
(1911) 09 MAD CK 0028
In the Madras High Court

Nadarsa Rowthen

APPELLANT

Vs

Amirtham and Others

RESPONDENT

Date of Decision : 04-09-1911

Acts Referred:

Citation : (1912) 22 MLJ 1

Judgement

1. The District Judge is mistaken in supposing that if there was a tenancy from year to year it terminated on the death of Chidambaram. There is no finding in this case as to the nature and the term of the tenancy, and the decisions to which we have been referred do not determine the incident of this tenure. These incidents must, we think, be determined on evidence as to the custom of the locality, and we have therefore decided to call for findings on the following issues:

1. What are the incidents of kasavargam tenancy with special reference to the term of such tenancy ?
2. Did the defendants Nos. 1 and 2 or their predecessors refuse to perform services in accordance with the terms of the tenancy ?
3. Has the tenancy been determined, and, if so, how ? Fresh evidence may be taken of witnesses called by the parties and of such other witnesses as the District Judge may think fit to call.

In compliance with the order contained in the above judgment, the District Judge of Tanjore submitted the following

FINDING Ed:-The High Court has called for findings on the issues:

- (i) What are the incidents of Kasavargam tenancy with special reference to the term of the tenancy ?
- (ii) Did the defendants Nos. 1 and 2 or their predecessors refuse to perform

services in accordance with the terms of the tenancy ?

(iii) Has the tenancy been determined, and, if so, how?

2. Issue I.-The question raised by this issue is a large one, and one of some general importance throughout this district. The parties have therefore

been afforded every reasonable facility for adducing all the available evidence, oral as well as documentary, on the point, and three large land-

holders of the district have also been summoned and examined as witnesses for the court, and documents produced by them which have a bearing

on the question have been filed as exhibits. There is therefore now on the record a considerable body of evidence from which to deduce a finding

as to what are the more important general incidents of kasavargam tenancy : that is so far as the Tanjore district is concerned. The custom of

kasavargam prevails in other districts as well (see the deposition of the first court witness) and the incidents of the tenancy may, and in all

probability do, vary in different districts, but it is clear from the judgment of the High Court in which the findings are called for that it is only the

custom as it obtains in this district that is to be taken into consideration, and it is on that footing that evidence has been let in at the hearing on

remand.

3. The meaning of the term kasavargam or kasavargamdar is given in Wilson's Glossary (see page 583) as "" traders and makers of canvas sacks,

residing in a village, and claiming certain fees, and perquisites, having a proprietary right to their houses, but not to the ground on which they stand.

The learned author does not appear to have been satisfied as to the etymology of the term, and it may therefore perhaps be presumed that his

definition was based entirely on his own personal experience of the use of the term, or on the experience of other persons on whose information he

considered it safe to rely. This may serve to explain why the definition which he adopted does not altogether apply to the term as used in this

district. The latter portion of the definition alone seems to apply here. The oral evidence adduced in the present case shows that in this district,

kasavargamdars have, as a rule, "" a proprietary right to their houses, but not to the ground on which they stand."" As regards this feature of

kasavargam tenancy, there can, I think, be no doubt, It has been spoken to by several witnesses of large experience in the management of lands in

this district, whose evidence appears to be thoroughly reliable. It is borne out by the entries in the paimash accounts, some of which have been filed

as exhibits in this case (see exhibits Q.S and T) and it has been repeatedly recognised by the courts of the district, and by the High Court as one of

the customary features of kasavargam tenancy as it prevails in this district; Vide Exhibits Z3, DD, GG, and HH, and the cases reported in ILR 14

Madras 98, and 22 Madras 116. Exhibit EE may also be referred to. It is the decree in a case in which a mirasidar sued to recover a manaikat.

The parties compromised, the defendant agreeing to vacate the manai on condition that the plaintiff should pay him compensation for the house he

had erected on it. This was a kasavargam manaikat, and the terms of the compromise go to show that the parties recognised that the

kasavargamdar had no proprietary right in the manaikat itself but only in the super structure which he had erected upon it. It is scarcely necessary

to refer to any more evidence on the point, but mention may perhaps be made of Exhibits AA1 to AA8 and BB, Exhibits AA1 to AAS are rent-

deeds which the first court witness has now taken from the tenants of Jus kasavargam manaikats instead of any longer relying on custom alone for

determining the conditions of their tenancy. Exhibit BB is a similar deed executed in favour of the mirasidar by the occupant of a kasavargam

carpenter's manaikat, who is the descendant of the Kasavargamdar mentioned in the paimash account (Exhibit CC). (Vide the evidence of

plaintiffs 14th witness). All these documents set forth the fact that the manaikat is the property of the mirasidar. This then may be taken to be the

fundamental principle of the tenancy : the site is the property of the landlord : the superstructure that of the tenant.

