

(1913) 02 MAD CK 0015
In the Madras High Court

Sri Rajagopalaswami temple

APPELLANT

Vs

Jagannadha Pandia Aiyar

RESPONDENT

Date of Decision : 12-02-1913

Acts Referred:

Citation : (1913) 24 MLJ 342

Judgement

1. The plaintiff, the trustee of a temple, instituted the suit on behalf of the temple, as the Inamdar of a tope to recover half the value of the trees cut in the Inam holding and appropriated by the defendant, the occupancy ryot of the holding. The Plaintiff claimed to be the melwaramdar of the tope and alleged that both by virtue of his right as melwaramdar and according to usage he was entitled to half of the value of dead trees and trees cut by the ryot. The defendant pleaded that the plaintiff was entitled only to a sum of 11-11-6 a year and the road cess payable to government out of the produce of the tope and that he himself was the absolute proprietor subject to the liability to the payment of that amount. The District Munsif and the learned District Judge have both found that the melwaram right in the land belonged to the plaintiff and that his right is not that, one entitled only to a benefit to arise out of land belonging to the defendant as proprietor. The Munsif also held that the evidence showed that the plaintiff's claim to half the value of the trees was supported by the evidence of usage adduced by the plaintiff and gave him a decree for Rs. 430. The District Judge held that as melwaramdar the plaintiff was not entitled to any portion of the value of the trees in the holding and that he failed also to establish any legal custom justifying his claim. He accordingly dismissed the suit. Mr. Devadoss for the respondent has repeated before us the contention

that the defendant is the absolute proprietor of the holding subject only to the liability to pay Rs. 11-11-6 a year and the road cess to the plaintiff

but we agree with the lower courts that the plaintiff is the melwaramdar of the holding. The Inam Register and the Inam Patta show that the

plaintiff's title to the land as Inamdar was recognised by government. The Register no doubt mentions Rs. 11-11-6 as the tree tax payable for the

land and Rs. 16-4-9 as the wet assessment. The object of mentioning the tax was to fix the quit-rent payable to government by the Inamdar.

Subject to the payment of the quit-rent the plaintiff was recognised as the melwarumdar. The relations between the melwaramdar and

kudiwaramdar were governed by the law applicable to landlord and tenant, and it was not the intention of the Inam authorities, nor was it within the

scope of their duties, to define those relations. The rights of the melwaramdar and kudivaramdar must therefore be determined according to the

provisions of the Rent Recovery Act and other rules of law applicable to them. There is probably some conflict of opinion in the decisions of this

Court with respect to the melwaramdar's right to the trees in the land comprised in a ryot's holding, cf. *Bodda Goddeppa v. The Maharajah of*

Vizianagaram ILR (1906) M. 155 *Rangappa Appa Row v. Kadiyale Ratnam* ILR (1889) M. 249 and *Appa Row v. Narasanna* ILR (1891) M.

47 with *Narayana Ayyangar v. Ors.* ILR (1902) M. 252 and *Kakarla Abbayya v. Raja Venkata Papayya Rao* ILR (1904) M. 24. But all these

decisions relate to cases when the holding consists of land occupied mainly for cultivating wet or dry crops, and the question for decision was

whether the melwaramdar's right would extend in any measure to the trees in the holding in the occupancy, and under the cultivation of the ryot.

But in the present case, the holding was at the time of the Inam settlement, and has subsequently been a tope consisting of trees. In such a case

there can be no doubt that the melwaramdar has a right to the trees and the ryot cannot be entitled to cut them down for his sole appropriation.

The cases referred to above have therefore no application and the learned District Judge was in error in extending them to this case. The Plaintiff

must be held to be entitled to a portion of the value of the trees cut by the defendant. The Judge held that the evidence as to usage was not

sufficient to entitle the plaintiff to half the value on the basis of a customary right apart from his legal right as melwaramdar. He recorded no finding

on the question whether in the view that that the plaintiff is entitled to a portion of the value of the trees as melwaramdar, the evidence shewed that he should receive half the value. For this purpose it is not necessary for the plaintiff to establish the requisites of a customary right not otherwise sanctioned by law. It would be enough to adduce evidence sufficient in the opinion of the court to show that the claim in question was understood by the parties to be one of the incidents of the relationship between them. The District Munsif's finding in the affirmative is amply supported by the evidence set out in his judgment including the evidence of defence witness No. 2, the defendant's own Kanakkan. We accept his finding on the question. In the result we reverse the decree of the District Judge and restore that of the District Munsif with costs here and in the Lower Appellate Court.