

(1913) 02 MAD CK 0003
In the Madras High Court

Venkatachala Goundan and Others

APPELLANT

Vs

Rangaratnam Aiyar and Others

RESPONDENT

Date of Decision : 18-02-1913

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : 20 Ind. Cas. 374 : (1913) 24 MLJ 571

Judgement

1. The plaintiff who is the pattadar of a certain village in the district of Trichinopoly which is a ryotwari tract seeks in the suits in which the second appeals have arisen to eject the defendants from the lands in their possession. The defendants alleged that they had a permanent right to the lands in dispute and this was the most important question for trial. There were two classes of land involved in the suit, garden land and dry land. The District Munsif found with respect to the lands of the former description that the defendants had a permanent right to them subject to certain yearly payments to be made by the defendants to the plaintiff and were not liable to be ejected therefrom, but he came to a different conclusion with respect to the dry lands and decreed the plaintiff's claim with respect to them. Against the judgment of the District Munsiff so far as the garden lands are concerned the plaintiff filed an appeal to the District Judge and the defendants filed a memorandum of objections as regards the dry lands. The judgment of the District Judge dealing with the points raised before him in appeal cannot be said to be satisfactory. As regards the main point he set before himself this question "" whether the defendants have shown that the plaintiff or his predecessor in title had contracted that the right of tenancy should be changed into a right of permanent occupancy."" Apart from the question as to whether in ryotwari tracts there is any

presumption that persons in occupation of land, making certain yearly payments to the pattadar, should be deemed to be tenants from year to year

- a question on which we express no opinion at present - the real point for determination before the learned judge was whether on the admitted

and undoubted facts of the cases and the evidence of both sides the defendants held the lands in their possession as tenants from year to year or as

persons having a right of permanent occupancy. It cannot be said that in this case there is no evidence in support of the right claimed by the

defendants. For instance it is clear that the defendants have been holding the lands in question for a very long time and the payments they have

been making to the plaintiff and his ancestors were found by the District Munsif to be at an unvarying rate and there is also evidence of transfers,

by way of sale, usufructuary mortgages and leases, by the defendants and their ancestors to different persons including some of the pattadars, of

recognition of such transfers by some of the pattadars, and of improvements of considerable value made in the land by the defendants. It was for

the learned judge to have applied his mind to this evidence and to draw such inferences as they led to in the circumstances of the cases. We cannot

say that the District Judge has so dealt with the cases. Further on several points he seems to be under a misapprehension as to the state of

evidence. For instance he says there is no evidence to show that the defendants or their ancestors made improvements on the land by digging wells

or ponds, while as a matter of fact there is evidence on the point; and this is admitted by the learned Advocate-General. We are unable therefore

to accept the finding of the lower appellate court as to the nature of the right under which the defendants hold the land. Then there was another

question for decision in this connection, viz., that of estoppel; whether the plaintiff, if he was found to have by his conduct induced the defendants

to believe that they had a permanent right of occupancy in the land and to spend their money and labour to do other acts under such belief, he

would be estopped from denying that the defendants had such a right.

2. Supposing it be found that the plaintiff is entitled to eject the defendants there would be a further question as to whether the defendants or any of

them would be entitled to any, and, if so, what compensation for improvements in the shape of wells and ponds dug in the land by them or their

predecessors. We have already pointed out that the District Judge is wrong in saying that there is no evidence to show that the defendants made

any improvements. We would therefore ask the District Judge to return revised findings on the following questions:

(1) Whether the appellants in these appeals are tenants from year to year or whether they have a permanent right of occupancy in the lands in dispute.

(2) Whether the plaintiff is estopped from denying that the appellants in these appeals have a permanent right of occupancy.

