also state that the documents on the defendant's side which came into existence after 1901 (Exhibit O when the first notice of

ejectment was issued by the plaintiffs) are also of very little importance. I am further not disposed to attach any weight to the pattah Exhibit G of 1900 which seems to have been obtained , by the temple authorities either unnecessarily (as they had already obtained inam pattahs) or to create evidence in their favour with a view to litigation. Documents H series following the pattah G may also be left out of consideration. The inam register and the title deed B and B-1 are also inconclusive.

12. In paragraph 46 of his judgment, the learned Subordinate Judge sums up his conclusions on the principal issues. Omitting his reference to Exhibits B-1, M series and G (1) I shall quote the greater portion of the paragraph (with a few alterations at the end) as it expresses fairly and fully my own conclusions on the evidence. "In the present case, the reference to the whole of the village in Exhibit C as that which was granted to the temple, the recital in column 8 in Exhibit C that the temple actually enjoyed the whole of the village including the poramboke, the payment of compensation to the temple; vide, Exhibit E, the grant of a land to a gurukkal by the temple, vide, "entry in Exhibit B, the entry in the Collector's register Exhibit D that Manthrapurswaraswami is the mirasidar, the last word denoting in the District of Tanjore that he is the proprietor of the soil, the reference in Exhibit F to Manthrapurswaraswami as miras solely entitled to the enjoyment of the village, the recital in Exhibit J10 of 1815 that the village is ekaboga gramam, the recital in Exhibit A 5 that Mangal village belongs to the temple, the reference in the lease deeds executed to the Collector before 1831 to the cultivation being undertaken by the lessees, the reference to the temple as the owner and village as miras of Ekabogam Manthrapurswaraswami in Exhibit F-1,.... the reference in Exhibits II series from 1891 to 1899 to Manthrapuriswaraswami as miras Manthrapurswami, the collection of fishery rent, tope rent and house site rent by the temple, the admitted ownership of the temple of some pannai lands as conclusively proved by Exhibit F-1 and L among others.... the reference to the same tenants by more than one name such as olavadaï kudimiras and purakkudi Ullur or Asalur, in the pymash, the reference to these men as purakkudis in the Tahsildar's report Exhibit P, the lease of the entire Mangal to certain persons by the Collector for the cultivation of lands from Faslis 1230 to 1240, "the execution of Exhibit A by certain persons for the cultivation of lands without any reference to their kudikani right in it and with a stipulation for payment of swamibogarn to the temple and rokkakuthagai to Government so long as they are in possession of the lands," the absence of all mention of kudikani right in the muchilika executed by the trustees to the Collector and the provision made in Exhibit A for the supply of labour to the temple festivals and for payment of such tirvai as is fixed by Government in respect of the special crops raised and in respect of poramboke waste land, etc., suggest the inference that the temple was entitled to both the kudivaram and melvaram rather than that the tenants had kudikani rights. Not a single document has been produced by defendants to show or to suggest that the temple was not "the owner of" both melvaram and kudivaram rights in the

village In my opinion plaintiffs have proved by means of documents and course of dealings evidenced by documents that it is more likely that the temple was "the owner" of the entire village and was both the melvaramdar and kudivaramdar than that it had only the melvaram right." I might add that the accounts J series ranging between 1806 and 1840 are themselves sufficient to prove the plaintiffs' contention. For instance, Exhibit J-74 shows that the "proposal" lessee himself realised the proceeds of the lands and gave out of the proceeds the purakkudivaram due to the cultivating tenants.