4. The rest of Mr. Wilson's definition of the term kasavargam does not seem to be applicable to kasavargam tenancy as known in this district.

None of the witnesses examined--not even the first court witness, Dewan Bahadur R. Raghunatha Rao, a gentleman of exceptionally wide

experience of the land tenures of the district, seems to have ever come across a kasavargamdar who could be described as a trader and maker of

canvas sacks, residing in a village and claiming certain fees and perquisites; and not a single one of the documents exhibited refers to a

kasavargamdar to whom such a description would apply. It seems clear, therefore, that that part of the definition does not hold good in this district.

5. The next important point to be considered in connection with kasavargam tenancy as it is known in this district is the condition on which the kasavargamdar is allowed to occupy the manaikat of his mirasidar. There can, I think, be no doubt that in this district the condition ordinarily is that he should render service of some sort to his landlord, the mirasidar. When the kasavargamdar is an artisan, the services he renders are those incidental to his trade, e. g., the barber does service as a barber, the washerman as washerman, the carpenter as carpenter, and so on. When the kasavargamdar is not an artisan, he renders services to his mirasidars by supplying manure from the manaikat for the mirasidar's land and also cocoanuts from the trees, if any, growing on the manaikat. He also usually renders cooly's service in various ways, e. g, by running on small errands and assisting generally at the landlord's house on festival and other great occasions. The exact nature of the services to be rendered varies according to circumstances, but services of some kind or other are, as a rule, rendered by the occupant of the manaikat, the kasavargamdar. In return for these services, the kasavargamdar is allowed to occupy his manaikat free of rent, as a rule, though in some cases when the landlord does not require any services from the tenant, or when the services which li receives from him are not a sufficient return for the enjoyment of the manaikat, a money rent is imposed in lieu of, or in addition to, such services. If the kasavargamdar renders constant and important services to the mirasidar, for which the free occupation of his manaikat would not be a sufficient return, he is sometimes given a maniam in some form or other as well, or sometimes he is paid a wage for his services, though at a lower rate than that usually prevailing in the village. The oral evidence let in on this point is clear, and is, I think, ample to establish the fact that in this district the condition on which the kasavargamdar ordinarily holds his manaikat is that he should render services in some form or other to his landlord, the mirasidar. The evidence of the first court witness, Dewan Bahadur R. Raghunatha Rao, by itself goes a long way towards proving this. This witness may almost be regarded as an expert witness on the subject. He is 80 years of age, and has had a wide and extended experience--both as a Government official and as a landed proprietor owning estate in five different taluks of the district, of the various kinds of tenancy prevailing in this district and his evidence in regard to the customary incidents of of

kasavargam tenancy seems to me to be entitled to very great weight. It is corroborated by the evidence of the third court witness, another big mirasidar with estates in five different taluks, some of them in a village only four miles distant from the village in which the suit site lies. The evidence of the second court witness, another big mirasidar, is to the same effect, though it is not entitled to so much weight as the evidence of the other two court witnesses, since this witness has not the same extended personal experience of the matter. The eleventh witness for the plaintiff is another big mirasidar of the district whose evidence is entitled to considerable weight, and it is to the same effect. There is also the evidence of the 14th witness for plaintiff to the same effect. Moreover, this incident of kasavargam tenure has been already recognised both by the courts of the district and by the High Court. This may be seen by a reference to Exhibits R, DD, and HH, Z1, Z3 and JJ and the case reported in ILR 27 Madras 519. The term kasavargam" is not expressly mentioned in the report of the last mentioned case, but the custom of the district which was therein found to be established by which artisans are allowed to occupy manaikats in the village rent free so long as they render services, obviously refers to the custom known in the district as kasavargam. No doubt the finding of the Sub-Judge in that case seems to cover only instances in which the manaikat was a samudayam or village common land, and the tenant was expected to render service to all the villagers. The learned vakil who appeared for the defendants in the case now before me, contended that those were the only real cases of kasavargam tenancy, and that the term does not apply to cases where artisans, or other tenants, occupy a manaikat which belongs to a single mirasidar on condition of rendering him service of some kind. This contention, however, is quite inconsistent with the entries in the paitnash accounts where kasavargam manaikats have been shown as belonging to individual mirasidars (see Exhibits Q and T.) The oral evidence let in at the hearing of this case on remand also clearly establishes that individual mirasidars may and do own kasavargam manaikats and let them out to tenants on kasavargam tenure. Instances of this have also been frequently found by the courts of the district (See Exhibits R, DD, EE, FP, GG). There is scarcely any evidence to the contrary. The defendants" vakil relied on Exhibit IX, the judgment of the Subordinate Judge of Kumbakonam in a very recent case--Appeal No. 539 of

