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**(1937) 01 MAD CK 0010**  
**In the Madras High Court**

Peravalli Kotayya and Others

APPELLANT

Vs

Ponnapalli Ramakrishnayya and Others

RESPONDENT

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**Date of Decision :** 04-01-1937

**Acts Referred:**

Madras Estates Land Act, 1908 — Section 3(2)(d)

**Citation :** AIR 1937 Mad 685 : (1937) 2 MLJ 573

**Hon'ble Judges :** Venkataramana Rao, J

**Bench :** Division Bench

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**Judgement**

Venkataramana Rao, J.—These civil revision petitions arise out of a batch of suits instituted by the Agraharamdars of Arepalli Taluk, Guntur

District, against the tenants for recovery of rents or damages for use and occupation in respect of the holdings in their occupation. All the suits

excepting one, namelyj O.S. No. 153 of 1918 were filed in the District Munsiff's Court of Repalli. The said O.S. No. 153 of 1918 was filed in the

District Munsiff's Court of Tenali.

2. The main question in these suits is whether the Civil Court or the Revenue Court has jurisdiction to take cognisance of them. The allegations in

the complaints are that the Agraha-ramdars own both the melwaram and the kudiwaram by virtue of the original grant and that at no time the tenants

had occupancy rights. The plea of the tenants is that Arepalli Agraha-ram is an estate within the meaning of the Estates Land Act and their holdings

being comprised in the said estate, the Revenue Court only has got jurisdiction to determine the claims. All the suits which were filed in the Repalli

District Munsiff's Court were stayed pending the decision of the Privy Council relating to certain lands in the same agraharam wherein the same

question was raised. The said O.S. No. 153 of 1918 reached the stage of second appeal and was pending in the High Court. The decision of the

Privy Council was delivered on 14th February, 1929, and is reported in *Seethayya v. Subra-mania Somayajulu* (1929) 56. M.L.J.730 : L.R. 56

IA. 146 : ILR 52 Mad. 453 (P.C.). On a consideration of the original grant, their Lordships of the Judicial Committee held that the Arepalli

Agraharam was an estate within the meaning of Section 3, Clause 2 (d) of the Madras Estates Land Act. After the decision of the Privy Council

the suits in the District Munsiff's Court of Repalli were taken up for hearing and the plaints were directed to be returned for presentation to the

proper Revenue Court. There was an appeal to the District Court from this decision. The learned District Judge was of opinion that though on the

question of the construction of the grant the Privy Council decision was conclusive of the rights of the parties, the plaintiffs will nevertheless be

entitled to allege and prove that they had acquired the kudiwaram right in the said lands subsequent to the date of grant. He therefore permitted the

said contention to be raised and remanded the suits for disposal in the light of the observations contained in his judgment. It may be noticed the

same view was taken in S.A. No, 1088 of 1921 which was filed against the appellate decision in O.S. No. 153 of 1918 and the said suit was also

remanded for a laik purpose The District Munsiff on remand in a very careful and considered judgment came to the conclusion that the

Agraharamdars did not acquire kudiwaram interest subsequent to the grant and the Revenue Court alone had jurisdiction. But his decision was

reversed by the learned District Judge. It is against his decision these revision petitions were preferred in 22 of the suits. Since the filing of these

revision petitions it has been brought to my notice that 10 of them have been compromised, namely, the following C.R.P. Nos. 971, 973, 979,

980, 982, 988, 989, 990, 991 and 992 of 1934. Therefore the main question which falls to be decided is whether the Agraharamdars own both

the warams by reason of the subsequent acquisition of kudiwaram and the Civil Court has jurisdiction to try the suits. Mr. Satyanarayana Rao who

appeared for the petitioners urged that it is unnecessary to go into the merits of these cases on the ground that under the Madras Act (XVIII of

1936) which amended the Madras Estates Land Act they have acquired occupancy rights and the kudiwaram is no longer in the Agraharamdars

and the Revenue Court alone has got jurisdiction. It seems to me that this contention must prevail. Section 3 of the said Act has now added the

following explanation to Section 6 of the Madras Estates Land Act (I of 1908):

In relation to any inam village which was not an estate before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, but

became an estate by virtue of that Act, or in relation to any land in an inam village which ceased to be part of an estate before the commencement

of that Act, the expressions "now" and "commencement of this Act" in this sub-section and Explanation (1) shall be construed as meaning the

thirtieth day of June, 1934, and the expression "hereafter" in this sub-section shall be construed as meaning the period after the thirtieth day of

June, 1934.

