
(1913) 10 MAD CK 0008
In the Madras High Court

Adusumilli Suryanarayana and Another	APPELLANT
Vs	
Atchuta Potanna and Others, Battula Seshayya and Kosuri Venkataratnam and Others	RESPONDENT

Date of Decision : 09-10-1913

Acts Referred:

Madras Estates Land Act, 1908 — Section 6(2)

Citation : (1914) 26 MLJ 99

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

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—My learned brother has fully dealt with the facts and the points of law involved in these Second Appeals. I add a few

words in my own language out of respect to the strenuous arguments advanced by the appellants' learned Vakils.

2. Having regard to the observations in the case reported in Bhadrappa v. Bapayya (1909) 21 M.L.J. 803 and Yeddampudi Lakshmi Narasimha

Row Vs. Repalli Sitaramaswami and Others, Venkata Narasimha Appa Row v. Subba Reddi (1912) 24 M.L.J.655 Narasimhacharyulu v.

Ramabrahmam (1912) 24 M.L.J 656, Tadikonda Buchi Virabhadrayya Iyyavaru and Others Vs. Sonti Venkanna alias Venkata Ramudu and

Others, and to the Judgment in Appeal No. 437 of 1908 and S.A. No. 168 of 1912, I think that no distinction should be made between an

Inamdar and a Zemindar as to the presumption to be raised in respect of the kudivaram right in lands of which the Inamdar or the Zemindar is the

proprietor. In other words the presumption ought to be that the Inamdar or the Zemindar is not the owner of the kudivaram. There are, no doubt,

some observations in the cases of Indety China Nagadu v. Potu Konchi

Venkatasubbayya (1910) M.W.N. 639 and Marapu Tharalu v. Telukula

Neelakanta Behara ILR (1907) M. 502, which favour the appellants' contention. But the authority of those cases can no longer be relied on

having regard to the uniform tendency of the later decisions. The distinction made in one of the two cases between the presumption to be drawn

where the jurisdiction of the civil courts will be ousted if the Inamdar is held not to own the kudivaram, and the presumption to be drawn if no such

question of jurisdiction arises in the suit, seems to me (with the greatest respect) a little too fine and far-fetched.

3. The other contention of the appellants that an Inamdar could acquire the kudivaram through abandonment or surrender by the tenant of the

holding and that, when he so acquires it, the holding ceases to be a part of the Inam estate, has caused me much more anxiety before I could arrive

at a decision satisfactory to my mind. The exception to Section 8 uses the general expression "" the kudivaram interest has been or is acquired by

the Inamdar.

4. Mr. Ramesam's argument is that, as it is an exception to Section 8 the modes of acquisition mentioned in the preceding clauses of Section 8

ought to be looked into to find out what the meaning of "" acquired"" is as used in the exception. These preceding clauses speak of acquisition by

transfer, succession or otherwise. And, according to the decisions of the Calcutta High Court on the corresponding section of the Bengal Tenancy

Act, See Bactan Chandra Das v. Rajeswari Debya (1905) 2 C.L.J. 570 and Muktakeshi Dasiv Pulin Behary Singh (1909) 8 C.L.J. 324 This does

not include acquisition by mere abandonment or surrender. Again, Section 6 Clause 2 of the Estates Land Act is as follows: ""Where land held by a

ryot with a permanent right of occupancy, is surrendered or abandoned or save in the case falling within... the exception to 8, comes into the

possession of the landholder."" This shows that the exception to Section 8 which relates to acquisition of the kudivaram right by the land-holder is

distinguished from the case where the land-holder gets power to deal with the land through surrender or abandonment by the tenant, in other

words, a right got by the landlord through surrender or abandonment of a holding is put under a different category from a right to kudivaram

acquired under the exception to Section 8.

5. As the appellants' possession of some of the lands during an occasional year or two arose out of surrender and abandonment and not alienation

or succession derived from the tenant, the exception to Section 8 cannot be relied upon, and the contention that those lands should be part of the estate therefore fails.

6. As these suits, on the above conclusions, have to be brought in the Revenue court, the complaints in the suits will be returned to the plaintiffs to be returned to the proper court. The costs up to date must be paid by the appellants. Spencer, J.

7. Seven items of lands are in dispute in these appeals; three are minor inams included in an Agraharam, and the others are ordinary Agraharam

lands. The District Munsif found on the second issue that the suit lands were not portions of an estate within the meanings of 3, Clause 2(d) of the

Estates Land Act. He placed the burden heavily on the defendants of showing that the village in question came within the definition and found that

they had failed to discharge it.