13. As against this, the appellants relied on what strikes my mind as inconclusive and one sided transactions and on some weak suggestions. One of the arguments advanced was that rokkakuthagai tenure being a tenure on favourable terms as to assessment, the temple was only an inamdar, that the grant of an "inam" is presumably only the grant of the Government assessment (either a portion or the whole) and not of the kudivaram, and that the burden of proving that the temple also owned the kudivaram was upon the plaintiffs. As regards the burden of proof in such cases was a party to some decisions beginning in 1912 in which it was held that the burden of proving that an inamdar was the owner of the kudivaram at the time of the grant of the inam to him, lay upon the inamdar, but my view (which differed from an earlier decision in 1910) has not been accepted in some later decisions of this Court which have held that as the jurisdiction of Civil Courts, would be ousted if the inamdar was presumed not to have been the owner of the kudivaram [and if the village is accordingly held to be an estate u/s 3 Clause 2 (d) of the Estates Land Act] the person so seeking to oust the jurisdiction of the Civil Courts by alleging that the inamdar was not the kudivaramdar at the time of the inam grant ought to prove his said allegation. See Ravulapati Papi Reddi v. Nanduru Peda Venkatacharyulu (1914) M. W. N. 794. The learned Subordinate Judge (evidently following my view) threw the burden in this case on the plaintiffs of proving that the temple was the owner of the kudivaram right from the beginning, and even so, found that the plaintiffs have proved their case. Without going to the question of burden of proof I am clearly satisfied that the evidence in this case very clearly establishes the plaintiff's contentions. In an inam village in which there are no tenants having occupancy rights and of which the inamdar is also the mirasidar, the full ownership right is in the inamdar and the distinction between melvaram right and kudivaram right is of no utility. (The word "kudivaram" has got several meanings. Its literal significance is the share of the cultivator in the produce raised. In that sense, the kudivaram belongs to the cultivating tenant, whether he has got a right of permanent occupancy in the land or is a lessee for only one year or is a lessee from year to year or for a fixed term or is even a mere tenant at-will. Kudivaram is also used in the sense of the right of such a tenant of whatever kind in the land so long as he continues in possession of the land. Finally, it is also used to mean the right of a tenant having a permanent occupancy tenure in the land in his holding." In this last sense, it is called also mirasdari right and some times kudimiras right. See Chinnan v. Kondam Naidu

28 Ind. Cas. 113. where Spencer, J , deals with the meaning of the kudimiras That decision also establishes that a mirasidar who gets a shrotriem inam grant from the Government does not lose thereby his original kudivaram right in the lands and might be called both a mirasidir and an inamdar).

14. The appellants further relied on the fact that since about 1867, they and their predecessor-in-title have been hypothecating, mortgaging and selling the lands in their respective holdings to the knowledge of the temple trustees and of the temple officials and that they have been granted rent receipts describing them as kudimirasidars (The documents filed on the defendants' side and dated earlier than 1867, namely, Exhibits 75, 76, 77, III (A) and III (B) are easily manufactured cadjans and I agree with the Subordinate Judge that their genuineness should not be presumed) The temple trustees and the kanakkans were, however, themselves interested, in some of the village lands as cultivators or as alienees from cultivators and their conduct is not of much value as against the temple. No doubt, where a landlord is legally entitled to grant rights as against him to a tenant he can, by acquiescence or by conduct amounting to estoppel, be treated as having made such grant. But the trustees of a temple have no legal right as power to confer higher rights on a temple tenant in the temple lands in his holding than he originally possessed except for the necessities or the clear benefit of the temple. The acquiescence and conduct of the trustees cannot, therefore, affect detrimentally the rights of the temple. In *Satya Sri Ghoshal v. Kartik Chandra Das* 13 Ind. Cas. 596. Jenkins C. J., says: "The presumption in favour of a permanent tenancy implies that there is ground for inferring that the tenure was always intended to be and always was hereditary, or that it acquired that character by subsequent grant. But a presumption in favour of a transaction assumes its regularity; it cannot be made in favour of that which offends legal principles. It is this that prevents our accepting the view of the lower Appellate Court as final, for it would seem that the property to which the presumption has been applied is debutter."

15. "If it was debutter at the time the tenancy originated then this would affect the applicability of the resumption for, to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of variable rent from time to time, would be a breach of duty in a shebait and is not, therefore, presumable; *Maharanee Shibessouree Dabia v. Motheoranath Acharjo* 13 W. R. 18." No provision of that branch of the law which relates to limitation or prescription has been pointed out to us which could confer such enhanced, right on a temple tenant (whose rights were in the first instance defined by the terms of a document conferring on him lesser rights) by reason of the conduct of the trustees of the temple. That the allegation in many of these transfer documents filed on the defendants' side, namely that the alienors owned occupancy rights, was, in all probability, not bonofide, is shown by the fact that not only waste lands of the temple subsequently brought under cultivation but even lands admitted to have been under the direct pannai cultivation of the temple originally have been alienated with such false recitals.