3. So far as Section 6 of the Act is concerned, it has been held to be retrospective in this sense, namely, that on the date of the commencement of

the Act if a tenant was in possession of ryoti land, he would acquire occupancy right and the section has been applied to pending litigations where

decrees in ejectments had been obtained but no final decree of a competent Court had been passed. In the order of the Reference to the Full

Bench in *Kanakayya v. Janardhana Padhi* (1910) 21 M.L.J. 31 : ILR 36 Mad. 439 Miller and Krishnaswamy Ayyar, JJ., made the following

observations in regard to the expression "every ryot now in possession" in the section:

4. It says "'the expression "every ryot now in possession" shall include every person who continues in possession at the commencement of this

Act'". It seems impossible to resist the conclusion that it was the deliberate intention of the legislature to confer a right of occupancy upon a ryot in

possession at the date of the commencement of the Act. Such an interpretation may have the effect of nullifying vested rights under contracts

previously entered into. But it is impossible to place the interpretation that ryots in possession of land at the date of the commencement of the Act

are entitled to occupancy rights on the mere general principle that a legislative enactment should not be interpreted so as to affect vested rights or

to give it retrospective operation by applying it to pending suits. As pointed out by Bowen, L J., "'no doubt, as a general rule, a statute does not

affect pending proceedings, but that rule is only a guide where the intention of

the legislature is obscure; it does not modify the clear words of a statute". (Quitter v. Mapleson (1882) 9 Q.B.D. 672.)

5. The same view was taken in Govinda Parama Guruvu v. Dandasi Pradhanu (1910) 20 M.L.J. 528 where before the 1st July, 1908, the date

when the Act came into force, the landlord obtained a decree for possession of the ryoti land. Benson and Sankaran Nair, JJ., held it was

immaterial that a decree for possession had been already passed. This interpretation was accepted by the Privy Council in Yerlagadda

Mallikharjuna Prasad v. Somayya (1918) 36 M.L.J. 257 : L.R. 46 IndAp 44 : ILR 42 Mad. 400 (P.C.). Now by virtue of the amendment made

by Section 3 of the Amending Act in relation to any inam village which ceased to be part of an estate before the commencement of the Amending

Act, the expressions "now" and "commencement of this Act" in this sub-section and explanation 1 shall be construed as meaning the thirtieth day

of June, 1934. This section is prima facie retrospective and there is no saving in regard to pending suits. If on the 30th day of June, 1934, a tenant

is in possession of land in an inam village which ceased to be part of the estate, he will get occupancy right by virtue of Section 6(1). Assuming

therefore the contention of the Agraharamdars is right that the land ceased to be part of an estate, the petitioners have acquired occupancy rights

and they are still in possession. I may usefully refer in this connection to the recent decision of the Privy Council reported in K.C. Mukerjee v. Mt.

Ram Ratan Kuer (1935) 70 M.L.J. 105: L.R. 63 IndAp 47 : ILR 15 Pat. 268 (P.C.). It was a decision under the Bihar Tenancy Amending Act.

In that case their Lordships of the Judicial Committee applied the Amendment Act of 1934 to a case pending before the Privy Council. The

landlord in that case sued to eject the defendant on the ground that she had taken a non-transferable holding and therefore he had become entitled

to re-enter. The Subordinate Judge who tried the case accepted the plaintiff's contention and gave a decree in his favour ejecting the defendant.

But the High Court took the view that since the transfer the landlord accepted rent and recognised the rights of the transferee and dismissed the

suit. The decision of the High Court was pronounced on the 27th April, 1933, and there was an appeal against the said decision to His Majesty in

Council. Pending the appeal to His Majesty in Council the Legislature of Bihar and

Orissa passed an Act called the Bihar Tenancy Amendment

Act of 1934, which came into force on the 10th June, 1935. By Section 26(N.) it was provided that:

Every person claiming an interest as landlord in any holding or portion thereof shall be deemed to have given his consent to every transfer of such

holding or portion by sale, exchange,, gift or will made before the 1st day of January, 1923.