1909. In para. 3 of that judgment it is stated with reference to the term kasavargam that "" it is admitted it ordinarily signifies a tenant-at-will

occupying a common village site and not any particular private one."" That may perhaps be taken to be an instance in which a mirasidar admitted

that kasavargam tenancy ordinarily applied only in the case of samudayam manaikats. But the admission is not worth very much in the absence of

any evidence to show whether the plaintiffs in the suit had any experience of kasavargam tenancies in general. It is clear from another portion of the

same judgment (Exhibit IX) that the particular manaikat to which the plaintiffs were laying claim as their own property was a samudayam manaikat,

belonging to all the mirasidars of that village. The plaintiff's title to the manaikat was therefore disproved, and as there is no evidence - to show that

he actually owns any kasavargam manaikats of his own, his admission in regard to such manaikats cannot count for very much, in face of all the

evidence in the present case to the contrary effect. The learned vakil for the defendants also relies on Exhibit JJ to show that the rendering of

services is not a necessary incident of kasavargam tenancy and that in fact there are no customary incidents of such tenure, but that the conditions

of the tenancy vary in each particular case according to circumstances. Exhibit JJ is a copy of the judgment of the District Munsif of Tanjore in O.S.

No. 230 of 1894. That suit was brought by the head of the S. P. G. Mission at Tanjore to recover possession of some land which had been

originally granted to the well-known Missionary Schwartz on behalf of the S. P. G. Mission by the Rajahs of Tanjore. This land was measured as

kasavargam land belonging to the Mission at the time of the Paimash (1829) and the District Munsif found that the defendants were kasavargam

tenants of the Mission and liable to be ejected. In that case it appeared that the defendants neither rendered services, nor paid rent to the Mission

and the defendants' vakil argues that this goes to show that the performance of services is not an essential incident of kasavargam tenancy. The

inference does not seem to be justified. A perusal of Exhibit JJ seems to show that it was understood in that case that a kasavargam tenant

should render services to his landlord, but that mere cessation of such services would not suffice to determine the tenancy (see the case of N. S.

Narayanasamy Aiyar v. Vathiyar Rama Aiyar reported in Madras Weekly Notes page 473). The case of the Tanjore Mission was moreover a

peculiar one. The terms on which the Mission allows tenants to occupy its lands may be gathered from an extract from the will of Rev. J. C.

Kohlhoff which is set out in para 9 of Exhibit LL, the judgment of this court in appeal from the judgment marked as Exhibit IX. These are quite

different from the terms of the ordinary kasavargam tenancy, but nevertheless the Mission succeeded in evicting from their lands persons whose

predecessors in title were proved by the paimash accounts to have been kasavargamdars but who had ceased for a long time to pay rent or

render services to the Mission. The judgments in these cases (Exhibits JJ and I.L) cannot, therefore, be regarded as evidence that the performance

of services for their landlord is not an essential condition of a kasavargam tenancy. The learned vakil for the defendants also relied on the ruling

referred to in 14 Madras Law Journal, Short Notes, page 18. There is, however, nothing in that report to show what were the facts of that case or

in what district it arose. It may not have been a Tanjore case and it is only with the incidents of kasavargam tenancy as they obtain in the Tanjore

District that we are now dealing. In the circumstances it is impossible to apply that ruling to the present case. Looking to the whole of the evidence

let in on this point, I think I am justified in finding that ordinarily the condition on which a kasavargamdar holds his manaiakat is that he should

perform services of some kind or other for his landlord the mirasidar, with or without the addition of a more or less nominal money rent.