16. Another argument of the appellants was that in the pymash account Exhibit F-1, 9 kudimiras kuraigars are mentioned and the temple itself is also called an additional kudimirasid and karaigar. These pymash accounts are first prepared by the lower revenue officer and surveyors, (Vattam Karnam assistants, Majumdars and so on) and then there is a revision or check by a higher officer called Brigedar. In the pymash Exhibit F of 1816-17, the word miras occurs only as regards residential sites with their appurtenant backyards called "manaikollai", and even as regards these "manaiko"lais", only 16 out of 21 are stated to belong to certain cultivators with mirasi right, the remaining 5 belonging to kasava rgam tenant, that is, tenants newly introduced into the village by the temple mirasidar for cultivation purposes on condition that they would give up their dwelling sites to the mirasidar when they ceased to do cultivation work for him. Ullur purakkudies (as distinguished from asalur purakkudies and kasavargam tenants) usually have permanent residential rights in the village and the word "miras" which in its widest sense means proprietary right (and is used to denote even hereditary right in temple offices) may, without impropriety, be used to describe the rights of these ullur purakkudies in their residential sites and they might be called kudimirasidars of such sites. The reference in Exhibit F-1 to the temple as one of the kudimirasidars seems to be almost meaningless, except in this sense of a permanent resident. The temple is the landlord and landowner and is described in ancient documents as the full ekabogam (exclusive right) rokkakuthagai mirasidar of the entire village and in Exhibit F-8 also it is so described in several places. If it is Only one of several kudimirasidars, it cannot be called ekabogam mirasidar, and would be only one of several palabhogam mirasidars. It is further significant that out of the nine persons described" as kudimirasidars in the beginning of Exhibit F 1, the mark of one man alone appears against his designation as kudimiras Ammayappa Thevan, while the marks or signatures of others describe them as either olavadai or ulavadai miras. Again, in another portion of Exhibit F-1, where a count of all the ploughs in the village is made, all these persons are called ullur purakkudies, while the temple alone is called rokkakuthagai mirasidar. Lastly, when the Ajmash or check measurement was made by the Brigedar on these pymash accounts (he seems to have checked about 44 entries", the descriptions of at least some of those persons who were entered as kudimiras cultivators in the checked entries in the preliminary pymash were, in pursuance of a Huzur order, corrected into uluvadai miras which description does not, of cour(sic)e, imply any occupancy right. As pointed out by the lower Court in paragraphs Nos. 97 to 99 of its judgment, the cultivating tenants under the temple (which is the ekabogham miras proprietor of this village) seem to have signed or put their marks (many of them being marksmen whose marks or names were entered for them by some unknown person) in these pymash accounts describing themselves indiscriminately and variously even in the course of the same document as olavadai, olavadai miras, olavadai kudimiras, vllur olavadai, ultur purakkudi and so on. Not much importance, therefore, could be attached to these varying descriptions. It was not formerly to the interests of the temple to disturb these persons, though they

have been only cultivators from fasli to fasli. That such cultivators should in their own estimation and owing to their not being disturbed for long, try to raise themselves by making unilateral declarations is not unnatural. From being pannai cultivating servants or asalur purakkudies, they become ullar purakkudies and begin to call themselves olavadai tenants, olavadai miras, olavadai kudimiras and even occasionally kudimiras.

17. Of the several executants of Exhibit A who were allowed (probably by an oversight in the Collector's office) in the beginning of the document to style themselves kudimiras, only one ventured to sign it as such. Under all the circumstances of this case, too much importance should not be attached to this fact, especially as in the arzee, Exhibit P, sent, by the Tahsildar to the Collector along with Exhibit A, he calls them only kudis or cultivator and even the man lyya Pillay who signed as kudimiras is called in Exhibit P only purakudimiras. Further the terms in the body of Exhibit A are wholly, inconsistent with any right of permanent occupancy in the executants. The word "swamibogam" used in Exhibits A, F, F 1, and other documents has got a settled meaning in the Tanjore and Chingleput Districts. Wilson in his Glossary says: "Swamibhoyam in the Tamil country means the share of the produce or rent which is paid to the mirasidar or hereditary proprietor by the tenant cultivator holding the land in farm for a fixed period." I think the use of the word swamibogham in Exhibit A is almost conclusive as to the full proprietorship of both the melvaram and kudivaram rights in the temple.

