

(1918) 08 MAD CK 0002
In the Madras High Court

V. Ponniah Nadan and Others

APPELLANT

Vs

T.N. Deivanai Ammal and Others

RESPONDENT

Date of Decision : 15-08-1918

Acts Referred:

Citation : 52 Ind. Cas. 247 : (1919) 19 LW 453 : (1919) 36 MLJ 463

Hon'ble Judges : John Wallis, C.J.;Seshagiri Aiyar, J

Bench : Division Bench

Judgement

John Wallis, C.J.—The question is whether the compensation awarded under the Land Acquisition Act for certain lands in a village in

Tinnevely should be apportioned between the pattadvar a registered holder, which in this case is a temple, and the ryots under it on the basis that

the ryots have occupancy rights in the lands, a claim which the District Judge has rejected. The Fifth Report speaks of a practice in Tinnevely

under which land, which had been under cultivation by the mirasidars or hereditary owners and had afterwards been left uncultivated by them, was

cultivated by others who paid them 13 p. c. of the produce as Swami Bogam and divided the rest between the Government and themselves. There

was a somewhat similar usage in Chinglepet. Mr. Venkatrama Sastriar for the respondent in this case, says that it has not been proved that these

lands were cultivated by the tenants in this way.

2. All that we know is that in 1817 a pious founder acquired at a revenue sale a five-sixths" interest in the lands in this village, and that he acquired

the remaining one-sixth under Exhibit JJ. Exhibit JJ is a sale of the one-sixth share of the land, and does not refer to the existence of any persons on

the land in the enjoyment of occupancy right. As regards the remaining 5/5th

also, the presumption would appear to be that at the revenue sale what was purchased was the land. It may be that some, at any rate, of the predecessors of those tenants were on the land at that date but of that there is no evidence. Exhibit CC-1839 is an order of the Board of Revenue to the Collector to resume the villages owing to diversion of the revenues to private purposes. It probably meant that the Collector was to manage under Regulation VII of 1817. Exhibit DD of 1842 orders the villages to be handed over to the founder's son who is to make arrangements to "manage the cultivation" and other business. Mr. Venkatrama Sastri relies strongly on this expression as negating the existence of hereditary cultivators and showing that the trustee on behalf of the temple had the right to cultivate the land himself, If so, this would be against the claim to occupancy right. Exhibit FF is a cadjan muchilika executed by the tenants in 1856 in which they acknowledge they have received an Adaolai or lease from the temple. If they do not observe its terms they are to be liable to eviction. They are to wait on the trustee every three years and to receive an adaolai like the one that had been granted to them, and in default were to abide his pleasure. This document does not seem to be conclusive either way, and was found not to have been proved by Mr. Goldie, the District judge in the appeal referred to below. Exhibit GG of October 1857 and the following documents show that there was a dispute as to the proper entries to be made in the village accounts, Till 1856, the patta had been in the name of the temple and the names of the cultivators had been shown as in actual enjoyment but apparently without reference to separate plots, As he considered the cultivators had only the right of cultivation, the Kurnam in the new accounts had not entered their names. The trustee was anxious that his name should be entered, but the Collector's assistant thought it better that he should be shown as being in enjoyment as Hukdar. Exhibit GG1, the register of personal complaints of 17-1-1859, shows that in that year the cultivators complained that, "though the village had all along belonged only to the ryots" it had been registered in the name of the trustee. The order refused to cancel the right of the Hukdar in the patta or to register them as in enjoyment and referred them to a civil suit. Exhibit HH is a rnzinamah setting forth a complaint made by the Hukdar's lessee against the ryots which was settled in

the lessee's favour.

3. Exhibit 2 dated 12th 10th 1859 shows that the Hukdar filed a revenue suit against the tenants to enforce the acceptance of adaolais which

was dismissed by the acting Collector for default. At the same time he passed an order with reference to the ryot's claim to be entered as in

enjoyment. They had admitted that the lands were the property of the pagoda, but objected to the entry of the Hukdar as in enjoyment. The

Collector observed that the entry of his name in the column of remarks tended to create disputes and mislead the authorities to the possible

prejudice of the ryots' rights in the soil. He accordingly directed the trustees' name to be struck out and the names of the ryots entered. For

arrears of revenue the ryots' crops were not to be liable but the land. This order was apparently confirmed by the Collector, and thereupon the

Hukdar filed O. Section 28 of 1859 in the Tinnevely Munsiff's Court. The plaint Exhibit A. alleges in paragraph 4 that prior to 1856 the Hukdar

had been in the habit of leasing the village to defendants 2,5,18,43 and 46 who were cultivators in the village, and that these lessees let out the land

to the other defendants for cultivation and cultivated it. It was very common for the landlord to arrange with a few leading villagers for the

cultivation of the village and leave them to make their own arrangements with the other villagers and as pointed out in Chidambaram Pillai v.