6. The next question to be considered is whether the kasavar. gamdar has any right to transfer his holding. The evidence of the Court witnesses

and of plaintiff's eleventh and fourteenth witnesses proves that he has no such right. No evidence has been placed before me that would prove the

exercise of such a right by a kasavargamdar in any particular instance. Exhibits IV, V, VI, VII and VIII have been filed by the defendants to prove

instances in which such a right has been exercised by a kasavargam tenant, but they are not sufficient for that purpose. Exhibit IV is an extract from

the paimash account which shows that paimash No. 678 is a kasavargam manaiakat. Exhibit V is an extract from the land register which shows that

paimash No. 678 is included in Survey No. 167 A. Exh. VI is a sale-deed, dated 13-9-'05, by which Survey No. 167-A was conveyed to the

defendant's 3rd witness, the vendors describing the land as their ancestral property. But there is no evidence to show that the vendors were not

the mirasidars, to whom S. No. 167-A. belonged, and the evidence of plaintiff's first witness shows that the manaikat has been vacant for years,

so that in any case it is clear the vendors were not kasavargam tenants occupying the manaikat under a mirasidar. The same criticism is sufficient to deprive Exhibit VII or any evidentiary value for the purposes of this case. Exhibit VII purports to be an hypothecation bond by which on 15-11-96 the executants of Exhibit VI mortgaged the same manaikat to Shanmugam Pillai, the second witness for the plaintiff. It is not quite clear that the manaikat referred to in Exhibits. VI and VII is the same. There is some difference in the boundaries given in the two deeds. If the manaikat referred to in Exhibit VII is not the one dealt with in Exhibit VI, then there is no evidence to show that the former is a kasavargam manaikat at all. But assuming that the same manaikat is referred to in both documents, the evidence of plaintiff's 1st witness shows that it was vacant at the time when these deeds were executed and therefore it was notas. tenants, but as mirasidars that the executants of Exhibits VI and VII purported to deal with them. There is no evidence that these persons were the descendants of the original kasavargamdars, but even if they were, it is quite possible that they or some of their predecessors had at some time acquired the mirasi rights in the manaikat by purchase from the original owner. Exhibits VI and VII are therefore of no value as evidence in the present case. So also in regard to Exhibit VIII which is a registration copy of a sale deed by which another manaikat was transferred. Exhibit VIII does not give the paimash number of the manaikat that was sold, bat only the survey number which is 165-A. Exhibit V shows that survey No. 165-A. comprises about 40 paimash numbers only some of which are kasavargam manaikats It cannot therefore be assumed that the manaikat conyeyed by Exhibit VIII was, a kasavargatn manaikat, and in the absence of any evidence on that point, Exhibit VIII is altogether irrelevant to the question at issue. There is thus no evidence to rebut the evidence of the plaintiff's witnesses and the court witnesses to the effect that a kasavargamdar has no right to sell or mortgage his manaikat, not even subject to the condition that his transferee should render the customary services to the landlord. The holding, however, passes by inheritance to the heirs of the kasavargamdar, and they are entitled to continue in possession of it, so long as they render the customary services. Even if the heirs of a deceased kasavargamdar

are females who are not themselves capable of rendering the necessary service in person, they are allowed to continue in the occupation of the

manaikat as long as they make some arrangement for the performance of the services by others. This is established by the evidence of the court

witnesses and of the 11th and 14th witnesses for the plaintiff, which is corroborated by entries in paimash accounts. See, in particular, Exhibits T,

Y and KK- This incident of kasavargam tenancy has also been frequently recognised by the courts (see Exhibits R, DD, JJ and HH). There is no

evidence to the contrary. I therefore find that it is an incident of kasavargam tenancy that the holding cannot be transferred by Sale or mortgage,

but that it passes by inheritance to the heirs of a deceased kasavargamdar. This incident is sufficient to distinguish the kasavargamdar from a mere

licensee as the second defendant was held to be in the case reported in I, L.R. 16 Mad 97.