18. Lastly, it seems to me that the principal questions raised in this case have been in a manner settled in the plaintiffs' favour by the decisions of this Court and of the Privy Council given in similar cases which had arisen in the same Tanjore District. I shall refer only to four of these decisions. In Chockalinga Filial v. Vythealinga Pundara Sunnady 6 M. H. C. R. 164. the plaintiff as trustee of the Piruppalur Sriyajneshwaraswami Muttam sued to recover cavil or temple lands which were leased to the defendants under a deed of agreement, Exhibit A, dated 14th August 1837, entered into between the defendants and the Government who at that time held the management of the pagoda property. The suit was brought in 1868. Defendants set up a perpetual right of occupancy, one of the grounds being that for 30 years they had paid sivamibhogam money at a fixed annual rate. The material terms in the taram faisal muchilika, Exhibit A, in that case were very similar to the terms of the taram faisal muchilika Exhibit A in this case. It was held that the tenancy continued to be regulated by the agreement Exhibit A which created only a tenancy from fasli to fasli and that mere long enjoyment cannot alter the nature of the tenure. In Thiagaraja v. Giyana Sambandha Pandara Sannadhi 4 Ind. Dec. 54. the tenants executed a muchilika for the lands in the village of Sandaputtur belonging to a Hindu temple, the muchilika having been executed in 1830 to the Government who was then managing the temple lands through the Collector. The Collector handed over the management to a Hindu trustee in 1857 on the latter's giving an undertaking to the Collector not to eject the ryots so long as they paid cist. To this undertaking

the ryots were, of course, no parties. The ryots set up the right of occupancy and also the trustee's undertaking of 1857 as a defence to the suit. The learned Judges followed Ghockalinga Pillai v. Vythealinga Pundara Sunnady 6 M. H. C. R. 164. and held that the tenants had acquired no right of occupancy though the consolidated rent fixed by the muchilika of 1830 had been paid separately by the several persons who claimed under the original tenant of 1830 and though there had been alienations by the tenants of their several holdings. Mr. Justice Brandt says in his judgment "Defendants rely very much on their possession of the lands by themselves, or by those under whom they claim from the 1st of January 1830, if not from a still earlier date. But mere length of tenure for any period will not give a right of, permanent" occupancy to a ryot,. who has been let in as a tenant from year to year

19. It was admitted by Turner, C. J., in Krishnasami Pillai v. Varadaraja Ayyangar 5 M.K 345. that the period of occupation which should confer upon the ryot a permanent tenure could only be settled by legislation." The muchilika of 1st January 1830 does not tend to show that the title of those who executed them was permanent. On the contrary, there are some expressions which favour a contrary supposition; and if there are expressions which indicate an intention that the occupation should be for more than one fasli, they are [as Sir Colley Scotland said of similar expressions in a muchilika in Chockalinga Pillai's case 6 M. H. C. R. 164 indefinite as to any period of time except that of the fasli, and clearly, therefore, did not bind the will of either party beyond the currency of each fasli while the tenancy remained undetermined. The defendants say t that their tenancy was not created by this muchilika, but that it existed, before that as a right of permanent occupancy. The defendants' predecessors-in-title may have been in possession before 1830. But if they had a permanent right of occupancy, they would probably have taken care to have that right expressly recognised in the muchilika of 1830. At present the permanency of their title before 1830 has not been proved."

In the muchilika executed in favour of Government by the plaintiff's predecessors on the 7th December 1857, he promised to respect the rights and privileges of" the purakudies according to the customs of the respective villages, and of the country; and that, as long as they should pay the cist properly, he would not eject them. But he did not thereby admit that the ryots had any permanent right in the soil, or that the swamibhogam was to be the same for all ages. The passage in question amounts to little more than an engagement to respect the rights of the ryots whatever those rights might be.

20. In the result it appears to me that the defendants have not shown that they had any higher title than that of cultivating tenants from year to year." The whole of these remarks, it appears to me, apply to the present ease also. The next ease is that reported as Chidambara Piliai v. Thiruvengadathiengar 7 M. L. J. 1. to which Mr. Justice Muthusami Aiyar, (who belonged to the Tanjore District) was a party. The plaintiffs there, were trustees of the Rajagopalaswami temple at