Thiruvengadathiengar (1896) 7 M.L.J. 1 this if established, would negative the existence of occupancy right. The plaint also relied on Exhibit FF in

the present suit, the muchilika executed on 25 11-1856 by 33 defendants said to be the leading villagers, and alleged that, the 7th defendant had

refused to execute the muchilika and induced the other tenants not to pay their rents. Several of the defendants asserted that the lands had been re-

claimed by them, and alleged that the temple was only entitled to the swamibhogam. 71 defendants admitted the plaintiff's claim. The Principal

Munsiff gave judgment for the plaintiff. The District Judge confirmed the decree as regards the 71 who had admitted the plaintiff's claim but

reversed it for misjoinder as regards the other defendants. Exhibit A 4 of 12-6-1861. 88 of the other defendants then compromised the case in the

District Court, Exhibit B to B 4 series, to avoid the expense of suits on the terms of accepting the decree of the Munsiff's Court directing them to

surrender possession. 28 defendants held out and after decrees had been passed against them by the Munsiff succeeded in getting those decrees

reversed by the District Court in A.S. No. 110 of 1864. Exhibit V dated 2-2-1865, and the connected suits which were confirmed on Second

Appeal by the High Court. The District Judge in Exhibit V gave reasons for not accepting the genuineness of Exhibit FF already referred to, and

stated that the plaintiff's own witnesses admitted that the defendant had been in possession of the lands in suit for nearly 20 years and of the house

for over 30 years, and considering the defendants had proved that the disputed lands had been in his and his family's undisturbed possession for a

very long period and that his tenancy was a permanent tenancy dismissed the plaintiff's suit in ejectment. It had been previously ruled by Scotland

and Holloway, JJ., in *Alagaiya Tiruchithambala v. Saminatha Pillai* (1863) 1 M. H. C. R. 264 that the question whether ryots under the mirasidar

have a title to the permanent occupancy of lands subject to the payment of the mirasidar's share for the most part depended on established usage

and custom which had to be proved. The High Court in the Second Appeals apparently accepted the findings of the District Judge that it had been

proved in this case. We next come to O. S. No. 31. of 1884 on the file of the Subordinate Court of Tinnevely, another suit for ejectment and

other similar suits. In his judgment H 2 dated 17-12-1885 the Subordinate Judge gave judgment for the plaintiff on the ground that the defendant's

father had admitted the plaintiff's right in the suit of 1859.

4. Exhibit T dated 21-7-1886 is judgment in O. Section 42 of 1884, a suit to fix the rent payable by plaintiff to defendant on account of

defendant's refusal to receive rent at rate alleged to have been fixed by his father in 1867 in one of the areas in which permanent tenure had been

established in the litigation already mentioned. Exhibit V (c). In O. Section 9 of 1901 in the District Munsiff's Court of Srivaikuntam, a suit by the

Hukdar for ejectment, it was found by the District Munsiff that the tenants were not entitled to occupancy rights by virtue of the decisions in the

previous suit, but that their right of occupancy was established independently. In Exhibit VII (c) O. Section 23 of 1905 in the District Munsiff's

Court a suit for ejectment was allowed to be withdrawn with liberty to bring a fresh suit.

5. In O.S. 637 of 1906 in the District Munsiff's Court another suit for ejectment, it was held to be res judicata as regards the particular land that there was no occupancy right.

6. The trustee also relies on N N series which he took in 1884.

7. The appellants rely on numerous transfers since 1884, sales both private and in execution and mortgages of their interest by tenants. The District

Judge has held that these were not brought to the knowledge of the plaintiff. If the transfers were genuine, the plaintiff must have received the rents

from the transferees and I think the appellants are entitled to contend that his failure to produce his accounts raises an inference against him in this respect.

8. Now as to the presumption to be applied to the case, the reason that the Courts, even before the passing of the Madras Estates Land Act of

1908, raised a presumption of occupancy right in favour of ryots holding under a permanently settled zemindar, and not in favour of ryots holding

under a ryotwari pattadar, was, that there was no presumption in the case of the permanently settled zemindar that he was the owner of the land

except as assignee of the Government interest therein, whereas the scheme of the temporary ryotwari settlements was to settle the revenue with the

owner of the land himself. In neither case, it is well established, was there any intention to interfere" with the legal relationship that might exist

between the person with whom the revenue settlement was made and those holding under him. The presumption being that the ryotwari pattadar

was the owner of the land, the Courts have proceeded on the view that the burden is on his tenants claiming a permanent right of occupancy to

prove it.