7. The next incident of the tenancy which is established by the evidence is the right of the mirasidar to eject the kasavargamdar, if the latter refuses

to perform the customary services. This is abundantly established both by the oral evidence let in at the hearing on remand (see the evidence of

plaintiff's 11th and 14th witnesses, and of the court witnesses) and by the exhibits which have been filed to show instances in which the right has

been successfully claimed in the civil courts, see Exhibits DD, FF, GG, JJ and HH which are all judgments in suits the subject-matter of which was

a kasavargam manaikat. It is unnecessary to go into the facts of all these cases in detail here. It is sufficient for the present purposes to say that they

are all instances in which the courts upheld the rights of a mirasidar to eject from his manaikat a kasa-vargamdar who refused to render him the

services which constituted the condition on which the manaikat was held. The oral evidence shows that it is usual when a kasavargamdar refuses to

perform the customary service, to tell him to quit and that he generally vacates the manaikat without compelling the mirasidars to bring a suit to eject

him. I therefore find that it is another incident of kasavargam tenancy that on the tenant refusing to render service to his landlord as usual, the latter

is entitled to eject him forthwith.

8. Another incident of kasavargam tenancy is that if the landlord ejects the kasavargamdar for refusal to render services, he is bound to

compensate him for any houses which the latter may have built on the site. There is abundant documentary evidence to prove that this has always

been recognised by the courts of the district as an incident of the tenancy ; see Exhibit DD (para 10), EE, HH (para 10) and JJ (para 28). This

incident of the tenancy has also been recognised already by the High Court. (See the case reported in ILR 22 M. 117.

9. I think I have now dealt with all the principal incidents of kasavargam tenancy, so far as they can be gathered from the evidence on the record.

My finding on issue No. 1 is that the chief incidents of as kasavargam tenancy are as follows:

(a) the manaikat or site is the property of the mirasidars : the kasavargamdar has no proprietary interest in it ; but he is ordinarily the proprietor of

the superstructure built upon it.

(b) the kasavargamdar holds the manaikat free of rent or for a more or less nominal rent, on condition that he performs services for the mirasidars

as an artisan or otherwise, as the case may be.

(c) the kasavargamdar has no right to transfer the manaikat to another, but on his death it passes to his heirs on the same conditions as those on

which he held it.

(d) the mirasidar is entitled to eject the kasavargamdar forthwith, if the latter refuses to render him the Customary services.

(e) if the kasavargamdar is ejected, the mirasidar is bound to compensate him for any house which he may have erected on the land during his

tenancy.

10. Issue II.-The plaintiff himself was his own 8th witness. At the re-hearing on remand he was recalled and deposed that he bought the suit

manaikat in 1897, the tenant at the time of his purchase being Aiyasami Nadan ; that Aiyasami Nadan rendered him services up till his death ; that

after Aiyasamy Nadan died, he (plaintiff) called upon the defendants, who are Aiyasami's heirs, and in occupation of the manaikat, to render him

service, and that they refused, and that he then told them they must vacate the manaikat. This is practically the case that was set up by the plaintiff

at the outset in his plaint. There is no Other evidence on the point. The defendants have not seen fit to go into the witness box to contradict the

plaintiffs allegation to the effect that they refused to render him service about

two years before the suit was brought to eject them. In these circumstances, I think the plaintiff's evidence on the point must be accepted. It is not denied that Aiyasami died about 2 or 3 years before the date of the plaint. The plaintiff says that it was 5 or 6 months after Aiyasami's death that he called upon the defendants to render him services and they refused. I therefore find on issue II that the defendants refused to render services to the plaintiff about two years before the institution of the present suit.

11. Issue III.-The plaintiff's evidence shows that the defendants refused to perform service about two years before suit (see my finding on issue II)

and that he thereupon ordered them to vacate the manaikat. In accordance with my finding on issue I. I must hold that this determined the tenancy

(cf. the case of N.S. Naraya-nasami Aiyar v. Vathiar Rama Aiyar reported in Madras Weekly Notes 473). My finding on issue III therefore is.

that the tenancy was determined, about two years before the institution of the plaintiff's suit, by the defendant's refusal to render him service, and

his order to them to vacate the suit manaikat.

This second appeal coming on for final hearing after return of the finding of the lower appellate court, the court delivered the following

12. The learned Judge's findings on the issues sent down for enquiry are not open to any legal objection and must be accepted. Mr. Ramachandra

Aiyar on behalf of the tenants asks for compensation for the superstructure put up by his clients, The District Munsif had directed that the

superstructure might be removed by the defendants and the defendants did not object to that portion of the decree in their appeal to the District

Court. We do not think the defendants are entitled to claim compensation at this stage. The result is that the appeal is allowed, the judgment of the

District Judge is reversed, and that of the District Munsif, restored. The respondents must pay the appellant's costs in this and in the lower

appellate court.