

(1926) 04 MAD CK 0051
In the Madras High Court

Sri Sri Sri Krishna Chandra Gajapathi Narayan Deo
Maharajulugaru

APPELLANT

Vs

Yalla Ramayya and Others

RESPONDENT

Date of Decision : 23-04-1926

Acts Referred:

Citation : AIR 1927 Mad 10

Hon'ble Judges : Phillips, J;Madhavan Nair, J

Bench : Full Bench

Judgement

Phillips, J.—The plaintiff-appellant, who is the Zamindar of Parlakimedi, brings this suit as trustee of gods Sri Ramaswami and Sri Jagannathaswami, to whom the suit village of Kosamala was given as an inam either in 1500 or 1700 A. D. The plaintiff alleges that the grant consisted of both melvaram and kudivaram of the village and that originally rent was paid in kind on the varam system. For a long period, the Parlakimedi estate, including this inam village of Kosamala, was under the control of the Court of Wards; and in 1869, after the estate had been surveyed a settlement was effected, and in that settlement certain money rents based on the nature of the soil and other advantages were fixed. This settlement has continued in force until the date of suit. The plaintiff sues for a declaration that this settlement was beyond the powers of the Court of Wards as trustee of the gods and is not binding on the plaintiff. He also prays for a declaration that he is entitled to claim rent in kind from the defendants and for an injunction directing the defendants to pay rent in kind from fasli 1326. The plaintiff is somewhat curiously framed in view of the admitted facts of the case and it seems to have been framed in such a way as to bring this suit entirely within the jurisdiction of the civil Courts. If, as alleged, the plaintiff is entitled to both varams in the lands, the defendants are mere tenants-at-will and the plaintiff could eject them or lease out the lands to them in any manner he pleases; consequently a suit for a declaration that the money rents are not binding on him seems to be merely a preliminary step before proceeding to exercise the powers which he alleges that he possesses. At the trial, however, a number of other

points have been raised and in appeal the plaintiff's case has been put on two bases. Firstly, it is said that the plaintiff, as owner of both varams, is entitled to deal with the lands as he pleases. Secondly, it is contended that, if the melvaram alone vests in the plaintiff, then the act of the Court of Wards in making the settlement of 1869 is ultra vires and not binding upon him. This second claim is nowhere mentioned in the plaint; but as the defendants pleaded that they had permanent rights of occupancy, and that their rent had been settled for all time, the second portion of the plaintiff's case was also considered.

2. I will first deal with the plaintiff's prayer to revert to payment of rent in kind, by which is meant the varam system, under which the landlord takes a definite share of the produce. This undoubtedly is the system which originally prevailed in most parts of this presidency; for it has always been held that, the ruler of the land was entitled to a share in the produce. It is on this theory, and on no other evidence that the plaintiff's case must succeed, if at all. The village of Kosamala appears to have been held on a somewhat curious tenure. At the earliest date of which we have any evidence the village as a whole was leased out to a mustajar who agreed to pay a certain fixed rent in money to the Zamindar. This system continued for a long time, but, in later years instead of leasing the village to a mustajar, the village was leased sometimes to the village officers on behalf of the villagers, and sometimes to a number of villagers and sometimes to all the cultivating ryots of the village. There is not a particle of evidence that the landlord ever dealt directly with each individual ryot and it is an essential part of the system of varam that each individual should contribute a definite share in what he produces to his landlord. This leasing system is, therefore, clearly not a varam system. We also have evidence, that as far back as 1826, the rent of the village was paid in money. The plaintiff relies on certain remarks in Ex. JJ as showing that there was a system of varam prevailing in his estate. Ex. JJ consists of official correspondence from 1861 to 1864 which preceded the survey and settlement of the Parlakimedi estate. In this correspondence we find certain references (at pages 29 to 30 of the documents) that there were recognized shares of the produce paid as rent in certain parts of the estate; but there is no reference to such share being paid in Kosamala village.