9. I have recently dealt in *Mcera Muhammad Rowther v. Muthu Alagappa Chettiar* (1917) 34 M.L.J. 234 with the Tanjore temple cases in which

this was laid down and followed the ruling in *Chidambaram Filial v. Thiruvengadathiengar* (1896) 7 M.L.J. 1 which has been approved in

subsequent cases. Those Tanjore cases had a special history and facts in common which differentiate them from cases such as the present, and led,

except in one case to the rejection of the claim to occupancy right. All that was laid down generally in *Chidambaram Pillai v. Thiruvengadathiengar*

(1896) 7 M.L.J. 1 and the cases which followed it was that the onus was on the

tenant and that mere length of enjoyment in the capacity of tenants or purakudies irrespective of other circumstances did not raise a presumption of occupancy right. The qualification is important because it shows that the inference as to occupancy right is to depend on a consideration of the whole circumstances of the case and among those circumstances are the continuance of the lands in the same hands at unenhanced rents, especially if they are low, the recognition of the tenants right to transfer his holding etc., as pointed out by the Privy Council in *Ramchunder Dutt v. Joghes Chunder Dutt* (1873) 12 Beng. L.R. 229 *Nabakumari Debi v. Beharilal Sen* (1907) ILR 34 Cal. 902. (P.C.), *Upendra Krishna " Mandal v. Ismail Khan Mahamad* ILR (1904) Cal. 41.(P.C.), *Nilratan Manlal v. Ismail Khan Mahamad* (1904) ILR 32 Cal 51 (P.C.). The same thing was laid down 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*, . These are facts which it is for the tenant to establish.

10. The task of drawing the right inference in the present case is one of some difficulty, which is increased by the fact that the claim is in respect of compensation awarded for land taken from different holdings, as to which owing to the facts set out above the rights of the tenants may be different, and because the evidence does not enable us to trace the history of respective holdings from which the acquisition was made in the dispute about the existence of occupancy right which has been going on with varying fortunes in the village for the last sixty years. The fifth Report shows that in Tinnevely before the settlement of the Revenue at the beginning of last century there were ryots holding with rights of occupancy under the mirasidars. If that was the case in the suit village I do not think that it matters that a five-sixth share in the village was purchased for the temple at a revenue sale, because, even if the land was sold free of encumbrances, the presumption in the circumstances would be that the temple continued the tenancies on the old footing. There is, however, no evidence that this was the state of things in the suit village, and the order of 1843 Exhibit DD as to the temple arranging for the cultivation points the other way. The fact that 28 ryots established their occupancy rights in the

litigation which began in 1859, though it does not make the issue *res judicata* as regards the lands now in suit, is entitled to considerable weight, but

the reversing judgment of the District Judge which was confirmed by the High Court without comment on second appeal apparently as a finding of

fact, does not appear to me to give reasons which would now be regarded as sufficient to establish the claim to occupancy right. On the other hand

we have the fact that the great majority of the tenants had given up their claim to occupancy rights at an earlier stage of the litigation.

11. As regards the rates of rent sharing or waram system seems to have prevailed until 1867 as regards nunja or wet land, and to have been

commuted at that time. It is not shown that the temple's share was less than that of ordinary owners, or that the punja money rates were unduly

low. As regards the evidence that the rents have not been raised since, and the evidence, which is all of it fairly recent, that the tenants have been

freely allowed by the temple to transfer their holdings, I do not think that in the present case it can be treated as a recognition by the temple of the

existence of occupancy rights, because it is clear that for the last 60 years the temple has been openly and notoriously contesting the existence of

occupancy right in the village in the numerous proceedings which I have mentioned above. In these circumstances I have come to the conclusion

that there are not sufficient reasons for differing on the main question from the conclusion on the evidence at which the learned District Judge has

arrived and which has also been arrived at by my learned brother. In this and other respects I agree in the order proposed by him,

Seshagiri Aiyar, J.

12. These eleven appeals have been preferred against the judgments of the District Judge of Tinnevely refusing compensation under the Land

Acquisition Act to the appellants, and awarding it entirely to the respondents. The lands are situated in a village called Kachanavilai. It is common

ground that about the year 1817. five-sixths of the village was purchased at a revenue sale by one Vengu Mudaliar; and the other sixth at a private

sale. The lands were dedicated as an endowment for the performance of a Kattalai in a temple. The respondents represent the founder of the

Kattalai, and claiming to be the sole trustees contended that the proprietary right in the lands belongs exclusively to the Kattalai.

13. The defendants, on the other hand, alleged that they and their ancestors have been in uninterrupted enjoyment of the lands paying the Circar

kist either direct or through the Hukdar, and paying the Hukdar a low and uniform rate of rent. They therefore, claimed to have occupancy right in

the lands. The District Judge held that the occupancy right was not established. Hence these appeals.

14. A brief narration of the previous litigation in connection with this village must be given in order to appreciate properly the arguments addressed

to us on the present occasion. The ryotwari patta for the village stands in the name of the temple (Vide M M series). As to when the first patta was

granted there is no reliable evidence. But we knew from Exhibit DD dated the 7th of September 1842 that the Collector ordered the Tahsildar to

issue patta. to the temple. MM (1858-1859) is the earliest patta that has been produced. A few years before MM, the cultivators of the village

executed a joint muchilika in which they stipulated that they shall receive an adayolai every three years in respect of the properties under their

cultivation. There is a condition in it that if the cultivators fail to act properly, the Hukdar was entitled to resume the lands. This was on the 25th of

November 1856. Then some correspondence passed as to whether the Hukdar's name should be entered in the patta, The tenants apparently

claimed even at this date that their name should be inserted as persons in occupation (Vide GG series). In consequence of these disputes the

Collector ordered that the name of Vengu Mudaliar should be struck out and that the cultivators' names should be entered instead (Exhibit II).