(3) What compensation, if any, each of the appellants in these appeals is entitled to for effecting improvements on the land by digging wells and

ponds. The District Judge will also find the nature and value of any buildings constructed by each of the appellants in these appeals. The

compensation, if any, due to each of the appellants in these appeals must be found separately. We may add that Mr. Rangachariar also argued that

the suit ought to have been dismissed for misjoinder of parties and causes of action. But we are unable to give effect to that contention in second

appeal in the circumstances of these cases. But it may be that the defendants would not be jointly and severally liable for the mesne profits and

costs. The District Judge will therefore also find

(4) What mesne profits each of the appellants in these appeals will be liable for in case of ejectment. He will call upon each of the appellants in

these appeals to state particulars of the lands in his possession.

3. Both the parties will be allowed to adduce fresh evidence on the above points. The findings should be submitted within three months and ten

days will be allowed for filing objections. The plaintiff undertakes not to execute the decree for mesne profits till the disposal of these appeals.

4. In compliance with the order contained in the above Judgment the District Judge of Trichinopoly submitted the following.

5. Finding: - When these cases first came before me I held for the reasons set out in para 2 of my order calling for a finding from the District

Munsif on the 8th Issue, that the trend of reported decisions was in favour of the view, that in the case of tenancy under a ryotwari proprietor, as

opposed to tenancy in a Zemindari, the burden of proving a right of permanent occupancy is on the tenant, and I find that this view is referred to

with approval both by Mr. Justice Shephard and by Mr. Justice Subramania Aiyar in page 318, a case quoted by the learned Judges, who heard

the second appeals in these suits, in a Judgment in an unreported case (Second Appeals 1471 and 1472 of 1909, they disposed of shortly before

passing the order calling for findings in these suits. In that case their lordships observed that the court is not bound to presume that a tenancy under

a pattadar is one from year to year, and to throw the onus of disproving it on the tenant. In the present case their Lordships have pointedly

abstained from expressing any opinion in this question, and leaving my finding as it stands, they observe that the real point for determination in these

appeals is whether on the admitted and undoubted facts of the cases, and the evidence of both sides, the defendants held the lands in their

possession as tenants from year to year, or as tenants having a right of permanent occupancy; adding that there is evidence (1) that the defendants

have been holding lands in their possession for a long time paying a uniform and unvarying rate of rent therefor, (2) that transfers have been made

by the defendants and their ancestors by way of sale, usufructuary mortgages and leases to different persons including some of the pattadars, and

that such transfers have been recognised by some of the pattadars, and (3) that improvements of considerable value have been made in the lands

by the defendants. I am directed to apply my mind to this evidence and draw such inferences as it leads to in the circumstances of the cases.

6. The plaintiff admits that the lands have been in possession of the appellants from the time of their ancestors, but it is suggested on his behalf that

rents were enhanced after the resettlement in 1864, and P.W. 18 the plaintiff's agent states that some of the tenants paid enhanced rents in 1896.

This witness admits however that during the 35 years he has been in service under the plaintiff he is not aware of any attempt to enhance the rents

other than that made then, and it is conceded that the present appellants are not among the tenants who are alleged to have paid enhanced rents in

1896. "The only evidence as to an enhancement of rent in that year is the statement of P.W. 18, and two accounts produced from the plaintiff's

office, which have been filed as Exhibit SS and Exhibit FFF. These accounts, a tandal kurippu and a ledger were filed in court in 1897, when the

plaintiff brought a small cause suit to recover the enhanced rent he claimed from the tenants to which the accounts relate. I do not consider this

