

(1921) 03 MAD CK 0016
In the Madras High Court

Subramania Karayalam and Others

APPELLANT

Vs

V.M. Sivasubramania Pillai and Others

RESPONDENT

Date of Decision : 29-03-1921

Acts Referred:

Citation : AIR 1921 Mad 233 : (1921) 14 LW 40 : (1921) 41 MLJ 175

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—31 of the 112 defendants impleaded in the suit in the Lower Court have preferred this appeal. The 1st plaintiff who died

after the institution of the suit was the trustee of the famous Siva temple at Tinnevely. The 2nd plaintiff obtained a lease from him of the plaint lands

for a term of 9 years under the lease deeds, the first lease term beginning in fasli 1319.

2. The only question in this case is whether the defendants have got a right of occupancy in the plaint lands. The lands are mainly ryotwari lands

and the temple has got a ryotwari pattah in respect of the lands. When tenants claim a right of occupancy in such lands, they ought to prove that

right by strong evidence, the burden of proof lying heavily on them—The observations in Veeranan Ambalam and Others and Peria Kampalam

Ambalam and Others Vs. Annasawmi Aiyar by his mother and next friend Subba Lakshmammal and Another, and Venkatachala Goundan and

Others Vs. Rangaratnam Aiyar and Others, that even a ryotwari pattadar when he sues as plaintiff and seeks to eject his tenants should prove his

title to eject, that is, should establish that his tenants have no occupancy rights cannot be now accepted as good law. Those observations were not

followed in *Ananthapadmanabha Pillai v. Gopalakrishna Iyer* (1915) M.W.N. 277 by my learned brother and Seshagiri Aiyar, JJ. and by my

learned brother and myself in *Aiyappa Naicker, minor by his maternal uncle and next friend, Guruswami Naicker Vs. Medai Thalavoi*

Thirumalayappa Mudaliar and Others, . The matter is now concluded by the decision of their Lordships in *Sethuratnatn Aiyar v. Venkatachela*

Gounden (1920) 39 M.L.J. (P.C.) which decision has been considered and construed, and I need not add, followed by the Chief Justice and

myself in Appeal No. 139 of 1919. The Subordinate Judge has given good reasons in paragraph 26 of his judgment for his conclusion that the

appellants have wholly failed to discharge the burden of proof which lay upon them. I might add that I do not agree with his observations in favour

of the defendants found in paragraph 23 of his judgment that the term "Swamibhogam" implies that the person who is entitled to receive

swamibhogam is not the owner of the kudivaram interest. On the other hand, the term usually implies that the ownership in the soil does vest in the

person who is entitled to swamibhogam. Two of the defendants other than the appellants have themselves given evidence as P.Ws. 14 and 15

which favours the plaintiff's case. I would therefore dismiss the appeal with costs.

Napier, J.

3. I agree.