This was on the 12th of October 1859. Thereupon Vengu Mudaliar brought a suit in the Court of the Sadar Amin, Tinnevely, to eject the

cultivators and recover arrears of rent from them (Vide Exhibit A dated the 17th of December 1859). The principal Sadar Amin gave a decree as

prayed for (Exhibit A4). It may be mentioned here that there was but one suit against all the cultivators who numbered nearly 270. 71 of them

admitted the right of the plaintiff. A number of other defendants did not file any written statement. 65 defendants alone contested the plaintiff's

claim. An appeal was preferred against the judgment of the Sadar Amin. Mr. Goldie, the then District Judge, without expressing any opinion on the

meritss held that the suit was bad for misjoinder of parties and causes of action and reversed the Sadar Amin's decision (Exhibit V). Even after this

reversal a large number of the defendants entered into a Razinamah with Vengu Mudaliar by which they acknowledged the title of the Hukdar to

eject them and agreed that if they failed to obey the conditions of the Razinamah they shall be bound by the decree passed by the Sadar Amin on

the merits. The one suit was split up into a number of suits and the Sadar Amin once again went into the merits of the case and came to the same

conclusion as before. Against his decree 28 cultivators preferred appeals to Mr. Goldie. He held that as the cultivators had been in possession for

20 or 30 years they were entitled to occupancy rights. The special appeals preferred to the High Court were summarily dismissed. It is apparent

from what I have stated that 28 of the defendants who were originally impleaded in the suit established their rights in the High Court. Exhibits

D,E,F,G, to S show that proceedings in ejectment were taken against some of the other cultivators.

15. The next litigation was in the year 1884 (vide Exhibit T) in which the question regarding the proprietary right in the soil was not considered. The

question was about the rate of rent that should be paid to the Hukdar. Then comes Exhibit V (c) which was a suit instituted in the year 1901 in the

District Munsif's Court, Srivaikuntam. About 11 cultivators contested the right of the Hukdar to eject them. The Munsif came to the conclusion

that they had acquired occupancy right. It is not clear whether there was any appeal in these cases. Matters seemed to have gone on smoothly until

the Government proclaimed in 1915 that they intended to acquire the lands in dispute for the Trichandur Railway. As a consequence of this

notification, the cultivators have preferred claims to a share in the compensation on the ground that they have occupancy rights in the land.

16. Four of these appeals may be disposed of at once. They are appeals No. 241, 245, 248 and 249. The District Judge in the last paragraph of

his judgment says that the lands in respect of which compensation was claimed in these four appeals were delivered over to the respondents"

predecessor in-title by virtue of proceedings in execution taken by him. Exhibit C shows that a large number of the cultivators were evicted from

their holdings for failure to comply with the conditions of the Razinamah embodied in Exhibit B. The District Judge has stated that the appellants in

those four appeals were among these against whom proceedings were thus taken. There was no ground of appeal disputing the correctness of the

statement made by the District Judge. We are not prepared to allow that question now to be re-opened. We must therefore hold that the

proceedings taken under Exhibit C are binding upon the appellants, and that they are estopped from claiming occupancy right.

17. Now we have to deal with the seven appeals on the merits. Mr. Narasimha Aiyangar for the appellants contended that the facts established in

evidence are sufficient to warrant the conclusion that his clients have occupancy right in the lands. The first circumstance relied on for this purpose

is the payment of a uniform rate of rent. It is clear from a reference to Exhibit T (1) that the present rate was fixed in 1860. We may therefore take

it that for 47 years the same rate was continuously paid to the Hukdar. I do not accept the learned Vakil's contention that it was only a nominal

rent that was paid. It was in the year 1868 that commutation from waram was made regarding the rate of rent. The sum of Rs. 2-7-0 per acre of

nanja paid to the landlord after deducting the circar kist cannot be regarded as a low rate. The next circumstance relied on was continuity of

possession. There is evidence on the side of the Hukdar, which is to some extent specific, showing that the cultivators were changed from time to

time. The District judge has expressed no opinion upon this evidence, and I do not desire to base my judgment upon that deposition. But having

regard to the usual mamool in this country of not changing a cultivator unless it be under very exceptional circumstances, I am not prepared to

attach much weight to this contention. In the southern parts of this Presidency instances can be cited of persons cultivating the same land for

generations. This is largely due to the feeling on the part of the proprietor that it is a sin to turn a cultivator out of the field which he has ploughed

and enriched, and to the feeling and the veneration which the latter entertains to his master. I am averse to basing any conclusion regarding rights in

the soil upon continuous possession even granting that the contention of the appellant is well founded. I must also point out that no attempt has

been made in the Court below by the cultivators to prove that they, their fathers, and their grand-fathers have been continuously in occupation of

the same land for any length of time. The next circumstance relied on was that the cultivators have been alienating the lands as if they were the

owners thereof. The District Judge points out that it has not been shown that any of those alienations were made to the knowledge of the Hukdar.