3. Here I may observe, that although there are admittedly separate accounts for Kosamala village, as of course there must be as it is a trust village, yet the plaintiff who was the trustee has failed to produce any one of these accounts. The only inference that can be drawn from this conduct is that the accounts, if produced, would be unfavourable to his case. Seeing then that there is no evidence of varam rent having been paid in Kosamala at any time, and that from so far back as 1826 the rent has always been paid in money, it is impossible for the plaintiff to revert to the system of varam when there is no evidence that it ever existed. Although, therefore, the right of the landlord to revert to varam rents is a very usual right it is clear that the plaintiff has not proved that he has that right; for there is no evidence that such a tenure existed. It is only if it is proved that he is the owner of both the varams that he would have such a right;

for he would be dealing with tenants-at-will and can impose.

4. Coming to his first prayer, that there should be a declaration that the settlement, by which the village has been leased out for money rent according to fixed block rates is beyond the powers of the trustee, it must be observed that the plaintiff bases his case on the allegation that varam rent was commuted by the Court of Wards into fixed money rent payable for all time. I have shown above that this is clearly wrong; for when the settlement was made, the rent prevailing in the suit village was money rent and all that the Court of Wards did was to survey and classify the village and determine the proper money rent payable on the land. In doing this they cannot be said to have exceeded their powers unless it can be shown that they granted a permanent lease which would not be binding on the trust estate.

5. The third prayer for an injunction directing the defendants to pay rent in kind before any agreement has been made with them is clearly untenable when the plaintiff fails to show that such rent is customary or the subject of a contract.

6. Prima facie, therefore, the three prayers put forward in the plaint are unsustainable unless we go into the question of whether the plaintiff is or is not the owner of both varams in the land. Seeing that the plaintiff has put forward his case as he has I should have felt inclined to dismiss his suit in limine on the ground that the declarations asked for are entirely futile if the plaintiff's allegation that he owns both varams is true. But as the further question has been raised in the trial, and argued here at considerable length I will proceed to deal with it.

7. It has been found by the District Judge that the plaintiff is the owner of both varams and this finding is based on a supposed presumption in plaintiff's favour coupled with the fact that the defendants have not proved their occupancy rights. This presumption that the grant of an inam is presumably the grant of the land itself, is sought to be justified by the recent decision of the Privy Council in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65. In that case the trustees of certain temple lands sued to eject the tenants who pleaded occupancy rights. It was there held that the onus was upon the defendants to prove that they had a permanent right of occupancy. Putting the result of the case as above, it would appear to be directly opposed to the decision of their Lordships in *Sivaprakasa Pandara Sannadhi v. Veerama Reddi* A. I. R. 1922 P. C. 292. It was formerly held by this Court that in the case of inams, especially in the case of inams granted to Brahmans, the presumption was that the grant was of melvaram only and not of the land itself. This presumption was held not to exist in *Suryanaranaya v. Patanna* [1918] 41 Mad. 1012, which was affirmed in *Venkata Sastrulu v. Seetharamudu* [1920] 43 Mad. 166. In *Muthu Goundan v. Perumal Iyen* A. I. R. 1 21 Ma 145 a Full Bench of this Court, after considering the above rulings, held that there was a presumption in law that in an inam grant, both melvaram and kudivaram are included. This Full Bench decision was expressly overruled in *Sivaprakasa Pandara Sannadhi v. Veerama Reddi* A. I. R.

1922 P. C. 292. If, therefore, we are to take it that the decision of the Privy Council in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 means that in all suits by an inamdar to eject a tenant, there is a presumption in favour of the inamdar that he is the owner of the land itself and that, therefore, the burden is on the tenant to prove that he has occupancy rights, the decision will be in direct conflict with that in *Sivaprakasa Pandara Sannadhi v. Veerama Reddi* A. I. R. 1922 P. C. 292.

8. The learned Advocate-General for the appellant asks us to adopt the view, namely, that the later decision in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 directly overrules the decision given only a year earlier, to which three of the Judges who gave the later decision were parties. That they should have overruled their own recent judgment without express reference thereto seems to me impossible and if the two decisions can be reconciled, it should be done. I had to consider this point, sitting as a single Judge, in *Periakaruppa Thevan v. Aiyans and Kaniyalaswamtgal Koil Devasthanam* A. I. R. 1 26 Mad. 136 and there I came to the conclusion that the decision in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 by which the burden of proving occupancy right is thrown on the tenant is only applicable in cases where the inamdar is proved or admitted to be the owner of the land itself. A closer scrutiny of the judgment in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 confirms me in this view. The judgment starts by stating as a principle of law that:

It cannot now be doubted that when a tenant of lands in India, in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant.