6. Therefore the question which their Lordships of the Privy Council had to consider was whether this section would apply, because if it applied

the Act must be deemed to have taken away from the appellant the right which he was proposing to enforce in the appeal before the Privy Council.

7. Their Lordships held his right was so taken away and they made the following observations referring to Section 26(N.) of the Act which are

pertinent to the case now on hand:

Its provision is that every person claiming an interest as a landlord shall be deemed to have given his consent to every transfer made before the 1st

January, 1923. This is retrospective: the question is not whether the general language shall be taken only in a prospective sense. The object of this

section can only be to quiet titles which are more than ten years old, and to ensure that if during those ten years the transferee has not been ejected

he shall have the right to remain on the land. Within this class the legislature has not thought fit to discriminate against tenants whose right is under

challenge in a suit, a course which it may well have regarded as invidious or unnecessary. As substantive rights of landlords and their accrued

causes of action were to be abrogated, respect for pending suits over old transfers cannot be assumed.

8. Similarly in the present case the section clearly says that if a person is in possession of land in an inam village on the 30th June, 1934, he shall be

deemed to have acquired occupancy right. The object of this section was in unmistakable terms to confer occupancy right on the tenant in

possession of such land and respect for pending suits cannot be assumed. In this view the Revenue Court alone would have the jurisdiction and the

decision of the learned District Judge cannot be sustained and it seems to me unnecessary to consider the argument based on Section 13 of the

Amendment Act (XVIII of 1936). The applicability of Section 3 is not controlled or

governed by the said section, as in my opinion, apart from

Section 13, Section 3 will apply to In the cases. All that Section 13 says is that the Act shall apply to all proceedings stayed by Section 127(2), but

it does not affect the application of the Act to other cases nor does it affect the retrospective operation of the Act, if the legislature meant the

section to be retrospective.

9. However, I will deal with the contention based on Section 13.

10. It is contended by Mr. Somayya that the Amending Act (XVIII of 1936) can only apply to pending suits which are stayed under I Section

127(2) of the Madras Estates Land (Amendment) Act of 1934, and Section 127(2), according to him can only apply to cases where land is

comprised in a village which is not an estate within the meaning of Section 3(2) (d) and that as the present agraharam was declared to be an estate

within the meaning of the said clause, Section 127(2) would have no application to the present suits. It must be said that the argument of Mr.

Somayya has great force as the language of the section lends support to that contention. But the question is, what was the intention of the

legislature in enacting Section 127, Clause (2) of the Madras Act VIII of 1934. As Lord Halsbury observed in *Herron v. Rathmines and Rathgar*

*Improvement Commissioners* (1892) A.C 498:

The subject-matter with which the legislature was dealing, and the facts existing at the time with respect to which the legislature was legislating, are

legitimate topics to consider in ascertaining what was the object and purpose of the legislature in passing the Act.

11. The legislature was contemplating an amendment in regard to the conferment of occupancy right on the tenants in inam villages. They were fully

aware that the land may form part of a village which is not an estate within the meaning of sub-clause (d), of Clause (2) of Section 3 of the Act or

may have formed part of the village within the meaning of the said clause but has ceased to be part of the estate and they wanted to confer

occupancy rights in respect of both classes of lands. Legislature was also aware that in respect of both classes of lands there were pending

litigations also. The object of the legislature was that till they carried out the legislation which they had in contemplation, there should not be any

final adjudication of the rights of the parties by Courts of law. This object would

