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**(1919) 03 MAD CK 0015**  
**In the Madras High Court**

Aiyappa Naicker, minor by his maternal uncle and next friend,  
Guruswami Naicker

APPELLANT

Vs

Medai Thalavoi Thirumalayappa Mudaliar and Others

RESPONDENT

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**Date of Decision :** 10-03-1919

**Acts Referred:**

**Citation :** (1919) 10 LW 7 : (1919) 37 MLJ 238

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

**Bench :** Full Bench

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**Judgement**

Napier, J.—This is an appeal from the District Court of Tinnevely in a suit brought by the plaintiff to recover possession of certain property

from the 1st defendant, the suit being based on a lease granted to the 1st defendant and on title. The present 2nd defendant applied to be made a

party alleging that neither the plaintiff nor the 1st defendant had ever any right to the land. This defendant alleged further that he was the owner,

and that he was in possession and pleaded adverse possession from enjoyment by his ancestors. The 1st defendant remained ex parte and the suit

proceeded between the plaintiff and the 2nd defendant and some supplementary parties.

2. The issues framed were "whether the plaintiff mentioned lease is true and valid, whether the plaintiff mentioned land belongs to plaintiff and whether

plaintiff has been in possession within the statutory period.

3. The plaintiff has also denied that the 2nd defendant was his tenant and, as far as he is concerned, sought to recover the land on his title. The

contention of the 2nd defendant before the lower appellate court was that the plaintiff was only a farmer of the revenue of the land, that the 1st

defendant never had any interest and that he had a permanent right of occupancy in it. This contention was negated by the Court which held that the plaintiff was the sole owner of the land and the 2nd defendant although he had shown possession had not established a permanent right of occupancy.

4. Before us the appellant (2nd defendant) put forward the contention that the plaintiff was a mere melvaramdar and that the ownership of the land was in him. The land being Government ryotwari, this contention would entail the proposition that in addition to the position of the Government as owning the melvaram there can be another melvaramdar introduced between Government and the owner of the land. Speaking for myself, I was surprised to hear such an argument put forward. But I find that the same contention was advanced in the well-known case in *Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs. Annasawmi Aiyar by his mother and next friend Subba Lakshammammal and Another*, .

Whatever else was decided in that case, however, this contention was negated, and it does not require serious consideration. There is not a trace

anywhere in the Law Reports of the view that Government in granting patta was only granting a portion of its share in the revenue as in some case

of Inams. The real substantial argument before us was that although the plaintiff was the owner of the land the 2nd defendant should be held on the

evidence to be entitled to permanent rights of occupancy on the analogy of a zemindary tenant prior to the Madras Estates Land Act. It must be

conceded at once that the decision in *Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs. Annasawmi Aiyar by his*

mother and next friend Subba Lakshammammal and Another, and *Venkatachala Goundan and Others Vs. Rangaratnam Aiyar and Others*, go some

way to support the appellant's contention. The decision in *Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs.*

*Annasawmi Aiyar by his mother and next friend Subba Lakshammammal and Another*, seems to treat one particular question as of great importance,

namely, whether it has been shown that the defendant's possession commenced under the plaintiff, while the decision in *Venkatachala Goundan*

and *Others Vs. Rangaratnam Aiyar and Others*, seems to be founded on the proposition that a pattadar must show that he let the tenant into

possession and that he was in fact a tenant from year to year. The learned Judges in the latter case also seem to hold that the fact that a patta was

granted by Government is no indication that another person found in possession has not permanent occupancy rights but that the pattadar must

show that the customary mode of holding land in that place justified the presumption that the tenant has no permanent rights of occupancy. This

question has been argued before me on two previous occasions, once in S.A. No. 684 of 1917 sitting with my learned brother and once in

Ananthapamanabha v. Gopalakrishnier (1915) M.W.N. 277 sitting with Mr. Justice Seshagiri Aiyar. On both occasions I declined to follow

Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs. Annasawmi Aiyar by his mother and next friend Subba

Lakshmmammal and Another, and Venkatachala Goundan and Others Vs. Rangaratnam Aiyar and Others, to the extent to which the dicta in those

cases commit the learned Judges.

5. I am relieved from the necessity of considering the present case at any great length because my attention has been drawn to an elaborate

decision of Mr. Justice Seshagiri Aiyar sitting with the learned Chief Justice in Ponniah Nadan v. Deivani Ammal A.S. Nos. 241 to 251 of 1917

(Since reported in 36 M.L.J. 463. Ed.), with which I am in entire accord. My learned brother in that case has, if I may venture to say so, applied

what I think the most valuable test, He has treated the matter historically and has shown that Government in adopting the ryotwari system made

their settlement with the cultivating ryot whom Government found on the land and treated him as the cultivating owner and intended him to remain

as such. The system was intended to be in direct contrast with the Zemindari settlement under which a number of persons who were in fact mere

farmers of revenue were for the first time given an interest in the land but an interest subject to the existing rights of persons then cultivating the

lands. I entirely agree with Mr. Justice Seshagiri Aiyar that it is not open to us to raise presumptions against this history and I agree with him that

wherever we find that a permanent right of occupancy is claimed by a cultivating tenant the burden should be cast on him to show how he became

entitled to this right.