9. Then instead of making the presumption that the landlord is the owner of the land, their Lordships proceed to consider the terms of the grant to the plaintiff and find that the grant included the land itself. They then proceed to consider whether the tenants have proved that they had any occupancy rights. When, therefore, the principle above mentioned was laid down, I think that the words "tenant of lands" must mean "tenant of lands belonging to his landlord," that is to say, that the landlord has a right not merely to the melvaram but to the land itself. In this view the two judgments are not inconsistent and I, therefore, adopt it.

10. We then have to consider the evidence as to the grant. The plaintiff relies on three documents, Exs. IV, J and K, which all relate to the enfranchisement of the plaintiff inam. The original grant is not available. These documents all show that the rent was a money rent. There is no specific reference to the grant of the land itself. The plaintiff relies on the statement in Ex. J that the area of the village is given. There is really nothing conclusive on the point in any of these documents, but there is a recital in column 12 of Ex. J., namely: "The average net profits of the amaniyadar are Rs. 2,000" and this is a somewhat peculiar phraseology if the

amaniyadar or inamdar was really the owner of the lands themselves. We have no other evidence to support the plaintiff's case, but we have certain circumstances which do support the defendants' claim to occupancy rights. The defendants and their predecessors have been in possession of these lands for as long as we have any record. If there is any record of a different state of affairs at an earlier date, the plaintiff would have produced it. It may therefore be taken that for a very long time the cultivators of the lands have been the defendants and their predecessor-in-interest. It is also very significant that the earliest tenure of which we have any record is this system of mustajari, namely, leasing out the whole village to a middleman. The middleman is responsible for the rent of the whole village and it is he that has to make his arrangements with the cultivators of the village lands. There is no direct dealing between the inamdar and the cultivator of the land. The rent payable by the mustajar must naturally have been proportionate to the rent that he will receive from the ryots. It may fairly be presumed, therefore, that when he took a lease the lands were under cultivation by the ryots.

11. In as much as there has never been any direct dealing between the inamdar and the ryots, the inference is strong that these ryots were in possession of the lands without the intervention of the inamdar. There is yet another piece of evidence in favour of the defendants and that is Ex. JJ. From a perusal of this exhibit, which consists of official correspondence between Government Officers, it will be seen that in making the settlement of the Parlakimedi estate, the officials were concerned with preserving not only the interests of the Zamindar but also the interests of the cultivating ryots. It must be assumed that these officers, at the time when they wrote, namely, from 1861 to 1864, were aware of all the circumstances of the case and were of opinion that the cultivating ryots had certain rights which required protection. It is well known that many cultivating ryots in this Presidency do possess occupancy rights and such rights have been expressly recognized by statute in lands within estates. This right conferred by statute cannot be said to be a new grant entirely but it is only a statutory recognition of what had in many cases previously existed. Parlakimedi is an estate within the meaning of the Act I of 1908 and the suit inam is within the ambit of that estate. It is not, therefore, difficult to assume that the rights of the cultivators which the Government officials sought to protect was the right of permanent occupancy. We have also evidence that from 1870 at least, the defendants have been alienating their lands to the knowledge, and with the permission of the inamdars [Exs. V to IX and XII.] No doubt, as pointed out in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65, such alienations are not necessarily proof of occupancy right. They may merely mean that the trustees are lax in their duties, but in this case they are put forward to corroborate the other evidence of occupancy right, and I think some importance must be attached to them. I am, therefore, satisfied on the evidence that the defendants have proved permanent right of occupancy in the land.

12. It now remains to consider whether, in these circumstances, the action of the

Court of Wards in making a settlement in 1869 was ultra vires or not. Two contentions are raised by the appellant: (1) that the settlement was in effect a grant of permanent lease and consequently a grant beyond the powers of a trustee, and (2) that it was a grant of permanent occupancy right. The second objection must necessarily fail, for the Court of Wards cannot be said to have granted a right which already belonged to the defendants.