be thoroughly frustrated if Mr. Somayya's contention is given effect to and the expression "not being an estate" were held to qualify "village" and not "land" in Clause (2) of Section 127 of the Madras Act (VIII of 1934). No doubt it is not strictly accurate to talk of any land being an estate. But the expression "any land in an inam village" might comprise the entire land in an inam village or a part thereof. If it comprises the entire land in an inam village it would be synonymous with the village. If it is not, it would be part of the said village. If the entire land is to be taken into consideration, there is no incongruity in qualifying the said land by the expression "not being an estate". That a separate part of an inam village can be an estate is also contemplated by the legislature (vide Section 5 of the Amending Act). It seems to me the expression "not being an estate" must be held to govern the land and not only village. If the contention of Mr. Somayya were to be accepted, the Court must in every case come to the conclusion whether it is an estate or not before the amendment can be applied. On the other hand the object of the legislature was whenever any question of kudiwaram right arose with reference to a land in an inam village the actions should be stayed. In Section 127, Clause (2) of the said Act VIII of 1934, the expression used is "all proceedings involving a decision whether or not the inamdar has the kudiwaram right in such land" and the expression is wide and general. The proviso also seems to indicate that the words "such land" must only mean any land in an inam village and not any land in an inam village qualified by the expression "not being an estate". However, it is unnecessary to rest my decision on this ground since I have already held that the application of Section 3 is not controlled or limited by the application of Section 13 of the Amending Act. Even if my view in regard to the applicability of the Madras Amending Act (XVIII of 1936) is wrong, I am also of the opinion that the case of petitioners on the merits is well founded and I shall proceed to deal with it.

12. The main question in these suits is whether the plaintiffs have acquired the kudiwaram right within the meaning of the exception to Section 8 of the Madras Estates Land Act. In the plaint which were originally filed, as already stated by me, the case was that by virtue of the grant the plaintiffs are the owners of both the warams. There was no allegation that they acquired

the kudiwaram subsequent to the date of the grant. In the cases which went up to the Privy Council, two issues were raised, namely:

(ii) Whether or not the plaintiff's predecessors-in-title owned the kudiwaram at the time of the grant?

(iii) Whether the plaintiffs or their predecessors-in-title subsequently acquired the kudiwaram right in the suit land? Mr. Narayana Murthi who

appeared for the plaintiffs stated that it was not his case that the plaintiff's predecessors-in-title had the kudiwaram interest at the time of the grant

or that they subsequently acquired the kudiwaram right and therefore he did not press those issues. In *Seeihayya v. Subramania Somayajulu*

(1929) 56 M.L.J. 730 : L.R. 56 IndAp 146 : ILR 52 Mad. 453 (P.C.) their Lordships of the Privy Council observed:

In the course of these proceedings the respondents have admitted that they do not own the kudiwaram before the grant, and that they did not

acquire the kudiwaram independently of and after the grant In view of the admissions made for the purposes of these cases that the respondents

did not acquire the kudiwaram subsequently to the grant, it becomes unnecessary to consider the subsequent acts of the parties and the inferences

to be drawn from them.

13. It may be mentioned that the case of the plaintiffs in those cases as laid in the plaint before it came up to the High Court was that the original

grant was lost and that the proper inference from all the facts including acts of ownership by themselves and their predecessors was that under the

grant they had both varams. Thus various acts including the acts of ownership were relied on for the purpose of establishing that from the inception

they had kudiwaram interest in them but not that subsequently the plaintiffs acquired them From the concession made by them it is also clear that

those acts were not relied on for the purpose of proving that they acquired the kudiwaram subsequent to the date of the grant. If the plaintiffs want

to rely on the exception to Section 8 of the Act, it is incumbent on the plaintiffs to prove that in a particular plot of land they acquired the

kudiwaram. It will not therefore be permissible for the plaintiffs to rely on any general evidence regarding the acts of ownership in regard to the

whole village or in regard to the other plots in the same village. As observed by Venkatasubba Rao, J., in *Ramalinga Mudalt v. Ramaswamy*"



Aiyar (1929) M.W.N. 239:

So far as the exception to Section 8 is concerned, its application depends on particular facts connected with each separate plot in the village. The

decision therefore that certain proved facts brought a specific plot within that exception, is a decision which in the very nature of things cannot

apply to other and different plots in the same village.