6. I do not propose to pursue the matter further but simply to say that after a

careful examination of all the cases and a careful re-hearing in this case, I adopt the views expressed by Mr. Justice Seshagiri Aiyar in their entirety and would found my Judgment on the reasons given by him in that case. It follows therefore that in my opinion the decision of Mr. Justice Spencer and Mr. Justice Krishnan in *Muthuswami Aiyar v. Nainar Animal* (1917) 7 L.W. 194 is incorrect and should not be followed. In the present case there is some small evidence of alienations by the 2nd defendant's predecessor, and also some evidence that rent has been received by the plaintiff direct from the 2nd defendant or his predecessors which would indicate that although the plaintiff was at that time granting leases to persons in the position of the 1st defendant, he recognised the position of the 2nd defendant. Mr. Srinivasa Aiyangar has argued that this evidence does not conclusively prove the above facts, but I do not think it necessary to examine this; for, even if the evidence is to be accepted in its entirety it falls far short of evidence of a grant of permanent right of occupancy by the plaintiff or his predecessors.

7. At the last moment, the contention was put forward that no notice had been given to the 2nd defendant and that therefore the plaintiff was not entitled to eject him. Mr. Srinivasa Aiyangar has met this by saying that his suit was brought against the 1st defendant, that he has never recognised any rights as tenant in the 2nd defendant and that if the 2nd defendant had set up that he was a tenant under the plaintiff, which he did not, the plaintiff would have offered evidence of a previous denial of the plaintiff's title as far back as 1911 when the 2nd defendant demanded a patta from the revenue authorities. In my opinion the 2nd defendant cannot be allowed to change his case at the last moment after having pleaded absolute ownership in himself and denied the plaintiff's right of ownership as pattadar. I would therefore dismiss the second appeal with costs.

Sadasiva Aiyar, J.

8. I agree that where a tenant under a ryotwari pattadar sets up a permanent right of occupancy, the burden of proving such right lies on him. See *Chidambara Pillai v. Thiruvengadathiengar* (1896) 7 M.L.J. 1. As stated about the above decision by Subrahmania Aiyar, J. in *Cheekati Zamindar v. Ranasonu Dhora* ILR (1899) Mad. 318. "" The view of the learned Judges was that permanent holdings under ryotwari proprietors being

unusual and exceptional, the onus is on the party setting up such a special kind of holding." I do not think that the circumstance that the pattadar

figures as the plaintiff in the suit and seeks to eject the tenant places the onus of proof as regards the particular fact upon the plaintiff; that is, that he

should prove the negative that the tenant under him has not got the exceptional rights set up by the tenant. I respectfully dissent from those

observations in Venkatachalla Goundan v. Rangarathnam Aiyar (1913) 24 M.L.J and Veeranan Ambalam and Others and Peria Kampalam

Ambalam and Others Vs. Annasawmi Aiyar by his mother and next friend Subba Lakshammammal and Another, which are relied on by the

appellant's learned vakil Mr. S. Ramaswami Aiyar in support of his contention on this point.

9. As regards the question of notice to quit, the contesting 2nd defendant (the appellant) was allowed to intervene in the suit which was originally

brought against the 1st defendant alone. The 2nd defendant was added in September 1914 (the suit having been brought in August 1914). The

District Munsif ought to have then allowed and directed the plaintiff to amend the plaint (a) by the addition of necessary allegations indicating the

plaintiff's title to eject the newly added 2nd defendant, (b) by amending the relief paragraph (10) by adding the necessary relief's prayed for

against the 2nd defendant. Both sides however seem to have treated the plaint as so amended and it was evidently understood between all parties

and the court that if the plaintiff established his proprietary right to the land and if 2nd defendant's alleged permanent occupancy right was found

against by the court, the plaintiff's suit in ejectment against the 2nd defendant should be decreed on the basis that the amended plaint contained all

the necessary allegations such as the service of a proper notice to quit on the 2nd defendant if he was lessee or on the real lessee, if he was sub-

lessee or a denial of landlord's title before suit by the 2nd defendant or by the intermediate lessee; such allegations, if established, entitling the

plaintiff to eject the 2nd defendant even supposing that the 2nd defendant was a tenant from year to year or a sub-lessee from a lessee for years

and not a mere trespasser. The 2nd defendant did not apply to the Munsif to raise any issue on the question of notice. This view is strengthened by

the fact that the plea of absence of notice to quit was not raised in either of the courts below and was not evidently thought of when the

memorandum of second appeal was drafted in the first instance as the ground has been inserted as an after-thought between the grounds 6 and 7

and marked 6(a) in the memorandum of appeal.

10. In the result, I agree that the second appeal should be dismissed with the plaintiff's costs.