13. Coming to the first objection: it is alleged that this settlement was in effect the grant of a permanent lease. I have already found that the prevailing rent was money and not kind, and consequently, the settlement made no alteration in this respect. The village was surveyed and the fields classified according to the soil, position, etc., and certain rates were proposed and finally accepted by the Court of Wards. The leases from 1869 were granted annually for the whole village. Of late years these leases have been in the names of all, or nearly all, the cultivating tenants, but the lease amount was fixed on the village as a whole although we find that an amount was fixed for each separate holding. This procedure appears to have been adopted in order that the ryots may know the amount payable by each individually, but in so far as the lease is concerned the signatories to the lease were all and every one individually liable to pay the whole lease amount. Recently in 1907 it has been sought to give individual leases to the ryots, but of that procedure the plaintiff makes no complaint in his plaint which relates only to the settlement of 1869. The Court of Wards in no way bound itself to grant these leases in perpetuity and, if the leases, such as Ex. EE, are perused, it is clear that they were to be in force for only one year. If, therefore, the tenants had any occupancy rights, there was no grant by the Court of Wards of a permanent lease. No doubt, the defendants have alleged in their written statement that the settlement was intended to be for all time and it had been acted upon ever since 1869. This assertion in itself will not give the right to a permanent tenure to the ryots after 1869, for the other contracting party is not bound by it in any way. The settlement, therefore, cannot be deemed to be the grant of a permanent lease.

14. It appears that prior to the settlement the rent of the whole village was some-what less than that fixed by the Court of Wards. The lease of 1869, therefore, was in no way detrimental to the trust, for the trust received an enhanced income therefrom. The plaintiff's prayer, therefore, for a declaration that this settlement is not binding on him as the present trustee must be disallowed. Any remedy which the plaintiff may have must be subject to the defendants' rights of occupancy in the land and he must proceed to seek any relief claimed by him in accordance with the provisions of the Estates Land Act. It is unnecessary to discuss here what form this relief can take, for that is a question which must be left to the plaintiff to decide for himself.

15. I may here observe that the above examination of the case has justified the remark made earlier that the plaintiff framed his suit in a somewhat peculiar manner in order to bring it within the jurisdiction of the civil Court. As he has

chosen to do this, he must abide by the result, and that is that the relief claimed by him in his plaint must be disallowed.

16. The appeal is accordingly dismissed with costs.

Madhavan Nair, J.

17. (After setting out the facts and pleadings of the parties his Lordship proceeded.) The arguments at the Bar mainly dealt with the following questions:

(1) Whether the melvaram and the kudivaram of the lands in the village of Kosamala were vested in the Gods Sri Ramaswami and Sri Jagannadhaswami?

(2) Did the defendants pay varam rent in kind according to the sharing system as alleged by the plaintiff?

(3) What is the nature of the arrangement effected by the Court of Wards in 1869 and is the plaintiff entitled to question it?

(4) Is the plaintiff's suit barred by limitation?

(5) Is the plaintiff entitled to the declaration and injunction prayed for?

18. The village of Kosamala is a pre-settlement inam. It was granted in inam to the two Gods by Pratapa Rudra Narayana Dev, the Zamindar of Parlakimedi, in or about the year 1500. The Zamindar was also the hereditary " trustee of the said Gods". The Parlakimedi Estate was under the management of the Court of Wards from 1830 to 1890 and again from 1905 till 1913 when the plaintiff attaining majority took its management into his hands.

19. In early times--prior to the Settlement and the advent of the Court of Wards-- it is admitted that the revenue of the Zamindari was collected either on the Kustajari or the Kosht Guta system:

In the Kosht Guta system an entire village is rented out to the whole body of ryots who make themselves jointly and severally responsible for the payment of the village revenue, irrespective of the land which they may choose to cultivate: see page 241 of the Ganjam District Manual. The Mustajari system is resorted to when money is scarce or when the landlord wants ready money or wishes to save himself the trouble of dealing with the ryots individually. The privilege of collecting the rents of the village or villages is put up to auction and sold to the highest bidder. The mustajar or renter makes an advance of money to the Zamindar and collects what he can in kind from the ryots who suffer accordingly: see page 242 of the Ganjam District Manual.