8. The District Judge, finding no evidence of an original grant of both warams and, adopting it as a legal presumption that both were not granted,

found this issue for the defendants, and dismissed the suits owing to the want of jurisdiction in the District Munsif to dispose of them when the

property concerned was an estate falling u/s 3, Clause 4 (d) of the said Act.

9. No deed has been produced to show the terms of the original grant. But it appears from Exhibit GG and EE2 that this Agraharam was given by

a Reddi Rajah to Agraharamdars of the Ivaturi family and that it is a Sarva Agraharam paying nothing to the Circar. The plaintiffs were purchasers

from the original grantees. The original grantees were Brahmins, and the District Judge finds that it was only in 1846 that one of the Agraharamdars

became a resident in the village owing to the difficulty of collecting rent at a distance.

10. Mr. Govindaraghava Aiyar for the appellants raises three contentions: (1) that the original grant was of both kudivaram and melvaram, (2) that

the subsequent conduct of the parties must be traced to a legal origin, from which the original grant of both varams can be deduced, and (3) that

the plaintiffs have acquired the kudivaram right even if they did not have it originally, and that by the nature of such acquisitions the exception to

Section 8 of the Estates Land Act takes the case out of the purview of the Act.

11. The District Judge expressed his inability to conclude from the evidence that both warams were granted in the first instance, and therefore he fell

back on the legal presumption that the melvaram only was granted. We find no sufficient reasons for not accepting the District Judge's finding on

questions of fact. After a careful consideration of his judgment and a comparison of the conclusions drawn by him with the evidence on which they

are based, we are not able to discover any misstatements of facts of any importance or any mis-construction of documents. The pros, and cons, of

every argument have been considered by him with reference to the evidence on record in paragraphs 6 to 12 of his judgment, and we cannot see

that the conclusions he comes to at the end are unreasonable or unsupported by evidence. On the first point for the appellants, great stress has

been laid on the language in Exhibit E E 7. This purports to be a deed of gift confirming a prior grant of the Agraharam in favour of a member of

the Ivaturi family. It contains a clause permitting the grantee "" to go on getting the lands cultivated extensively and to enjoy the produce thereof from

generation to generation."" It is a question whether this clause affected or was intended to affect the rights of the cultivating tenants. The District

Judge declined to draw any conclusive inference from the words so used. He remarks that similar words might be used if the rights of melvararn

alone were granted. He alludes to the fact of which he finds clear traces that the village was inhabited and cultivated at the time when the earliest

grant came into existence and that the soapnut trees were the special perquisite of the Agraharamdars. We do not think that the grant is so

expressed as to leave no doubt that the intention of the donor was to deal with the rights in the soil.

12. The expression to enjoy the produce of the land" appears to be not uncommon in grants of inams, and a similar expression has been

interpreted in Ravji Narayan Mandlih v. Dadaji Bapuji Desai ILR (1875) B. 523 as meaning only an alienation of the land revenue. In S.A. No.

705 to 814 of 1909 (unreported) the expression " to get cultivated and enjoy, was interpreted by the District Judge as implying that the grant was

one of both warams and his finding was accepted but in that case there were other reasons for considering that the lands were not cultivated

previously. Here there is nothing to show that the suit lands were not cultivated previously, although there is some ground for thinking that the agrapharam contained a considerable portion of unoccupied and waste lands at one time. In *Rajya v. Balkrishna Gangadhar* ILR (1905) B. 415, it was assumed in a case where the sanad was not produced that the grant was one of the Royal Share of Eevenue, and it was observed that, if owing to antiquity there was no evidence of the commencement of a tenancy, it might be presumed to be co-extensive with the duration of the tenure of the landlord. In *Yeddmapudi Lakshmi Narasimha Row Vs. Repalli Sitaramaswami and Others*, a presumption was raised that the Government did not intend to deal with the rights of the occupants when they made the grants, the ryots in that case being tenants of a Mokhasa in a Zamindari. The presumption is the same whether the grant of the Inam was by Government or by a Zamindar. So the fact that the grant in this case was made by certain Reddi rulers of that part of the country will make no difference.

