

(1917) 09 MAD CK 0048
In the Madras High Court

Chandrasekharaswami Siva Matha Temple at Maramanglam and Another APPELLANT

Vs

Nainar Ammal and Others RESPONDENT

Date of Decision : 25-09-1917

Acts Referred:

Citation : 43 Ind. Cas. 977 : (1918) 7 LW 194

Hon'ble Judges : Spencer, J;Krishnan, J

Bench : Division Bench

Judgement

1. In this case, the trustees of a temple in Tinnevely District sued to eject the defendant from certain temple lands in her possession, alleging that she was a yearly tenant and that her tenancy was terminated by notice to quit. She pleaded in answer, inter alia, that she had a permanent occupancy right in the land and that plaintiffs were not entitled to eject her but only to receive the thirvai due; she also pleaded a right of permanent tenancy acquired by adverse possession. The temple traced its title to an inam, grant by the Government in 1835. One of the questions in the case was whether the grant was only of the revenue payable to Government or of the land itself and as a result whether the Estates Land Act applied. The Munsif held that the grant was of the land itself and not of the revenue alone and that the Estates Land Act did not apply. He further held that the tenants in this and the connected suits were not shown to be yearly tenants liable to be ejected, or to have even been let into possession by the temple trusty that they and their predecessors in title were proved to have been in occupation of the land for nearly fifty years paying a uniform rate of rent, which never exceeded the assessment payable to the Government, that they were dealing with the land as their own, subject only to the payment of thirrai, to the knowledge of the trustees and were making transfers and that the trustees recognised those transactions, that in some instances the property devolved from father to son, that the circumstances proved pointed to a permanent right in the tenants and that there was no foundation for any presumption of yearly tenancy and that as the burden was on the plaintiffs to prove the yearly tenancy

alleged by them and as they had failed to prove it, their suit for ejectment failed. On appeal, the District Judge held that the grant was of the revenue alone but confirmed the Munsif's decree. The teuates appealed to the High Court in Second Appeal No. 2394 of 1913 and this Court held that what was granted was the land itself and remanded the appeal for fresh disposal. In doing so, they also came to a finding of fact that the lands, when granted, were unoccupied and stated that the occupancy rights, if any, must have been acquired since the grant. The District Judge has now found on the evidence all the facts except one relied upon by the Munsif for holding that plaintiffs failed to prove their case of yearly tenancy and that defendants have shown their tenancy to be permanent; and that fact is that the defendants were not in possession before the date of the grant which was concluded by the finding of the High Court; he, however, agreed with the Munsif that the burden was on the plaintiffs to prove the yearly tenancy and their right to eject and that it was not discharged and that the defendants had established their case of permanent tenancy; and he dismissed the appeal.

2. The plaintiffs have again appealed to this Court and Mr. Ramachandra Aiyar for them has contended before us that the burden of proof was on the defendants, that the finding as to defendants' permanent occupancy was erroneous and that, if the burden was on his clients, they had proved the tenancy to be a yearly one.

3. The question of burden of proof in a case like this is a somewhat vexed question. It seems to us, however, that there need be no difficulty if the general principles of burden of proof in the Evidence Act are kept in view. Ordinarily, when a person seeks to eject another from possession on the ground that the latter is his tenant whose tenancy has been re-minded he must prove not only that the tenancy is as alleged, if that is denied, but also his right to eject. In doing so, he must necessarily show that the tenancy is a terminable one and has been validly terminated. This burden is unaffected by any defence of permanent tenancy set up by the defendant but which he has failed to prove. Vide, Venkatacharlu v. Kanctappa 5 Ind. Dec. 415. On the other hand, when the plaintiff has made out a prima facie case of a terminable tenancy and his right to eject, either by evidence as to the origin of the tenancy or from admissions of the tenant as to the character of his tenancy, either before or in the suit or by reliance on presumptions arising in his favour from other circumstances, and the tenant sets up in answer to it the existence of permanent rights in himself, the burden is on him to prove the special case thus set up. The many cases on the point will on examination be found to have proceeded on one or other of these rules. In one class of cases where the evidence showed that the tenant was, at one time either at the beginning of the tenancy or at some later period during the continuance of the tenancy, a temporary or terminable tenure holder, it was held that the tenant must prove that he had a permanent tenancy at the date of suit. The examples of these are Achayya v. Hanumantrayudu 5 Ind. Dec. 189, where the landlord proved a lease from him to the tenant: Bangsami Eeddi v. Gnana Sammantha Pandora Sannadhi 22 Mk 264 where the admissions of the tenants that they were *ulvadai pura-kudis* was held to favour the contention