Mr. Narasimha Aiyangar has drawn out attention to one single instance in which the Hukdar's Kariasthan is said to have written the deed of

mortgage. This is not enough to bring home to the Hukdar the fact that the cultivators were dealing with the property as if they were the

proprietors. Moreover most of these transactions are of very recent date, and I do not think they are of any consequence in determining the rights

of the parties. There is no doubt the fact that some of the tenants did succeed in obtaining a decision in their favour establishing their occupancy

right. In the present case no attempt has been made to show that any of the appellants derived title under those cultivators. Therefore the plea of

res judicata is not available to them. None the less those judgments are evidence of the right now put forward. But their probative value is not

much as the judgment of Mr. Goldie solely proceeded upon possession for 20 or 30 years, a fact which the Judicial Committee in Mayandi

Chettiyar v. Chokkalingam Pillai ILR (1904) Mad. 291 and the High Court in recent cases have held to be insufficient to prove occupancy right.

On the other side Mr. Venkatrama Sastriar ""referred us to the fact that a majority of the cultivators accepted the position of tenants at will by

executing muchilikas. He also referred us to certain compensation proceedings of 1858 in which the right of the Hukdar was accepted by the

Government to the total exclusion of the cultivators. (See the evidence of P. W. 8.)

18. Both the learned vakils relied upon the use of the word "Swamy Bogam" in support of their contentions. It is true that the expression denotes

that the person receiving it is the owner and proprietor of the land. Wilson in his glossary gives this as the correct rendering of the expression. On

the other hand Mr. Hodgson seemed inclined to the view that the expression connoted that the cultivators had an interest in the land, (See Fifth

Report, Volume III, page 346.)

19. To sum up, the facts in favour of the appellants are: (a) Payment of a uniform rate of rent for nearly 50 years; (b) an alleged continuous

occupation from father to son for the same period; (c) alienation of the property in their possession without the knowledge or consent of the

Hukdar during recent years; (d) two judgments on two. different occasions in their favour establishing occupancy right after contest. The

circumstances against their contentions are: ½(1) the majority of cultivators in the village have agreed to hold their lands as tenants at will; (2) in a previous Land Acquisition proceeding some of the tenants did not set up a right of occupancy; and (3) they are cultivators under ryotwari patta holders.

20. I have held as regards (a) that the rent paid is not insignificant; as regards (b) I am not satisfied that there had been continuous occupation from

father to son; as regards (c) no weight can be attached to it as the transactions were behind the back of the Hukdar; and as regards (d) it cannot

be disputed that the judgment of Mr. Goldie, if it comes up for consideration before the High Court to-day, will not be upheld on the grounds

mentioned by him. As regards the judgment of the District Munsif, he was largely influenced by the judgment of Mr. Goldie and had referred to a

few other circumstances which do not advance the case of the tenants any further. The circumstances referred to as being against them detract very

much from the value to be attached to the points established in their favour.

21. My decision would therefore largely depend upon the view I take as to onus of proof in this case. If I come to the conclusion that the burden is

upon the cultivators to establish their right of occupancy, I shall have no hesitation to decide that they have failed to discharge it. If, on the other

hand, I hold that it is for the Hukdar to show that he has the sole proprietary right, I would hesitate before holding that they have proved their case.

Therefore it becomes necessary to consider the question of the burden of proof.

22. In order to come to a proper conclusion on this point it is necessary to consider the nature of the right which a ryotwari pattadar has in the soil.

Contemporaneous with the permanent 22. settlement under Regulation XXV of 1802, the question was considered on what basis the remaining

lands should be settled. There were a number of conflicting views. Some Revenue Officials recommended the Mutt a system, that is, a system by

which a number of villages were intended to be granted to a single owner making him responsible for the Government assessment. Others were in

favour of the village system by which it was expected that each village would be handed over to the headman or some respectable person in the

village who would parcel out the lands to the cultivators and would also be responsible to the Government for kist. And lastly there were others

who advocated the ryotwari system by which it was intended that small holdings should be allotted to a large number of persons. Sir Thomas

Munro was a strong Advocate of the Ryotwari Settlement In the Ceded Districts to which he was appointed Principal Collector after the war with

Tippu, he tried the experiment and succeeded beyond expectation in showing that both the ryots and the Government were benefitted by the

Ryotwari system. Although the Government of the day recognised the success of the experiment in these districts, they were not prepared to give

effect to it in the other districts. In a letter addressed to Sir George Barlow, the then Governor of Madras, by the Board of Revenue, the Board

while remarking that "" under the ryotwari settlement the Officers of Government were supposed to settle and collect the rent from each farmer "",

pointed out that what was achieved by Colonel Munro in the Ceded Districts could not be expected of other Officers in the other districts, and that

the system was fraught with danger to Government revenue. This letter was signed by Mr. Hodgson as a Member of the Board of Revenue.