Mannargudi in the Tanjore District. The defendants (tenants) paid the Government assessment to Government and the swamibogam or mirasbogam to the temple trustees. On account of the Mohini allowance due by the temple, the revenue due on the village to the Government was shortly before suit assigned to the temple, and this temple, therefore, became (in a sense) also an inamdar. The tenants set up kudikani right, that is, permanent right of occupancy and relied upon a pymash account of 1839 and on the free alienations by the tenants of their holdings, the alienations having begun so long ago as in 1848. The learned Judges held that the entries in the pymash account are not conclusive, that the assertion in the sale-deeds of kudikani rights by the tenants cannot bind the temple, that the karayeedu system, (namely, periodic re-distribution of lands among the ryots) having been obtaining in the village cannot also give a permanent right of occupancy to the tenants in the village that the undertaking given by the trustees to the Collector not to eject the tenants so long as they regularly paid the rent without mentioning that the ryots have any kudikani rights, cannot help the tenants and that the trustees were entitled to eject the tenants. At page 10 it is said: Seeing that the Officers of Government had managed the temple villages for many years prior to 1857, it is not improbable that the consideration shown by them to the purakudies as an incident of good management and the length of time for which the purakudies cultivated, inspired them with a belief that they were not liable to be ejected so long as they were punctual in the payment of rent. This may account for sales and mortgages by the appellants and their predecessors "accompanied with an assertion of kudikani right" which may loosely be used to indicate a permanent tenure of some kind or other." "The non-specification of lands in the leases, the fact that each of the appellants cultivated separately and that there was an occasional re-distribution of lands held by the Purakudies are referable to the conventional mode of leasing to chief men among the purakudies leaving it to them to select others who are to cultivate with them and to distribute the portions to be cultivated by each as may be arranged between them." [In the Full Bench case in *Sivatha Muthu Asari v. Revd. J. N. H. Mfsguita* 24 M. L. J. 642. it was expressly decided that where "there is an instrument defining the terms of the tenancy and it shows that there is no permanent tenancy" created under it, the facts of alienation and subletting by the tenants and even the fact that the original letting was a building lease cannot confer a permanent right of occupancy.]

21. The fourth and the" last case I shall refer to is the important Privy Council decision reported as *Mayandi Chettiar v. Chokkalingam Pillay* 27 M.S 291. their Lordships reversing by their said decision the decision of this Court reported as *Chockalingam, Pillai v. Mayandi Chettiar* 19 M.S 485. In that case also, the tenants began to hold under a *taram faisal muchilika* which was executed in December 1831 and completed in January 1832. They claimed permanent occupancy right on grounds very similar, to those advanced in the present case. The executants called themselves *ulavadai mirasidars*. They relied also on long enjoyment with a uniform rate of rent. Their Lordships point out that the

description as ulavadai mirasidars does not occur in any document emanating from the Collector's office but only in documents put forward by the applicants themselves" and their Lordships state: In the case of *Ohockalinga Pillai v. Vythealinga Pundara Sunnady* (10) in which the circumstances were very similar to those of the present appeal, and there was a muchilika in similar terms, it was held that no permanent tenancy was created. The language of the agreement, paid Scotland, C. J., (page 168), "had, I think, no greater effect than the ordinary form of muchilika given by a ryot in exchange for a pattah, except so far as it indicated the intention that its terms should apply to every successive fasli for which the holding might be continued by neither party exercising the right to terminate it at the end of a fasli" This decision was followed by the Madras High Court in the case of *Thiagaraja v. Giyana Sambandha Pandara Sannadhi* (11) in which the circumstances were almost identical; and their Lordships see no reason to differ from the conclusions at which those learned Judges arrived, upon a state of facts which cannot be distinguished in any material degree, from those in the present suit." Thus their Lordships of the Privy Council expressly approved of the decisions in *Chockalirga Pillai v. Vythealinga Pundara Sunnady* (10) and *Thiagaraja v. Giyana Sambandha Pandwra Sannadhi* (11) in which it was held that lessees under *taram faisal* muchilikas executed to the Collector of Tanjore in the thirties of the last century could not claim permanent occupancy rights by mere length of possession.

22. I agree with the lower Court for the reasons already slated that the 1st defendant who evidently belongs to the trading class had no bona fide belief that his vendors had a permanent occupancy right in their holdings. It has been held in *Rajah of Venkatagiri v. Mukku Narsaya* 7 Ind. Cas. 202. that Section 51 of the Transfer of Property Act will not apply to the case of a tenant as it cannot be said that he is a person believing in good faith that he is absolutely entitled" to the land. It, therefore, follows that even assuming that the 1st defendant bona fide believed that his vendor had occupancy rights he cannot claim compensation u/s 51 of the Transfer of Property Act. In the result I would dismiss the appeals with the costs of the respondents (plaintiff).

Napier, J.

23. I agree.