13. In *Vaman Janardan Joshi v. The Collector of Thana and the Conservator of Forests* (1869) 6. B.H.C.R. 191, the rule of English Law as to the construction of grants to subjects by the Crown was held to be the correct rule to be applied by the Courts in India in construing grants by former governments. In that case, words to the effect that the grantees were to enjoy the inam grant of the village hereditarily without disturbance were held not to operate as an alienation of the soil of the village. The headnote in the *The Secretary of State for India in Council Vs. Ikkurti Subbarayudu and Others*, is quoted to show that a grant of land could not be split up into a grant of Melvaram and a grant of Kudivaram without words in the document to that effect, but the decision is one dealing with a case of Archaka inam and applying Section 4 of the Pensions Act, 1871. It cannot be taken as restricting the Court from putting the proper construction on the documents filed in the present case.

14. On the second contention, the District Munsif finds as a conclusion of fact on the evidence that all the defendants had only recent possession of the suit items, that the items concerned in S.A. No. 1207 were subject to changes in tenants, that one of them was home-farm in fasli 1305, that two were waste for a time, and that there was variation in rent in respect of one. He also found that the tenant of the inams concerned in S.A. No.

1208 was ejected in 1883 and that it was home-farm land in fasli 1305. The District Judge also refers to the change in holdings evidenced by the

Amarakam accounts, to mortgages and sales of the land, not merely of the Melvaram share in the land, to grants of inams by the Agraharamdars,

to cases of eviction, to conditions in the Khats under which the tenants agreed to quit at the end of their tenancy, and to high prices at the sales of

land. On the other hand, he finds that the Agraharamdars were non-resident "Brahmins not to be found in the village till 1846, and the District

Munsif finds that many of the old cowles contained no stipulation to quit; (vide Exhibit XIII series) In fact, the finding of both the Courts is that

these tenants obtained possession of the suit lands recently and that some of them had been in the possession of some other tenants and some,

were allowed to lie waste.

15. In *Bhadrayya v. Bapayya* (1909) 21 M.L.J. 803, failure on the part of ryots to prove permanent occupation of their predecessors, the fact of

other ryots having no proved connection with the defendants cultivating in a few stray years, admissions by ryots of other inamdar's Kudiayaram

right, past admissions by a holder of a portion of the plaintiff's inam of his right to eject, and want of uniformity in the rents were facts considered

and held to be insufficient in the circumstances of that case to prove a right to eject.

16. In cases of change of possession the presumption applied in *Gheekati Zamindar v. Ranasooru Dosra* ILR (1899) M. 318, must be applied to

this case, viz., that when new occupants are admitted to the enjoyment of waste or abandoned land, the intention is that they should enjoy on the

same terms as those under which the prior occupants held, unless this presumption is rebutted by proving that the usual condition of things did not

prevail in the particular estate or that particular contracts were made with the tenants.

17. Courts have now to be guided by the rules in 6 and 8 of the Madras Estates Land Act, which embody the presumptions formerly recognised in

reported decisions. It is not the commencement of possession of the present tenants that is so important as the commencement of the tenancy, and

neither the District Munsif nor the District Judge has been able to find the origin of the tenancy in each case. If in these Second Appeals we had a

finding that the tenancy originated in leases containing definite terms that the tenants concerned in this litigation should vacate at the end of their term, the position might be very different.

18. Our attention has been called to some evidence of recent occupation, and the terms of the Khats in recent years are in favour of such a finding.

But there is no finding by the District Judge that the defendants are tenants at will or tenants from year to year. He says in paragraph 16, "" All that

this evidence shows is that defendants came into possession of the "" suit lands very recently and not as they alleged from time immemorial. But it is

also clear that the lands had been continuous under the occupation of tenants with an occasional break for banjar and in some cases a year of

cultivation by the plaintiff as. Kamatam. Therefore, it is certain that these lands are seri lands and not Kamatarn lands and therefore occupancy

right exists in them"". The evidence being inconclusive the District Judge finally gave effect to the legal presumption that there was no grant of

Kudivaram to the Agraharamdars.