evidence is sufficient to establish that enhanced rent was as a matter of fact collected from any of the tenants in 1896, but seeing that there have been disputes from about that time what really has to be considered is whether the present appellants paid uniform rates of rent from the commencement of this tenancy up to 1897. Such of the appellants as have been examined as witnesses state that the rates of rent paid by them have never been enhanced within their memory, and this statement is supported by the admission of the plaintiff's agent (P.W. 18) that he knows of no attempt to enhance the rents other than that made in 1896. It is argued for the plaintiff that Exhibits E 8, E 9, E 14 and H show that there was an enhancement of rent about the year 1867. Exhibit H, which is an account book kept by the plaintiff for 1867 for the village of Karuppathur and its hamlets, contains an entry showing that in that year the demand was increased by 20 per cent, over the previous demand, but there is nothing to show this increased demand was ever collected. Exhibits E8 and E9 are not very intelligible, but read in the light of Exhibit E14, they appear to be an undertaking given by certain tenants to pay an increased demand of 20 per cent, in the following year. Admittedly however the persons who are alleged to have signed Exhibits E series are not the appellants or their predecessors in title, and the evidence let in by the plaintiff to prove the genuineness of these documents is not in my opinion satisfactory. It is true they are over thirty years old and have been produced from proper custody, but they were first filed in court in 1897, when they were not thirty years old, and I do not therefore consider there can be any presumption in favour of their genuineness, especially as their appearance is somewhat against their having been written in 1868 and 1869. P.W. 7 and D.W. 28 prove Exhibits E 8 and 9 were written by an individual named Rasalingam, who has signed them as writer, but D.W. 9 admits that Rasalingam died only in 1898, and the fact that he wrote them therefore affords no clue as to the date when they were written. P.W. 9 says that the signature, purporting to be that of Seetharama Iyer as an attesting witness on Exhibit E 14, is his father's signature, and D.W. 24 says the signature on Exhibit E 8, purporting to be that of Muthukaruppa, is his father's signature. But I do not think any presumption can be drawn in this country in favour of the genuineness of a document from the circumstances of its being attested, and it would be especially dangerous to draw any

such presumption in this case of Exhibits E 8 and E 14, as both D.W 24 and P.W. 9 admit that their fathers were in the plaintiff's service for many years. In the circumstances I do not think the mere production of Exhibits E 8, 9 and 14 and Exhibit H can be regarded as proving that the rents of any of the tenants in the village of Karuppathur or its hamlets were enhanced between 1867 and 1870. My finding on this question is that the appellants have been in possession of the lands for a very long period, and that during the whole of their tenancy they have paid a uniform and unvarying rate of rent. I base this finding on the admission made by the plaintiff's agent (P.W. 18) that he knows of no attempt to enhance the rents during the last 35 years, except that made in 1896, and on the plaintiff's failure to show there was any enhancement prior to the period of 21 years, during which P.W. 18 admits there was none to his knowledge.

7. The next question relates to the pleading of the defendants that they have dealt with the lands as their own with the knowledge and in some cases with the acquiescence of the pattadars. As pointed out in para. 3 of my order calling for a finding from the District Munsif on the 8th issue no attention can be paid to admissions made by pattadars other than the plaintiff after the year 1897, when the plaintiff brought a partition suit against the other samudayamdars, and I am also of opinion that documents executed by tenants after 1897 should be disregarded, seeing that after that year there were disputes between the tenants and the plaintiff. With regard to the alleged transactions before 1897, so far as the present appellants are concerned, I believe I am correct in stating that it has not been shown that any of the lands or wells in possession of any of the appellants has ever been transferred by way of sale or mortgage or lease to any of the pattadars, or that the pattadars have accepted rent from transferees from the appellants, and even if it were shown that other tenants in the village had made transfers of this nature, I do not myself consider it would be germane to the issue as to whether these appellants have occupancy right in the lands. I would point out however that there is not a single instance of the alienation of land by itself, and that where land has been alienated it would appear from the deed of transfer to have been treated merely as an appurtenance of the well located thereon. The only cases of transfers to the pattadars are those evidenced by Exhibits VIII, XXXV, XXXVIc,

XLb, LI and XLa and in all these except the last only the wells are transferred without the lands. In Exhibit XLa the right of cultivating and enjoying

some land is no doubt given to the vendee, but this land is not included in the plaintiff's suit, and the vendor is not one of the present appellants.