that the tenancy was temporary": Marapu Tharalu v. Telukkula Neelakanta Behara 2 M.L.T. 470, where the Munsif had found on the evidence that the defendants were tenants from year to year and the High Court holding there was no necessary presumption of permanent occupancy in favour of tenants under inamdars held that the burden was on the tenants to prove the alleged occupancy right, and Naina Pillai v. Ramanathan Chettiar 41 Ind. Cas. 788, where the tenancy was under muchilikas executed by some tenants on behalf of all. In some cases presumptions of fact have been raised in favour of the landlord or of the tenant from the conduct of the parties with reference to the land when there is no direct proof of the origin of the tenancy: periodical raising of the rent and periodical resumptions of land by the landlord, tenants submitting to them, have thus been held to raise a presumption in favour of the landlord, and against the tenant, that the tenancy was a terminable one. See Rajah of Venkatagiri v. Mukku Narasaya (1910) M.W.N. 369 On the other hand, circumstances such as long continued occupation at a uniform rate of rent, dealings by the tenant to the knowledge of the landlord as if he had an alienable permanent tenure without objection, and devolution of property from father to son have been considered as indicating permanent tenancy. Where circumstances exist in any particular case, Some of them in favour of a presumption of a terminable tenancy and some in favour of that of a permanent tenancy, the Court which has to weigh the evidence must decide on which side the balance of evidence falls. In a third class of cases presumptions are raised in favour of the landlord or the tenant, as the case may be, from the situation and character of the lands themselves; for example lands in a zemindari are presumed to be held on permanent tenancy. See Cheekati Zamindar v. Ranasooru Dhora 8 Ind. Dec. 624 That question is now regulated by the Estates Land Act. Again if the land is in a district or locality where the usual rule is permanent tenancy there will be a presumption in favour of it; and vice versa. Here again, if there are conflicting presumptions the Court considering the facts must decide which presumption should prevail. It may also be stated that a tenant who comes into possession as a temporary tenure-holder cannot develop himself into a permanent tenant by mere length of occupation, vide the case cited as Rangasami Reddi v. Gnana (Sammantha Pandara Sannadhi 8 Ind. Dec. 188 or even by setting up a title as permanent tenant in himself, so long as the original tenancy has not been terminated by the landlord. See Rajah of Venkatagiri v. Mukku Narasaya 7 Ind. Cas. 202.

4. Bearing the above considerations in mind we must examine the present case. The Estates Land Act does not apply to it and the presumption u/s 106 of the Transfer of Property Act also does not apply, as these are agricultural lands and there has been no notification issued by the Government u/s 117 of that Act. The fact that the lands are inam lands does not by itself give rise to any presumption in the inamdar's favour, vide, Muddu Yerrayya v. Tadulla Kangati Naidu 6 Ind. Cas 711 and we think there is no presumption from that fact in favour of the tenants in this case either, as the lands are Government ryotwari lands to which

the Estates Land Act does not apply, though in inam lands to which the Act applies the presumption is distinctly in favour of the tenants, vide, *Adusumilli Suryanarayana v. Acchutta Potanna* 22 Ind. Cas. 339.

5. The plaintiffs have produced no *muehilikas* or other documents to prove the terms of the tenancy. They attempted to show that the lands were held on *waram*, tenure and that they themselves cultivated them for sometime, but they failed to prove these allegations. The cumulative effect of the facts found by the lower Court, viz., the holding at the same rent for nearly fifty years, that rent being equivalent to the Government assessment for a single crop land in the Government village, the absence of any successful attempt being made by the trustees to enhance the rent for all these years, the selling and mortgaging of their lands by the tenants to the knowledge of the trustees, as if the lands were their own subject only to the payment of *thirvai* to the temple, the devolution of property from father to son in some cases, the trustees recognising the alienees and the heirs in each case, certainly supports an inference of permanent rights, and is against the landlord's allegation of yearly tenancy.