20. Taking charge of the estate immediately after the rebellion, the Court of Wards proceeded to survey and settle the estate:

In 1861 a survey on what is called the block system was commenced and finished in 1867. In 1868 a rough classification of soils based on this block survey was made and the rates of the different soils were fixed: see page 33 of

the Ganjam District Manual.

21. Ex. JJ series are the proceedings of the Court of Wards relating to this Survey and Settlement. These proceedings show that the Court of Wards gradually fixed a new scale of money rents. In Communication No. 1198 the Court fully approved the principle of moderation on which the Collector proposed to proceed in making the detailed assessment of the lands in this estate but they doubted whether Rs. 3-8-0 per acre was a sufficiently moderate rate to be put on dry lands of ordinary quality as a permanent demand: see page 22 of the printed papers. From the same communication we see that hope was entertained that the cultivators of Kimidy would probably under the survey and tarumwar assessment pass from the joint rent system of permanent individual holdings. In or about 1869 fixed money payments on the block survey system came into general vogue and holdings in the village were thus leased out annually at first on the Kosht Guta or joint lease system which gradually after 1905 made way for individual war collections. Exs. BB and EE are instances of such joint muchilikas Ex. XVIII is a patta executed to a cultivator of Kosamala village. It is this system of annually leasing out the village at a money rent determined according to fixed block rates that is sought to be set aside by the Zamindar on the various grounds which have already been noticed. I will now proceed to discuss the grounds.

22. The first question for determination is as regards the nature of the estate that was granted in inam to the Gods by the Zamindar of Parlakimedi. If both the melvaram and kudivaram, as already pointed out, were conveyed in inam, then there can be no doubt that the defendants are only tenants-at-will and the trustee, the Zamindar, is not bound by any prior arrangement made by the Court of Wards. On this question evidence has been let in by both sides, but it was argued as a question of law by the learned Advocate-General for the appellant that, according to the decisions, the burden of proving that they have rights of permanent occupancy in the lands lay upon the tenants, defendants, and since they have not discharged this initial burden by the evidence they have adduced the appellant, the inamdar, is entitled to succeed, however slender his evidence might be as regards the nature of the grant. In support of his position strong reliance has been placed by the learned Advocate-General on the following observation of their Lordships of the Privy Council in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65:

It cannot now be doubted that when a tenant on land in India, in a suit by his landlord to eject him from the land, sets up a defence that he has a right of permanent tenancy in the land, the onus of proving that he has such right is upon the tenant.

23. On behalf of the defendants it is pointed out that the broad interpretation sought to be put on this dictum is not warranted by the previous pronouncements of the Privy Council which go to show that in deciding with reference to evidence whether occupancy rights exist in lands granted in inam there is no presumption in favour of the inamdar or pattadar on the one side or

the ryot on the other and that "each case must therefore be considered on its own facts" irrespective of the question of onus: See Sivaprakasa Pandara Sannadi v. Veerama Reddi A. I. R. 1922 P. C. 292 and Venkata Sastrulu v. Seetharamudu [1920] 43 Mad. 166.

24. For a long time the decision of this Court took the view that an inam grant conveyed only the melvaram. In Suryanarayana v. Patanna [1918] 41 Mad. 1012 the Privy Council pointed out that there is no such presumption of law. Without expressly laying down that the grant conveyed the entire proprietary interest in the land including the melvaram and the kudivaram, their Lordships examined the evidence and decided that permanent occupancy rights were not proved in the case. In Venkata Sastrulu v. Seetharamudu [1920] 43 Mad. 166 their Lordships affirmed their previous decision and stated:

Each case must, therefore, be considered on its own facts and, in order to ascertain the effect of the grant in the present case, resort must be had to the terms of the grant itself and to the whole circumstances so far as they can now be ascertained.