14. Again as observed by Spencer, J., in *Mogadasu Venkatadasu and Others Vs. Venkamamidi Udayanarayan and Others*, :

If the plaintiffs intended to rely on the exception to Section 8 of the Madras Estates Land Act for ousting the jurisdiction of the Revenue Court, it

was necessary that they should have advanced a specific case to show by what acts they acquired the kudiwaram interest of their ryots and

became entitled to both warams.

15. In the present suits even after the plea was allowed to be raised, no acts were alleged by which they acquired the kudiwaram right, nor was it

alleged when they acquired such kudiwaram right or by whom was such right acquired. As stated by the District Munsiff the argument on behalf of

the plaintiffs was that as the plaintiffs were unable at this remote time to prove when or how the kudiwaram was acquired and as the subsequent

conduct of the Agraharamdars showed that they were in full possession and enjoyment of both the warams, it must be presumed that their

acquisition of the kudiwaram had a legal origin. The District Judge also remarks that:

There is no direct proof in any of these suits of such acquisition. It is sought to be made out by the plaintiffs from enjoyment of the properties and

the conduct of the parties.

16. It seems to me that this plea ought not to have been permitted at all in the absence of any definite allegations as to the mode of acquisition. The

question is whether there is any room in these cases for the application of this theory of lost grant or the presumption of a legal origin and long

continued enjoyment of both the warams. At the outset I may state that even this theory of lost grant must be made out with reference to facts of

each case. The learned District Munsiff dealt with each case separately and arrived at an independent conclusion in regard to each. But

unfortunately though the learned District Judge concurred with the District

Munsiff in his treatment of the cases, he never adhered to it but dealt with the cases together and arrived at conclusions based on facts relating to the entire village. The evidence relied on in proof of the acquisition of kudiwaram right falls into two classes: (1) general evidence regarding the entire village and the acts of ownership exercised by the Agraharamdars, and (2) evidence regarding each holding. The general evidence relied on comprises three independent pieces of evidence, namely, (1) evidence furnished by what are called Dumbalas which range between 1801 and 1823; (2) evidence furnished by partition proceedings between the Agraharamdars in 1859 and 1860; and (3) certain land acquisition proceedings wherein the Agraharamdars were paid compensation in respect of certain lands in the village. This general evidence as already observed by me is wholly inadmissible and particularly in this case where concession was made that in respect of certain lands in the village, the inamdars have not acquired kudiwaram interest subsequent to the grant. The general evidence is admissible only if it was intended to prove that in the entire village they acquired kudiwaram right subsequent to the grant. In *Ramalinga Mudali v. Ramaswamy Aiyar* (1929) M.W.N. 239 Venkatasubba Rao, J., considered the evidence in regard to the whole village because the case there made out was that in regard to the entire village kudiwaram was acquired subsequent to the grant. Further the said case can hardly be treated as an authority because it related to a mirasi village where admittedly the mirasdar is the cultivating ryot and the question in that case was whether the zamindar acquired also the rights of the mirasdar. It was not like this case where the cultivating ryots set up occupancy right as against the landlord. However as the learned District Judge was considerably influenced by this general evidence, I shall proceed to deal with the legal inference that can be drawn from that evidence. The dumbalas are Exs. A to A-14. Ex. A relates to Fasli 1192 (that is, 1782-83) and Ex. A-14 relates to Fasli 1231 (1821-22). The learned District Judge says that: They furnish valuable evidence in favour of the Agraharamdars that whatever might have been the state of affairs at the time of the original grant in 1689 there were no tenants with occupancy rights in the lands on the dates of the dumbalas and far from any of the dumbalas lending any support to the contention of the ryots, each one of them has got a deadly effect against

their case.

17. The learned Judge fell into a serious error in regard to the import of these documents. If, according to the learned Judge, on the dates of these

dumbalas there were no tenants with occupancy rights, it could not be said that there was any acquisition by the landlord of such occupancy rights.