Thereupon the Governor-in-Council accepted the recommendation of the Board, and ruled that the ryotwari system should not be introduced in

the other districts. Meanwhile Sir Thomas Munro went to England, and was invited to give evidence before a Select Committee of the House of

Commons on the 15th of April 1812. He strongly advocated the ryotwari settlement. This is what he said in his evidence: ""Every ryot, who is

likewise a cultivating proprietor of the land which he holds, is permitted to hold that land, at a fixed assessment as long as he pleases; he holds it for

ever without any additional assessment. If he occupies any waste or additional land, he pays the assessment that is fixed upon that land, and no

more; his rent undergoes no alteration."" Apparently This view prevailed, as we find that the Court of Directors agreed to introduce the ryotwari

settlement in Madras. On the 16th of December 1812, the Court wrote: ""It remains for us to signify our directions that in all the provinces that may

be unsettled when this despatch shall reach you, the principle of the ryotwari system, as it is termed, shall be acted upon, and that where village

rents upon any other principle shall have been established, the leases shall be declared to be terminable at the expiration of the period for which

they may have been granted.

23. The next question that I propose to consider is, what was the nature of the right that was secured by the Ryotwari system. I have already

referred to the evidence of Sir Thomas Munro before the Select Committee. In one of his Minutes dated the 15th of August 1807 this is what he

says about the Ryotwari system: "" That it is better adapted to preserve simplicity of manner and good order, because every ryot will, on his own

estate, be at once proprietor, farmer, and labourer; because the division of property by engaging men in labour for their maintenance, is favourable

to quiet."" Baden-Powell in his Land Systems of British India gives this definition of the ryotwari system: ""A system of Land Revenue Administration

in which there is no middleman or landlord over the individual ryots, who are severally liable for the Land Revenue Assessment on the holding.

Again, quoting from the Settlement Manual from Madras he describes the Ryotwari system thus (Volume III, page 130): ""Under the Ryotwari

system every registered holder of land is recognised as its proprietor. He is at liberty to sublet his property or to transfer it by gift, sale or

mortgage. He cannot be ejected by Government so long as he pays the fixed assessment, and has the option of (annually) increasing or diminishing

his holding or of entirely abandoning it. The ryot under this system is virtually a proprietor on a simple and perfect title, and has all the benefits of a

perfect lease without its responsibilities."" It is clear from the extracts which I have quoted that the settlement by the Government under the

Ryotwari system was with the actual cultivator of the soil whereas in Settlements under Regulation XXV of 1802, the proprietor had only the right

to receive rent from persons who were in occupation of the lands Of course there are cases under the Ryotwari system in which certain classes of

the community who are not in the habit of tilling the soil have been given a Ryotwari patta. But in such cases a pattadar is the undoubted proprietor

of the land with liberty to get it cultivated by leasing it to cultivators. This being the history of the system and the incidents of the system being what

I have already described them to be, it seems to me that if a person claims to have acquired occupancy right under a Ryotwari holder, the burden

lies heavily upon him to establish it. One other aspect of the question will also lead to the same conclusion. Under Madras Act II of 1840 the land

for which the patta is given is held liable for the payment of revenue. If the patta holder makes default in paying the revenue the holding can be sold

irrespective of the fact that cultivators are on the soil for generations together. There can be no question that the rights of these cultivators would be swept away by the sale for arrears of revenue. This is an indication that the Legislature and the Government of the country do not recognise a permanent occupancy right in the soil under a Ryotwari pattadar.

24. It is not easy to say what would be the residue of interest that would be left to the ryotwari pattadar if he has the Government above him who can sell the lands under the patta straight away for arrears and if he must recognise an occupancy ryot under him whose interest in the soil must be very considerable. The conception is opposed to the recommendations of those who advocated the ryotwari system. Virtually the occupancy ryot in a Ryotwari village deprives the pattadar of all rights save that of being the recipient of a permanent rent.

25. Before dealing with the cases which have been quoted at the Bar, I shall refer very briefly to the history of the Ryotwari Settlement in the

Tinnevelly District. Contemporaneous with Sir Thomas Munro in the ceded Districts Mr. Hodgson was apparently the Collector of Tinnevelly. As I

pointed out before, he was very much against the Ryotwari System. Sir Thomas Munro had induced the Court of Directors to accept his view in

preference to the view of the Board of Revenue; subsequently when he was appointed to the Governorship of the Presidency, he directed that the

ryotwari system should be introduced in all the Districts. So far as Tinnevelly was concerned we are told attempts were made to introduce this

system, from 1827 onwards. By the year 1834 it was introduced in a number of villages (Vide Tinnevelly Gazetteer). But apparently no further

progress was made for some time. It was in the year 1861 when Mr. Puchle was the Collector, the Government of the day decided that the district

should be surveyed and that the Ryotwari tenure should be introduced at once. From the fact that in 1842 a ryotwari patta was given to the temple

we may take it that this was one of the villages upon which the principle was experimented between the years 1827 and 1834. In all probability the

predecessors-in-title of Vengu Mudaliar were themselves cultivators of the lands when they were sold to the temple, There is nothing in the History

of the system as applied to the Tinnevelly District to lead to the conclusion that prior to the acquisition of the property by the temple the present

cultivators had acquired any interest in the lands. That being in short the position of the ryotwari pattadar in the District it seems to me that no

special considerations arise in dealing with the lands situated in Tinnevely different from those which would apply to lands in Tanjore or

Trichinopoly. At any rate there is nothing on the record in this case to lead me to hold that the Tinnevely cultivator should be treated differently

from the cultivator in the other Districts of the southern part of the Presidency.