25. These Privy Council decisions were differently understood by different Benches of this Court. In one set of cases it was held that both the melvaram and the kudivaram interest passed to the grantee unless the contrary was shown. In another set of cases it was held that there was no presumption either way according to the Privy Council cases. When the question came before a Full Bench in Muthu Goundan v. Perumal Iyen A. I. R. 1 21 Ma 145 the learned Judges held that there was an initial presumption in favour of the grant of both varams, thereby suggesting that the onus of proving that he has permanent rights of occupancy lay on the tenant. All these cases were referred to in Sivaprakasa Pandara Sannadhi v. Veerama Reddi A. I. R. 1922 P. C. 292. With reference to the Full Bench decision their Lordships state thus:

A Full Bench of the Madras High Court, however, has in a recent case in Muthu Goundan v. Perumal Iyen A. I. R. 1 21 Ma 145 held that underlying the exposition of their Lordships such an initial presumption is to be inferred. Their Lordships cannot help observing that in drawing this inference the learned Judges are clearly in error. Each case must be dealt with on its own facts, with special regard to the evidence and circumstances therein. When the entire evidence on both sides is once before the Court, the debate as to onus is purely academical.

26. Here is a clear and express pronouncement of the Privy Council as regards the non-existence of the presumption and also as to how each case should be dealt with. This case has not been referred to in Nainapillai Marakayar v. Ramanathan Chettiar A. I. R. 1924 P. C. 65. Are we to understand that the Privy Council have gone back upon this view in Nainapillai Marakayar v. Ramanathan Chettiar A. I. R. 1924 P. C. 65 and affirmed in effect the view of the Full Bench in Muthu Goundan v. Perumal Iyen A. I. R. 1 21 Ma 145 which their Lordships

expressly stated was wrong? I think not. Subsequent to the decision in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 the dictum of their Lordships with reference to the burden of proof has been referred to in some decisions of this Court. In *Tirupathi Goundan v. Shamanna Goundan* A. I. R. 1925 Mad. 477 and *Annamdevula Thata v. Khwaja Ahamadulla Khan Saheb Bahadur* A. I. R. 1925 Mad. 890 the learned Judges refer to the principle and give effect to it without considering the question how far it is in conflict with the principles enunciated by the Privy Council in *Sivaprakasa Pandara Sannadhi v. Veerama Reddi* A. I. R. 1922 P. C. 292. In *Challamma v. Pentayya* A. I. R. 1924 Mad. 828 the facts showed that the lands in question were originally forest lauds in the zamindari and as regards such lands, as pointed out by the learned Judges, the High Court had held that the Zemindar owned an absolute interest in them. In such circumstances the onus of proving that he has an occupancy right certainly lay on the tenant. In *Periakaruppa Thevan v. Aiyanars and Kaniyalaswamigal Koil Devasthanam* A. I. R. 1 26 Mad. 136 my learned brother pointed out that the dictum in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 so much relied upon by the learned Advocate-General should be understood with reference to the particular facts of the case. The dictum of the Privy Council as regards the burden of proof is based upon two decisions referred to by their Lordships, viz., *The Secretary of State v. Luchmeswar Singh* [1889] 16 Cal. 223 and *Sethuratnam Aiyar v. Venkatachala Goundan* [1920] 43 Mad. 567. In *Secretary of State v. Luchmeswar Singh* [1889] 16 Cal. 223, after examining the facts of the case, their Lordships state thus:

The Government undoubtedly are tenants of the Darbhanga Raj. It is for them to show why the landlord may not recover his property If we could not find out the origin of these things, there would be strength in that argument. But as the origin of them is known, the argument loses its force.

27. In *Sethuratnam Aiyar v. Venkatachala Goundan* [1920] 43 Mad. 567 the following observations occur:

The plaintiff's title was conceded, and the notice by which he purported to terminate the defendant's tenancy was not disputed. It was also admitted that the defendants held under, if not from, the plaintiff. To resist the plaintiff's claim the defendants set up a permanent tenancy or an occupancy right in themselves.

