

(1924) 02 MAD CK 0013
In the Madras High Court

Chidambara Gurukkal

APPELLANT

Vs

Sivagnanasundaram Pillai and Others

RESPONDENT

Date of Decision : 08-02-1924

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(d)

Citation : AIR 1924 Mad 833

Hon'ble Judges : Venkatasubba Rao, J

Bench : Division Bench

Judgement

Venkatasubba Rao, J.—This appeal arises out of a suit by an Inamdar against his tenant.

2. The first question to be decided is whether the grant to the predecessor of the plaintiff was of the land, or, the grantee not owning the

Kudivaram, of the land revenue only. Section 3(d) of the Estates Land Act does not in terms apply because the suit concerns not a village but only

a small plot of land. The point had however to be decided with reference to considerations similar to those that would apply if the case fell within

that section. If the grant were forthcoming it would have been the most valuable evidence but unfortunately the grant is not before the Court, although it is

agreed that the land was granted some centuries ago during the period of the Madura Kings. The learned Subordinate Judge has on a

consideration of the materials before him come to the conclusion that the Inamdars were entitled only to the Melvaram. I agree with him.

Proceedings connected with the Inam enquiry are relied upon by both the parties. At the enquiry, the Inamdar made the statement that the land

was let to ryots for "Kandayam" cultivation. The Subordinate Judge is of the opinion that this supports the defendants' case. The word,

Kandayam, is defined as being either a fixed portion of the tax payable or rent paid in money as distinguished from rent paid in kind (see McLean's Manual of Administration of the Madras Presidency). The Judge presumably thinks that the word is used in the Inam statement in the former sense and I am not prepared to say that he is wrong. The Inam title deed is inconclusive. It acknowledges the title of the Inamdar to the Inam and says that it has been subject to a quit rent of Rs. 2-4-0, that the Inam has been hereditary but not alienable and liable to lapse on failure of lineal heirs. It then recites "'on your agreeing to pay an annual quit rent of Rs. 4-4-0 your Inam tenure will be converted into a permanent freehold in which case the land will be your own absolute property.'" On behalf of the plaintiff it is argued that the use of the word "'land'" denotes that the original grant was of the soil. This contention, I am not prepared to accept. The word "'land'" is not used with special reference to the subjects of the grant. The words "'Inam'" and "Land" are used indifferently and in the context no significance attaches to the use of the particular word "'Land.'" The tenants are not parties to this document and there was no occasion to refer to the rights of the Inamdar as distinguished from those of the tenant. The plaintiff next relies upon a receipt for rent executed by himself. It refers to "'My Inam Vengayam Kadu which belongs to me.'" It is said that this contains an assertion by the Inamdar that he was the owner of the land. A similar argument was advanced with reference to the statement of the Inamdar made at the Inam enquiry "'the lands are let to ryots. '" Even where the tenant is admittedly possessed of the Kudivaram the landholder refers to his Melvaram right as land and therefore no inference favourable to the plaintiff can be drawn from the circumstance. It is true that there is no presumption that an Inam grant is grant of the land revenue only and that each case must be decided with reference to the circumstances connected with it. But the Subordinate Judge has on a consideration of all the circumstances come to the conclusion that the grantee was not the owner of both the Varatns, and I am not prepared to interfere with this finding.

3. Granting that the Inamdar was possessed of both the Varanas, the next question to be decided is whether the defendants have proved the existence of a permanent tenancy. The Court has to find whether the defendant's predecessors possessed occupancy rights at, the inception of the

relation of the parties, not whether there was a subsequent change in those relations; the latter alternative not having been suggested; see

Seturatnam Ayyar v. Venkatachala Goundan (1920) 43 Mad. 567 and when the origin of tenancy is not known evidence of the acts and conduct

of the parties constitutes the best and the only evidence to prove the nature of the tenancy see Ismail Khan Mahomed v. Jaigun Bibi (1900) 27

Cal. 570. It has been contended that permanence, if claimed, must be established and that the burden of proof lies on the tenants. The learned

Subordinate Judge has found that the true inference from the facts proved is that the tenure is permanent and not precarious. Granting that the onus

is on the tenant the Subordinate Judge has found that the defendants have made out their case and I am not prepared to disturb his finding. For at

least three generations the defendant's family have been occupying the land without any alteration in terms and during that period the rent has been

far below the economic rent and a uniform and fixed rent has been paid. The plaintiff has not been able to give any evidence that at any time a

different rent was paid or the rent was ever enhanced. It is suggested on behalf of the plaintiffs that they were absentee landlords, that when they

went to the village of the defendants, the latter who were karnams attended to the wants of the plaintiffs and that it was likely that a low rent was

fixed on account of the3e considerations. This has not been accepted by the lower appellate Court as an explanation. The facts suggested on the

one aide and the uniform and low rent on the other have not been shown to be related as cause and effect. It is quite as likely that because the

defendants and their ancestors have been tenants of the plaintiff's family the former have from time to time rendered small services to the latter. The

Judge was entitled to infer from the continuance of the land in the same hands at a low and unvarying rent, permanent rights of occupancy Ponniah

Nadan v. Deivanai Ammal (1916) 36 M.L.J. 468 and Palaniandi Malavarayan v. Vadamalai Odayan (1915) 2 L.W. 723. In the result the second

appeal fails and is dismissed with costs but subject to the following reservation. The defendants do not object to a decree being passed in favour of

the plaintiff for the rent admitted by them to be due, and I accordingly pass a decree for Rs 54 With this modification the lower Appellate Court's

decree will be confirmed.