The learned District Judge entirely forgot that the entire area of this inam village was not cultivated. Even at the time of the inam settlement as will

be seen from Ex. D it will be found that the total extent of the inam village was 2409 acres whereof 960 acres were cultivated dry and only 84

acres and odd were cultivated wet and the rest of it was uncultivated and waste. Therefore on the dates of these dumbalas it is not possible to

know how much was cultivated. In the lands which were not cultivated it cannot be said that there were any tenants with occupancy rights and in

these lands there could be no question of any tenants abandoning occupancy rights or the landlord purchasing occupancy rights and any such

acquisition thereof by the landlord. Unless it is possible to establish that the suit lands were lands which were then under cultivation at the time of

the dumbalas it cannot be said that there was any acquisition of occupancy right subsequent to the date of the grant.

18. Coming to the nature of the dumbalas they do not seem to have any such deadly effect as is attributed by the learned Judge. These dumbalas

are only permits to enable the Agraharamdars to deal with the produce freed from the burden of paying the dues to the zamindar. The person with

whom the zamindar is concerned is only the Agraharamdar because he was the person responsible for the payment of the dues to him. The

zamindar is not concerned how the produce is distributed between the Agraharamdar and the tenants who cultivate the land. The nature of, and the

value that should be given to, these dumbalas have been very accurately summed up in a considered judgment of Pandalai, J., in S.A. No. 1592 of

1926 and I am constrained to quote the observations of the learned Judge at considerable length because that judgment has unfortunately not been

reported:

The dumbalas produced C series and Exs. X and X-a covering the period 1765 to 1836 have been construed by both the lower Courts on the

footing that the Privy Council have by a remark in Venkata Sastrulu v.

Seetharamudu (1919) 37 M.L.J. 42 : L.R. 46 IndAp 123 : ILR 43 Mad.

166 (P.C.) given dumbalas generally the meaning and effect of establishing that the inamdar who is mentioned therein is the owner of both warams.

The respondents also rely on it for that purpose. The remark is " there are also some dumbalas or orders dated in the year 1793 requesting that the

plaintiffs" ancestor shall be allowed to reap and enjoy the crops pertaining to Billapadu." These are dealt with under the category of other

confirmatory documents. We are confident that by this remark their Lordships did not intend that wherever dumbalas are found they should have

the meaning and effect attributed to them by the plaintiffs irrespective of any consideration of the nature and object of dumbalas and other facts

which establish that the inamdars were not and could not be permitted to remove the whole crop or indeed do anything more than take what as

between them and the ryots is due to them. Dumbalas are merely part of the machinery of revenue collection when the revenue is calculated on a

share of the produce. The revenue being in theory payable in kind by a share of the produce, the zamindar or Government has necessarily to take

care that the crop is not before or after harvest removed by any one till the revenue is paid. The local officials having for this purpose detained the

crop the dumbala is simply an intimation to them by the zamindar or superior Government revenue official, who has previously received the

revenue, that it has been paid or accounted for and that the crop may be permitted to be removed. In short it simply raises the Government

embargo on the produce and permits it to be taken away. By whom and of what? It is natural that the revenue authorities should refer to the

person who is bound to pay and has paid the revenue. But it is a misunderstanding of the situation and the document to think that the mention of the

inamdar means that the whole produce may be appropriated by him and therefore that he is the full owner of the land and that the tenants have no

rights. The inamdar is mentioned in the dumbalas because he is the person responsible for the revenue and he in his turn to protect his own interest

as well as of the Government to whom he is bound to pay revenue is bound and interested to see that the produce is not taken away by the

cultivators till the melwaram out of which both revenue and the inamdar's share has to come is paid.

19. On a reference to the printed records of the case it will be found that the nature of these dumbalas is more or less similar to that in the present

cases. I think the learned District Munsiff has correctly appreciated their true legal effect. The partition proceedings are evidenced by Exs. B, B-I,

C and C-I. So far as these documents are concerned, they can never form the basis of any inference in regard to the title to the kudiwaram interest.

Whenever there is a partition of an estate among the members of a family, it is usual always to divide the lands which form the estate and not the

melwaram. From the description of the land it does not follow that actual lands were divided. In a permanently settled estate, for example, most of

the lands would be in the possession of the tenants except lands which were lying waste and were not cultivated. In the case of lands, which are in

the possession of tenants, when there is a division of lands, it only means that the person to whom the lands are allotted will realise the rents and

profits from the tenants who are in occupation of the said lands. It will be seen from Ex. D that nearly 1,400 acres were not in the cultivation of

anybody and there is no evidence in the present suit that the lands which are the subject-matter of those suits were not comprised in the lands

which were not under cultivation then. It is not possible to draw any inference that there were tenants with occupancy rights in the said lands who

had abandoned them or from whom the landlords acquired the kudiwaram right.