28. The facts of these cases and these observations show that in both of them as pointed out by my learned brother, it was either admitted or found as a fact that the tenants had been let into possession by the landlord who was the absolute owner and that consequently when the tenant claimed to possess occupancy right it was incumbent on him to prove it. When similar circumstances, arose in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 their Lordships affirmed the same principle. In that case the facts show that the lands in respect of which a decree in ejectment had been made were part of the endowed property of the temple. Their Lordships after examining the terms of the grant found that the grant included the entire proprietary interests in the

land and then they proceeded to consider whether the tenants have proved that they possess permanency rights: see p. 351. When the landlord owns both the melvaram and the kudivaram interests in the land and the tenant sets up occupancy rights in such land the burden of proving that he has such rights is on him. If the dictum referred to in *Nainapillai Marakayar v. Ramanathan Chettiar* A. I. R. 1924 P. C. 65 is thus understood it is not inconsistent with the decision in *Sivaprakasa Pandara Sannadhi v. Veerama Reddi* A. I. R. 1922 P. C. 292. The decision in *Subbarayudu v. Narasimha Rao* A. I. R. 1924 Mad. 907 does not express any definite opinion on this question. It follows as a result of this discussion that we have to decide the question whether occupancy rights exist in this case or not by examining the entire evidence given by both the parties. His Lordship then examined the evidence and continued.) On a consideration of the entire evidence I am satisfied that the defendants who are tenants of the Kosamala village have proved that they own the kudivaram interest in their holdings. The finding of the District Judge to the contrary cannot be accepted. He discusses the question in paragraph 30 of the judgment, but beyond a reference to a few decisions of this Court and a statement of some aspects of the evidence given by the defendants, there is no real examination of the evidence relating to the question, nor is there any reference to the evidence of the plaintiff. His finding is unsatisfactory, and, as I have shown above, cannot be accepted.

29. The next question for consideration is, what is the system of payment of revenue that prevailed in this village prior to the introduction as mentioned by the plaintiff for the first time of the money rent system by the Court of Wards. (After discussing the evidence his Lordship found that prior to Court of Wards taking up management the money payment system prevailed). It follows that the plaintiff has not made out a case that he is entitled to claim rent in kind from the defendant in respect of their holdings. The prayer for declaration and injunction as regards this right cannot therefore be granted to him.

30. The third question for consideration is as regards the nature of the arrangement effected by the Court of Wards in 1869. It is alleged by the plaintiff that it was introduced

for all time in respect of the village and is detrimental to the interests of the trust: see paragraph 9 of the plaint.

31. The defendants allege that:

the Court of Wards did nothing by way of innovation but simply confirmed the system that always prevailed: see paragraph 10 of the written statement.

32. There is no evidence that a permanent arrangement fixing the rate for ever binding on the estate as a permanent settlement was ever introduced by the Court of Wards. As I have already shown payment of rent in money prevailed when the Court of Wards took up the management. By block surveying the Zamindari and settling the rates on that system they only placed the existing arrangement on a more scientific and definite basis. There is no evidence to

show that they effected what may be called alienations of land by giving permanent leases on fixed money rates as contended for by the plaintiff. It is admitted that the lands are annually leased out. The fact that the same rates continued in the leases does not show that the arrangement of 1869 was a permanent one. In this view, the question as to whether a trustee can make permanent alienations of trust property by granting perpetual leases does not really arise for consideration, though Mr. Venkatramana Rao for the respondents argues that, even if considered as a permanent arrangement--as his clients assert it to be--it is binding on the estate inasmuch as it was introduced by the Court of Wards on account of extreme necessity. However, the question of law argued does not really arise for decision. The arrangement introduced by the Court of Wards has not been shown to be detrimental in any way to the interests of the trust; on the other hand, it appears that the revenues of the trust have really increased as a result of this measure. Since the arrangement is not a permanent one and has not been proved to be detrimental to the trust, the plaintiff is not entitled to a declaration that the settlement is not binding on him. His remedy, if he is so advised, will be to take appropriate proceedings to alter prevailing rates if he can make out a proper case.

33. If the arrangement is to be regarded as a permanent one, then, according to the decision of this Court, the plaintiff's suit would be governed by Art. 144 of the Limitation Act: see *Vidya Varuthi v. Baluswami* A. I. R. 1922 P. C. 123, *Ranga Dasan v. Latchuma Dasan* A. I. R. 1925 Mad. 822 , *Rao Bahadur Govinda Rao v. Chinnathurai Pillai* A. I. R. 1926 Mad. 193, and it is in time, since the plaintiff attained majority in 1913 and the suit was instituted in 1916.

34. It follows from the findings given above that the plaintiff is not entitled to the declarations and the injunction that he has sought for in this case. The appeal must therefore be dismissed with costs.