

**(1942) 07 MAD CK 0061**  
**In the Madras High Court**

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|---------------------------------------|------------|
| Thirumalareddi Inna Reddi and Another | APPELLANT  |
| Vs                                    |            |
| Gade Gopireddi and Another            | RESPONDENT |

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**Date of Decision :** 20-07-1942

**Acts Referred:**

**Citation :** AIR 1943 Mad 311 : (1943) 56 LW 102 : (1943) 1 MLJ 43

**Hon'ble Judges :** Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

**Bench :** Division Bench

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### **Judgement**

Kuppuswami Ayyar, J.—The appellants in both these appeals are the defendants and the two appeals arise out of two suits in ejectment and for possession of the suit lands, filed by the trustees of the Venugopalaswami temple at Rentachintala. That the defendants are tenants holding the lands was not disputed but their case was that the temple had only the melwaram interest in the lands and that they had permanent rights of occupancy, that they were in occupation from time immemorial, that their predecessors alienated the lands and made improvements, that they have been paying a uniform rate of rent, Rs. 10, in one case and Rs. 15 in another, which was not in keeping with the current rate of rent and that the plaintiffs had no right to eject them. The first Court found that the temple had only the melwaram interest and that the defendants had permanent rights of occupancy and dismissed the suits. On appeal the learned Subordinate Judge held that the temple was entitled to both the warams and that the defendants had no permanent rights of occupancy and decreed the suits. He, however, gave the defendants compensation for improvements which consisted in the digging of a well. The defendants have appealed against the decrees in ejectment and the plaintiffs have filed

cross-objections against the decree, granting compensation for improvement.

2. So far as the findings of the lower appellate Court that the temple had both the warams and that the defendants had no permanent rights of

occupancy are concerned they are findings of fact binding on this Court and I will not be justified in interfering with those findings which are based

on evidence. In arriving at those findings the learned Subordinate Judge has not adverted to any irrelevant evidence and there is nothing to show

that he has not correctly considered the question of onus of proof.

3. It is urged for the appellants that as in all suits for ejectment by a lessor against the lessee the burden is on the lessor to prove that the lease was

a terminable one and it has been so terminated and the lessor is entitled to possession the " mere findings of the lower appellate Court that the

temple was entitled to both the warams would not by itself be sufficient to entitle the plaintiffs to eject the appellants without proving the terminable

character of the tenancy. This is pointed out in A. Lakshmana Reddiar Vs. The Ellinganaickenpatty Kumara Koil Sri Subramania Swami and

Others, , by His Lordship Justice Venkataramana Rao, after discussing in full the case-law on the point. It is urged therefore that without a finding

that the tenancy was terminable the lower appellate Court was not justified in granting a decree for ejectment. But then it must be remembered that

neither in A. Lakshmana Reddiar Vs. The Ellinganaickenpatty Kumara Koil Sri Subramania Swami and Others, , nor in any of the cases referred

to with approval therein were the permanent rights of occupancy found against the tenants and decree in ejectment was refused. My attention is

drawn to the following observations of His Lordship Justice Spencer in Bollapragada Subbarayudu and Others Vs. Valluri Narasimha Rao, ,

In order to prove a right to eject, he must necessarily show that the tenancy is a terminable one and has been validly terminated. This onus is

unaffected by any defence of permanent rights of occupancy that the defendant may set up but fails to prove. The principle that in a suit for

ejectment the plaintiff must first prove his right to eject before the onus is shifted to the defendant to prove that he has a permanent right of

occupancy has been recently affirmed in Sri Raja Venkatarangayya Apparao Bahadur Zamindar Garu Vs. Morampudi Bajiraju and Others, ,

which was like this a case of resumption of a service inam.

But the observations of His Lordship were made with reference to the facts of that case. Both of them were cases of a zamindar suing in ejectment after resumption of a service inam. That is why it was pointed that in such a suit the plaintiff must prove his right to eject and in order to prove a right to eject he must necessarily show that the tenancy was a terminable one and had been validly terminated. In this case, as already pointed out, both the warams were found to be in the temple. There is absolutely no evidence as to when the appellants' tenancy commenced. At any rate there is no evidence that before the inam grant to the temple the appellants' predecessors-in-title were in possession and that the appellants derive their right from any person who was the tenant before the date of the grant. All the evidence that was let in was that there had been alienations of the property in the shape of execution of wills and sales in respect of his holding, that the rent paid was a uniform rate of rent not in keeping with the current rate of rent and that the appellants have been in possession for a long time. But then in this case as pointed out by the learned Subordinate Judge the appellants could not have acquired permanent rights of occupancy from the temple authorities by any grantor by prescription and it is therefore not possible to presume that there was a lost grant by the temple. It is urged however that this may be a grant by the person in enjoyment of the land before the grant to the temple. For this there must be some basis. In the absence of any evidence to show that the predecessors-in-title of the appellants were in possession before the grant the Court was justified in holding, from the fact that the temple had been granted both the warams, that the appellants have not proved that they had permanent rights of occupancy. u/s 106 of the Transfer of Property Act in the absence of any contract or usage to the contrary Courts will have to presume in the case of agricultural lands that the lease was from year to year if there is nothing to show how the tenancy started. There is absolutely no evidence to show when the tenancy started, and when there is a finding that the tenants have not got permanent rights of occupancy it will have to be presumed that the tenancy was from year to year, and that the plaintiffs have established their right to eject as proper notice has been given to the tenants to vacate the holding.

4. With regard to the cross-objections in view of the finding that the appellants were only tenants from year to year, it is clear that they are not

entitled to any compensation for the improvements. The learned Subordinate Judge has found that they are entitled to compensation as the temple was standing by and allowed the tenants to dig the well. I am not able to see how it can be said that the temple was standing by and allowed them to dig the well. In most cases the tenants are allowed to continue if they are regular in paying the rent and they do not give any trouble to the landlords; and when a tenant who, although in law has no right to continue for more than a year, is still confident that the landlord will allow him to continue longer and makes some improvement to the land by digging a well, he does so because the improvement will be for his benefit. Further in Venkatavaragappa v. Thirumalai ILR (1886) Mad. 112, it has been pointed that the digging of a well was not an improvement of such a character as to entitle the lessee to claim compensation for improvement under Hindu Law. I therefore find that the learned Subordinate Judge was not justified in granting compensation to the appellants for improvement.

5. In the result" both the second appeals are dismissed with costs. The cross-objections are allowed and the decree directing the plaintiffs to pay compensation before eviction is set aside. The appellants will pay the court-fee paid on the cross-objections as costs in them. Leave refused.