19. The presumption of occupancy rights in the tenants in Zamindaris has been established by a long course of decisions before the introduction of

the Madras Estates Land Act. In this connection it is sufficient to refer to Venkatanarasimha v. Dandamudi-kotayya ILR (1897) M. 299, as the

Land Estates Act has now introduced a statutory presumption in favour of Zamindar's tenants. As regards agraharams and whole inams, which, if

the agraharamdar or inamdar does not own the Kudivaram, will now fall u/s 3 Clause 2 (d) of that Act, three of the most recent decisions dealing

with agraharams in the Kistna District are reported, Venkata Narasimha Appa Row v. Subba Reddi (1912) 24 M.L.J. 655, Sri Rajah

Venkatanarasimha Appa Rao Bahadur Zamindar Garu (died) Vs. Muppidi Subba Reddi and Others, Veerabhadrayya v. Sonti Venkanna (1913)

21 M.L.J. 659. The appellants rely on the decisions in Rajaram Row v. Sundaram Aiyar (1910) M.W.N. 566, and in S.A. No. 561 of 1908

(unreported) Marapu Tharalu v. Teluhula Neelakanta Behara (1910) M.W.N. 639, and Veerabhadrayya v. Sonti Venkanna (1913) 21 M.L.J.

659, as being in their favour. In Marapu Tharalu v. Veluhulu Neelakanta Behara (1910) M.W.N. 639, it was held that the presumption in favour of

Zamindari tenants could not be extended to the case of inamdars, whose position

materially differed from that of Zamindars. The learned Judges who decided that case, Boddam and Wallis J J. stated reservedly that as the case then stood they were not prepared necessarily to apply the same presumption to persons becoming tenants to inamdars. The Estates Land Act must be taken to have altered the position as regards whole inams also and with all deference to the opinion of those learned Judges we think that this decision can therefore no longer be taken as an authority for the general proposition that there is a presumption that the tenants of inamdars have no occupancy rights. In *Indety China Nagadu v. Potu Konchi Venkatasubbayya* (1910) M.W.N. 639, an observation occurs that there is no presumption that an inam was granted to a person not owning the Kudivaram, whatever may be said as to there being a presumption that the inam was only a grant of the land revenue. The onus was placed on the defendant to show that the village came within Section 3, Clause 2 (d) of the Act. In Appeal No. 137 of 1908 (unreported) the Court declared that there was no presumption that an inamdar was "the owner of both Kudivaram and Melvaram rights in the inam. In this respect the decision in *Srinivasa Chetti v. Nanjunda Chetti* ILR (1881) M. 171, was followed. That case related to a Mittadar, and it was held that he must prove that he had Kudi-varam as well as Melvaram before he could treat the tenancy as one from year to year. In *Venkatacharlu v. Kandappa* ILR (1871) M. 95, in an ejectment suit the burden was thrown on the inamdar of proving that under the terms of his tenancy he had a right to eject his tenant. In *Kesaram Narasimhulu and Others Vs. Vuddanda Rao Narasimhulu Patnayudu*, the principle was recognised with reference to Section 13 (1), (ii) of Act III of 1895 and the preamble to Madras Act VIII of 1869 that inams are prima facie to be taken as assignments of the Melvaram right only. For the purposes of that Act the above mentioned section contains a special proviso reserving the jurisdiction of Civil Courts over suits for the recovery of the land itself.

20. In *Kandada Narasimhacharyalu Ayyavarlam Garu Vs. Kavicherla Ramabrahmam*, a presumption was said to arise that an Agraharamdar who obtained his inam from the Nuzvid Zemindar had only the Melvaram rights. In *Venkata Narusimha Appa Bow v. Subba Reddi* (1912) 24 M.L.J. 655, in the absence of evidence that the Inam grant included the Kudivaram or

that the inamdar was himself the owner of the Kudivaram at the time the inam was granted, it was held that an Agraharam village was an estate within the meaning of Section 3 of the Estates Land Act. The learned Judges observed that a Brahmin was not likely to have been a cultivating tenant, an observation which applies to the present case. The decision in Tadikonda Buchi Virabhadrayya Iyyavaru and Others Vs. Sonti Venkanna alias Venkata Ramudu and Others, related to a Sarva agraharam granted by a Nuzvid Zemindar and treated as Lakhiraj at the settlement and excluded from the Zemindari and afterwards enfranchised at the Inam settlement. On the facts of that case both the Courts came to a concurrent finding that Kudivaram and Melvaram rights had always belonged to the Agraharamdars and their predecessors in title. The judgment admits the difficulty arising from the onus falling on different parties for different purposes. We feel no doubt that the burden of proving that the Court has no jurisdiction to try the suit will fall on the party which seeks to oust the Court's jurisdiction, but where in the absence of conclusive evidence one way or the other, neither side is in a position to show where the jurisdiction lies, the natural presumption which Courts have recognised about grants from the Crown being grants of revenue only, comes into play and will have the effect of shifting the onus to the party to whom it is disadvantageous. In Suri Venkata Subbaraya Sastri Vs. Darappareddi Kristnaiya and O, the onus was placed on the plaintiff in a suit for ejectment by an inamdar to prove his title to eject. In that case the defendants (vendors) came into possession on condition of paying the arrears. In Appa Row v. Subbanna ILR (1907) M. 60 the presumption laid down by a course of decisions was stated to be that a pattadar or ryot in a Mitta was entitled to continue in possession so long as he regularly paid rent and had a saleable interest. In S.A. No. 561 of 1908 (unreported) a presumption was raised, where the occupancy right was not found, that the tenancy was from year to year, but it does not appear from the judgment what was the nature of the holding. These three as well as the three decisions reported in the 24 M.L.J. are all cases from the Kistna District. Each of these authorities must be considered in the light of the facts and findings of the particular case. S.A. No. 168 of 1912 (unreported) was a case of a Darmilla Inam (or Inam granted by Zemindar after permanent