26. The facts referred to above establish at least this much that at the time when 5/6th of the lands were sold for arrears of Revenue to Vengu

Mudaliar the interest of the cultivator, if any, ceased to exist. Consequently it is clear that they had no subsisting rights when the Mudaliar acquired

the property for the temple. Secondly when the Collector in 1842 directed that Ryotwari patta should be granted to the Hukdar, he must have had

before him the instructions of the Madras Government contained in the Settlement Manual and in the minutes of Sir Thomas Munro, The inference

is that at this time persons who were cultivating the soil had no occupancy right in it. It follows from the above two conclusions that the present

cultivators must have been let into possession either by Vengu Mudaliar or by his descendants. Mr. Goldie in the judgment already referred to

speaks of 20 or 30 years possession in 1864. This lends support to my view that the appellants' predecessors probably came in as cultivators

after the issue of the Ryotwari patta to the Hukdars of the temple. Their occupation was not immemorial as was suggested in the course of the

arguments in these appeals.

27. Now I proceed to consider the decisions that have been quoted. Most of these decisions have been reviewed fully in the judgment which the

learned Chief Justice delivered in *Muna Mahammad Ruwther v. Muthu Alagappa Chettiar* (1917) 34 M.L.J 234. Therefore I shall not attempt to

deal with every one of them. A few of them however require consideration in the light of the history of the Ryotwari Settlement which I have

sketched above. *Krishnaswami v. Varadaraja*, *Varadaraja v. Venkatachala* ILR (1882) Mad. 345, was a decision of the Full Bench and in view

of the fact that Mr. Justice Muthuswami Aiyar who took part in *Chidambaram Pillai v. Thiruvengadathiengar* (1896) 7 M.L.J. 1 was also a party to

this decision it should be considered with some care. Sir Charles Turner with

whose judgment Mr. Justice Muthuswami Aiyer concurred, says at page 857: ""Without attempting to define what period of occupation should confer a right of occupancy"½a matter which can only be dealt with by legislation"½we consider ourselves at liberty to say that an occupation for upwards of seventy years is sufficient, under the circumstances of this case, to throw upon those who seek to disturb it the burden of showing that the tenancy was not accompanied with a right of occupancy and that the plaintiff has not succeeded in doing so." This passage shows that the learned Chief Justice laid the burden in the first instance upon persons who asserted the right of occupancy, but that in his opinion the facts proved in that case shifted the burden on to the pattadar. In the judgment of Mr. Justice Kinderseley the facts are fully set out and I find that there was a previous litigation in which the right of the tenants to remain on the lands so long as they paid rent regularly was upheld. The learned Chief Justice refers to a number of documents which according to him, evidence an engagement not to eject the tenants from their holdings. It is true that there are observations in the judgment tending "" to show that a cultivating ryot is entitled to some interest in the soil. In page 357 reference is made to the custom of the country and of the District. No such custom has been sought to be established in this case and I therefore do not think that this decision which proceeded upon the special features of that case and which did not in the first instance throw the burden upon the proprietor is an authority for the proposition contended for by Mr. Narasimha Aiyangar. That this is the correct interpretation of the decision is clear from a reference to Chidambaram Pillai v. Tiruvangadathiengar (1896) 7 M.L.J. 1 to which Mr. Justice Muthuswami Aiyar" was a party. In that case the law is laid down in these terms: ""The claim of an occupancy right as overriding the proprietor's right to cultivate his own land is of a special character, and as such it is one which the party, seeking to derogate from the ordinary incidents of property, is bound to establish. Mere length of enjoyment in the capacity of tenants or purakudies irrespective of other circumstances is not prima facie proof of occupancy right."" I have shown already what the incidents of a ryotwari tenure are, and the judgment in Chidambaram Pillai v. Thiruvengadathiengar (1886) 7 M.L.J. 1 entirely supports the view I have taken. When we remember that

Muthu-swarai Aiyar, J., was first a Deputy Collector, and afterwards an Inam Commissioner, the value of his pronouncement acquires very great

weight. This view of the burden of proof was accepted unreservedly by Shephard and Subramania Aiyar, JJ., in Cheekati Zemindar v. Ranasooru

Dhara ILR (1899) Mad. 218. In Rangaswami Reddi v. Gnana Sambanda Pandara Sannathi ILR (1898) Mad. 264, Mr. Justice Subramania Aiyar

and Mr. Justice Moore acted on that view. Mr. Justice Moore quoted the passage which I have already cited and accepts it as good law. Mr.