20. Then the next piece of evidence relied on is certain land acquisition proceedings. The circumstances under which compensation was awarded

to the Agraharamdars are not in evidence. They have no bearing on the specific issue in the suits, namely, whether a particular plot ceased to be

part of the estate. The fact that with reference to certain lands which formed the subject-matter of the said proceedings, compensation was not

claimed by the tenant would not be any evidence in regard to other plots of land. Probably they may be evidence in regard to the question whether

the zamindar owned both the warams in the entire estate but that question is not in issue. The above three pieces of evidence each by itself being

inconclusive even on the question whether the original grant was of both the warams taken together are also inconclusive on the said question and it

is not safe to rely upon them to establish the subsequent acquisition of kudivaram interest by the inamdar. Therefore if we eliminate them we fall

back upon the evidence with reference to each plot. Before dealing with the said evidence it is necessary to make a few general observations. The

lands being prima facie in the Arepalli Agraharam, geographically they are within the ambit of an estate within the meaning of the Estates Land Act.

Therefore there is a prima facie presumption that in the said lands the tenants have got occupancy rights. The Court therefore has to start with the

said presumption in deciding whether the inamdar has got the kudiwaram right. u/s 23 of the Estates Land Act and Section 185 of the said Act the

presumption is that land in an estate is a ryoti land. The learned District Munsiff has correctly applied the presumption in estimating the evidence.

The learned District Judge has in my opinion fallen into an error in thinking that the presumption ought not to be applied. The learned Judge

remarks at the end of paragraph 7:

We have nothing to do with the presumptions laid down in the Act when considering the issue whether such an acquisition has been made.

21. Under the exception to Section 8, Sub-section (2), Clause (d) land in an inam village will cease to be part of an estate if it is proved that the

tenants' interest in those holdings have been acquired by the inamdar. It is an exception which the landlord will have to make out. The exception is

only to the general rule that in every land comprised in an estate the tenant has got occupancy right. It is not possible to understand how the learned

District Judge ignored this elementary rule. The evidence abundantly establishes and it is not challenged before me that the lands were never in the

personal cultivation of the Agraharamdars. There is no evidence either oral or documentary by which the plaintiffs sought to prove the manner and

method of the acquisition of the kudiwaram right and no single instance has been proved of a relinquishment by the tenants or of purchase by the

inamdar or of inheritance of any other known mode by which the landlord came to acquire the kudiwaram right. The sole thing relied on is that the

Agraharamdars were dealing with the lands as owners and leasing them from time to time for specific periods. The learned District Munsiff

disbelieved all the unregistered leases relied on by the plaintiffs. In this the learned District Judge has also concurred. He observes:

The safe method to adopt with reference to these exhibits is to ignore the unregistered documents altogether.

22. There remain then the registered leases and other evidence relied on with reference to each of the plots in question. Taking the registered leases they range between 1903 and 1911. The Estates Land Act came into force on the 1st July, 1908. If before the dates of these registered leases the landlord has not acquired kudivaram right, the execution of these registered leases would not affect their occupancy right if they were in possession of the lands on the date of the commencement of the Act. Therefore it has to be proved apart from these leases whether the landlord has acquired kudivaram right. If so, these leases may be some evidence in confirmation of the said right. It is a well-known fact that the zamindars and inamdars anticipating tenancy legislation had been trying by all possible means to deny occupancy rights to the tenants and to prevent acquisition of occupancy rights by the tenants and for that purpose have been taking muchilikas with recitals in and by which the tenants stipulate to surrender possession to the landlord at the end of the term. It has always been held that from such a stipulation it is unsafe to presume absence of occupancy right in the tenant. The value of these leases will also be much discountenanced if it is proved that the tenants from whom these leases were taken were in occupation of the said lands on the dates of the said leases. Certain observations in the Privy Council judgments were relied on by Mr. Somayya in this connection. But on a careful perusal of the judgments it will be seen that the observations were made with reference to the particular facts of those cases. For example in *Suryanarayana v. Pothanna* (1918) 36 M.L.J. 585: L.R. 45 IndAp 209: ILR 41 Mad. 1012 it was found that the defendants were let into possession by the inamdars under agreements for terms which expired in each case before the suits for ejectment were brought. Similarly in *Venkata Sastrulu v. Seetharamudu* (1919) 37 M.L.J. 42 : L.R. 46 IndAp 123 : ILR 43 Mad. 166 it was found that in 1904 all the tenants formally relinquished their lands to the plaintiff and put him into possession thereof and from that date until the tenancies were granted in the year 1907 the property remained vacant and when the defendants were admitted as tenants, they severally declared that they had no right of occupancy except such as was given to them by the tenancy agreements. Therefore in cases where defendants were let into possession by the inamdar under agreements executed by them, the said muchilikas may be taken into consideration for the purpose of