settlement) which was held to be part of an estate and it followed therefrom that the Civil Courts had no jurisdiction under the Estates Land Act.

This, apparently, was a case falling u/s 3 Clause 2(e).

21. In *Rajaram Bow v. Sundaram Aiyar* (1910) M.W.N. 566 there is only a finding by the Subordinate Judge of Tanjore that the Tanjore Palace

estate had ceased to be an estate within the meaning of the Act.

22. As regards minor Inams in the Agraharam, it is argued that as between the minor inamdar and the tenant none of the presumptions either in the

Estates Land Act or otherwise apply. But we are clearly of opinion that the Agraharamdar could not have granted more than what he had to give,

and therefore if he did not possess the Kudivaram, it follows that the minor inamdar also did not have it. This is pointed out in *Maddu Yerrayya*

Vs. Yadulla Kangali Naidu and Another, which is also published in ILR 34 Madras 246, in these words, "" If the plaintiffs' Inam were in a

Zemindari they could not be in a better position as regards the right to eject the defendant than the Zemindar who created the Inam"". Similar

observations occur in S.A. Nos. 705 to 714 of 1909 to the effect that an inamdar stands in no better position than the Zemindar if the inam is

carved out of the Zemindar's interest; also in *Gullapalli Bhadrappa Vs. Puttagunta Bapayya and Others*, . The position in this suit of the tenants

under the minor inamdars appears to be stronger than that of the other tenants of the Agraharamdars, and the inamdar must show that he let in the

defendants as tenants at the beginning of their occupation (*Vide Parvataneni. Venkatramiah v. Parvataneni Narayadu* (1912) 12 M.L.T. 313 On

the whole we consider that the view taken by the District Judge of the legal presumptions arising in this case is correct.

23. On the third contention that the plaintiffs have acquired the Kudivaram rights in these lands it was held in *Ganpatra v. Putwardhan V. Ganesh*

Baji Bhat ILR 10 B. 112 that a Saranjamdar or Inamdar might acquire occupancy rights by cultivating unoccupied land himself or through tenants.

This principle corresponds to the statutory provision in the exception to Section 8. We are not prepared to accept the appellant's contention that

Section 6 (2) of the Estates Land Act was intended only to apply to Zemindaris, nor am I disposed to place a narrow interpretation on the word

"acquired" in the exception to Section 8 so as to. exclude acquisition by

surrender or abandonment. The second clause of Section 6 simply excludes that form of acquisition in whole Inam villages for the purposes of that particular clause. In my opinion, this exception must be read with Section 6 Clause 1, where the word "acquired" occurs again, and with Section 8 (7), which gives ten years for a land to be permanently uncultivated or let without occupancy rights as the limitation period which must elapse before rights can be thus "acquired" by the landholder. An inamdar apparently may acquire Kudivaram rights by transfer, succession or otherwise, e. g., by purchase at any time, but a Zemindar's acquisition by such methods is subject to the restrictions contained in Clauses 1 to 4 of Section 8. It does not appear from the findings on the facts of this case that the plaintiff's have thus acquired the Kudivaram right in any particular holding concerned in these suits. The presumption, therefore is that laid down in *Cheekati Zumindar v. Ramasooru Dasra* ILR (1899) M. 318 that new occupants of waste or abandoned holdings enjoy on the same terms as those under which prior occupants held.

24. The result will be as stated in my learned brother's judgment.