6. It was argued that there was a presumption in favour of the temple because the lands were unoccupied at the time of the Government grant in 1865 and because the landlord in this case is a temple. No doubt we must take it that at the date of the grant there was no permanent tenancy right in existence; that does not prevent the acquisition of permanent rights subsequently. It was suggested that fifty years was too short a period for it. It is not possible to lay down any general rule as to the minimum length of occupancy required to justify the use of that fact as one of the factors in drawing an inference of permanent tenancy. Each case must be decided, on its own facts with reference to all the facts proved, though of course the amount of support given by the length of occupation to such an inference will necessarily vary with the period. We do not think fifty years' occupation at a uniform rent should be treated as an immaterial fact in considering the nature of the tenancy because the period is only fifty years. It does not follow as a matter of law that because the lands were unoccupied Government ryotwari lands at one time, cultivating tenants could never have acquired occupancy rights in them. See, if authority is needed, *Peria Karuppan v. Annasawmi Iyer* 12 Ind. Cas 1 : (1911) 2 M.W.N. 162. In the case of *Tadi-konda Bnchi Virabhadrayya v. Sonti Venkanna* (1913) M.W.N. 782 their Lordships held that the landlord was bound to prove his right to eject and allowed him to eject only on proof that he and his predecessor-in-title were in possession of both the *melwaram* and *kudiwaram* for the past 40 or 50 years before Suit and that the tenant came into possession when they were owners of both *warams* which they continued to be up to the date of suit. In the case before us though the land was unoccupied in 1865 and the plaintiffs had, therefore, full rights in the land including both *warams* at that time, they have not shown that they continued to be in possession of both rights up to the present time, the evidence pointing to the contrary. The question, therefore, really is whether on all the facts in the present case, a presumption of

permanent tenancy does not arise, one of those facts being that the land was unoccupied in 1865. It cannot be urged that from that fact alone there is a presumption of yearly tenancy at the date of suit.

7. The next point taken is that as the lands are temple lands, no presumption of a creation of permanent rights by grant was permissible as that would be a breach of trust, and reliance was placed on *Satya Sri Ghoshal v. Kartik Chandra Das* 13 Ind. Cas. 596 which was followed in *Naina Villai v. Ramanathan Chettiar* 41 Ind. Cas. 788. No doubt a Court will not presume the existence of an illegal transaction or as Jenkins, C.J , put it "the presumption in favour of a transaction assumes its regularity." But the grant of a lease in perpetuity of temple lands is not necessarily¹ a breach of trust, though it may be if it was an act of management not authorised by the terms of the endowment or by the usage of the temple. Such a grant is perfectly valid if made for necessity of far the clear benefit of the temple. Vide the Privy Council case of *Palaniappa Chetty v. Detvasikamony Pandora Sannadhi* 39 Ind Cas. 722 : (1917) M.W.N. 477 and the observations of Sidasiva Aiyar, J, in *Naina Pillai v. Bamanathan Chettiar* 41 Ind. Cas. 788. The presumption in favour of permanent tenancy in temple lands is not, therefore, an impossible one; the only point is that when drawing the presumption it should not involve a breach of trust. In *Satya Sri Ghoshal v. Kartik Chandra Das* 13 Ind. Cas. 596 what their Lordships did was to send the case down to find on the question of permanent tenancy on all the materials before the Court, bearing the objection in mind. It should also be remembered that a grant is not the only way that permanent rights could be obtained in temple lands; prescription is another. In this case the lands were originally waste and were evidently brought under cultivation by the tenants. The arrangement to get that done by granting permanent rights may have been very beneficial to the temple. The presumption of a valid creation of permanent rights is, therefore, easier to make. At any rate the learned " District Judge, in considering on which side the balance of evidence and presumptions was, had his attention drawn to the objection now dealt with and his finding, therefore, cannot be said to be vitiated by the objection in question as in the Calcutta case.

8. On all the facts of this case we think there is no ground for holding that the primary burden of proof, which was on the landlord, to prove the tenancy alleged by him and his right to eject has been discharged, or for interfering with the District Judge's finding on the facts and the presumption arising from them in favour of the defendant, that she has an occupancy right in the lands in suit.

9. The second appeal fails and is dismissed with costs.

10. The other second appeals, Second Appeals Nos. 1649, 1650, 1651 and 165 of 1916, follow our decisions in Second Appeal No. 1648 of 1916 and for the like reasons as are recorded in our judgment therein we dismiss the Second Appeals Nos. 1649, 1650, 1651 of 1916 with costs and without costs in Second Appeal No. 1652 of 1916.