determining whether the landlord or the tenant had the kudiwaram right, but when the defendants were not let into possession under those

agreements but they were already in possession on the dates when they executed them, the same inference could not be drawn. Again in one place

the learned District Judge remarks:

We find the Agraharamdars dealing with the lands as if they were their own, dividing them, mortgaging them, selling, exchanging them and letting

them for particular periods for specified rents. Effect must be given to this course of known enjoyment of the properties and under the

circumstances it could be given only by presuming that the kudiwaram interest in the holding was acquired by the inamdars at some date or dates

subsequent to the grant.

23. To my mind this is a sweeping observation made by the Kotayyai learned Judge not borne out by the evidence on record, at any rate so far as

the particular plots in these civil revision petitions are concerned. From the analysis given by Mr. Somayya, I find that only in two suits there was

either a mortgage or sale. In C, R.P. No. 985, there are two registered mortgages and in C.R.P. No. 984, there are two registered mortgages and

one sale. I will deal with the evidentiary value of those documents in dealing with the particular cases. But beyond these so-called mortgages or

sales there is no other evidence of mortgages, sales or exchanges. I do not know what the learned Judge means by saying the inamdars divided the

lands. That observation can have relevancy only if we were dealing with the question whether in the entire village the inamdars had the kudiwaram

or acquired the kudivaram right but it will have no bearing on the question whether in a particular plot of land the inamdar acquired the kudivaram

right unless there is evidence that that particular plot of land happened to be the subject of division among the Agraharamdars. There is another

observation which the learned Judge makes which requires some notice, namely:

There is not a single instance of any sale of the lands by any one of the so-called tenants and no documentary proof of any partition of the lands in

the same family. Oral evidence there is of the tenants themselves to the effect that they divided such and such lands in such and such a manner with

out any reference to the Agraharamdars or their rights ; but such oral evid ence has no value in the face of the documents that have been produced



by the plaintiffs.

24. The proof of alienations of lands in the possession of tenants is given for the purpose of probalising the existence of kudivaram right in the

tenant, but the absence of it could not be taken as negating occupancy right. Where land has been in the possession of a particular family for a

considerable period, say 30 or 40 years, and if the said family was not in need to mortgage t>r sell a land, it is preposterous to expect any sale or

mortgage in the said family. I think possession for a considerable length of time should ordinarily be taken as dispensing with such a proof. In most

cases it may not be possible to have them though it is desirable or it might be good if such evidence was forthcoming and the absence of such

evidence should not be taken as a factor in negating occupancy right.

25. Now I shall proceed to take up each of the cases.

[His Lordship discussed each case separately and held.] I

[ \* \* \* ]

26. Thus on a consideration of the entire evidence I am of the opinion that the conclusions reached by the learned Pistrict Munsif are right. I

therefore allow the above revision petitions and reverse the decision of the learned District Judge and restore that of the District Munsif with costs

both here and in the Court below.

27. C.R.P. Nos. 971, 973, 979, 980, 982, 988, 989, 990, 991 and 992 of 1934 are not pressed and are dismissed as withdrawn and there will

be no order as to costs.