Justice Sadasiva Aiyar and Mr. Justice Napier in A.S.N. Naina Pillai Marakayar Vs. T.A.R.A.R.M. Ramanathan Chettiar and Others, have

examined the case-law very fully and have accepted the conclusions stated in Chidambaram Pillai v. Thiruvengadathiengar (1886) 7 M.L.J. 1. We

have a very full discussion by the learned Chief Justice and Sadasiva Aiyar, J., in Muna Muhammad Bowther v. Muthu Alagappa Chetliar (1917)

84 M.L.J. 234 wherein the principle enunciated in Chidambaram Pillai v. Thiruvengadathiengar (1896) 7 M.L.J. 1 is accepted and re-stated. As

against these decisions, Mr. Narasimha Aiyangar quoted Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs.

Annasawmi Aiyar by his mother and next friend Subba Lakshammam and Another, , Veera Ambalam (died), Vellappayal Ambalam alias

Veeranan and Kesan Vs. Karuppayya Pillai, and Muthusami Aiyar v. Naina Ammal (1917) 7 L.W. 194. As regards Veeranan Ambalam and

Others and Peria Kampalam Ambalam and Others Vs. Annasawmi Aiyar by his mother and next friend Subba Lakshammam and Another, it is

enough to say that the proposition therein laid down is not disputed by those who allege that the burden of proof is upon the person claiming

occupancy right. What the learned Judges say is that it should not be laid down that in all cases of ryotwari lands a cultivating tenant cannot have a

right of occupancy in the lands. This contention is not advanced now. It is no doubt an anomalous position. But it is easy to conceive of a grant of

occupancy right which is only in other words a permanent lease by a ryotwari holder in favour of a cultivator. Such leases are very common in

South Kanara. It is also imaginable that the limited right of holding the land on payment of a fixed rate of rent with the incidents of occupancy right

may be acquired by a cultivator. Therefore it is not necessary to say that under no circumstances can an occupancy right be acquired against the

ryotwari proprietor. Therefore the proposition which is stated in Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs.

Annasawmi Aiyar by his mother and next friend Subba Lakshmammal and Another, seems to be unexceptionable as far as it goes. It is in

Venkatachala Goundan and Others Vs. Rangaratnam Aiyar and Others, that a further extension seems to have been attempted. In this latter case

the learned Judges, quoting without disapproval the dictum of Muthuswami Aiyar, J. in Chidambaram Pillai v. Thiruvengadathiengar (1896) 7

M.L.J. 1 and also the statement of law contained in Rangasami Reddi v. Guana Sambanda Pandara Sannathi ILR (1898) Mad. 264 and Cheekati

Zemindar v. Ranasooru Dhara ILR (1899) Had. 318 say: "There is nothing in the observations above cited to warrant the opinion that in the case

of every Ryotwari village there is necessarily a presumption that a ryot holding under a Mirasdar has no occupancy right." If the judgment stood

there, no exception can be taken to it. But almost towards the end, the learned Judges seem inclined to hold that the burden is upon the proprietor

to show that a cultivator who has been long on the land has not acquired a right of occupancy. It seems to me that this proposition is not warranted

by the decisions which the learned Judges have quoted without dissent in the body of their judgment. I will not examine this case any further as we

were told that it is under appeal to the Privy Council. Now I come to the last case quoted before us, Muthusami Aiyar v. Naina Ammal (1918) 7

L.W. 194. There are two statements in it; one is that the Second Appellate Court is bound by the findings of fact on the question of occupancy

right at which the District Judge has arrived. If the judgment has been based upon that view of the functions of the Second Appellate Court, no

exception could be taken to the conclusion arrived at in this case. But the learned Judges also proceed to lay down the principles upon which the

case should be decided. I cannot help observing that in the body of the judgment the use of the words tenant and landlord which is the very fact to

be established by the evidence has to some extent clouded the issue to be decided. The expressions tenant and landlord have special meanings

assigned to them in our legislative enactments. One feels, on reading the decision, as if the principle applicable to cases under the Estates Land Act

has been unconsciously adopted in the disposal of the case. No doubt Muthuswami Aiyar v. Naina Ammal (1918) 7 L.W. 194 is based upon

Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs. Annasawmi Aiyar by his mother and next friend Subba

Lakshammal and Another, and Venkatachella Goundan v. Rangaratnam Aiyar 3. I have stated my opinion about these two decisions, With all

respect, I am not prepared to accept the principle as to onus enunciated in Venkatachala Goundan and Others Vs. Rangaratnam Aiyar and

Others, . I prefer to follow the view ,taken by Collins, C. J., Muthuswami Aiyar, J, Shepherd, J., Moore, J., Subrahmania Aiyar, J., Sadasiva

Aiyar, J., Napier, J., and by the learned Chief Justice. In my opinion the burden is upon the cultivators to show that they have got an occupancy

right in these ryotwari lands which have been taken up by Government under the Land Acquisition Act and the evidence they have let in is not

sufficient to discharge that burden, I therefore agree with the District Judge that they are not entitled to compensation on the footing of being

occupancy tenants. At the same time I think that in respect of their interest in the land as tenants from year to year, they are entitled to have their

share of the compensation apportioned; and we fix it at one anna in the rupee. Subject to this modification we dismiss the appeals with costs. The

vakil's fee will be Rs. 352 in all the appeals together.