Exhibit XXXIV is a usufructuary mortgage in respect of land and well executed by the father of defendant 83 in O.S. 1180, who is one of the

present appellants, but there is nothing to show the plaintiff accepted rent from the mortgagee during the existence of the mortgage or that he was

aware of or acquiesced in the transaction, and even in regard to transfers in respect of land and wells by other tenants than the appellants there

does not appear to be any satisfactory evidence that the pattadars ever accepted rent from the transferees or acquiesced in the transfers. My

finding on this question is that it has not been proved that the appellants have transferred their holdings by way of sale, usufructuary mortgage or

lease, to any of the pattadars or to other persons with the acquiescence and knowledge of the pattadars.

8. The last question relates to improvements alleged to have been made in their lands by the appellants. In regard to this there seems to be some

misconception in the mind of their lordships as to my previous finding. As will appear from para 4 of my order calling for a finding from the District

Munsif I always recognised there was evidence that the tenants had made improvements on the lands by digging wells or ponds, but, seeing that

this evidence was of a somewhat general nature, I asked for a specific finding on the 8th Issue which runs as follows: ""Have any and which of the

defendants made any and what improvements on the plaint lands and what is the cost thereof?"" and directed that both parties should be allowed to

adduce such evidence oral and documentary as they might think necessary. The defendants did not adduce any further evidence, and when I used

the words in my final judgment ""The defendants have adduced no evidence to show any of them have made any improvements on the plaint lands"",

I intended this statement to relate only to the remanded hearing. D.W. 17 has now given evidence in regard to 4 of the wells in O.S. 1180 of 1904

and, in view of the general evidence let in by the defendants at the original hearing and of the absence of any evidence contra on behalf of the

plaintiff, I find that the wells the District Munsif finds to be in existence on Survey Nos. 33 a, 153, 157(1), 159,181, 187,190 and 251 were sunk

by the defendants or their ancestors. In regard to the Well which defendants 92 to 97, 104, 105, 108 and 109 claim in respect of Survey No. 154,

the survey plan (Exhibit KKK) shows this well is in Survey No. 158 which is nattam, and defendants 92 to 97, 104, 105, 108 and 109 have not

shown they have obtained a prescriptive right as against Government to use the water for Survey No. 154. I find that it has not been proved that

either these defendants or the appellants whose holdings are dry lands have made improvements of considerable value in their holdings.

9. Next the learned Judge considers the 3rd issue.

10. The 1st and 2nd issues sent down may be conveniently disposed of together. As I have already ventured to observe, though with some

diffidence in view of the unreported Judgment of the learned Judges, who have called for findings in these appeals, in Second Appeals Nos. 1471

and 1472 of 1909, the consensus of reported decisions appears to be that permanent holdings under ryotwari proprietors being unusual and

exceptional the onus is on the party setting up such a special kind of holding (See XXIII Madras page 311 at page 327); and it would also seem to

have been generally held that a tenant under a Government pattadar cannot resist a suit in ejectment by proving only that the tenancy has been of

long duration and that he has during the whole of the tenancy paid a uniform and unvarying rate of rent, this circumstance by itself not being

sufficient to raise a presumption of an implied contract that the right of tenancy should be changed into a right of permanent occupancy. Following

these principles my finding in respect of all the suit lands other than survey Nos. 33a, 153, 157(1), 159, 181, 187, 190 and 251 is that the

appellants are tenants from year to year, that they have not a permanent right of occupancy in the lands, and that the plaintiff is not estopped from

denying that they have such right. The cases of survey Nos. 33(a), 153, 157(1), 159, 181, 187, 19a and 251, in which wells have been sunk by the

appellants or their ancestors, present greater difficulty, for in these cases the tenants have both paid a uniform rate of rent for the whole period of

their tenancy, which must have lasted at least a hundred years, and have expended a good deal of money in improving their holdings. It is urged for

the plaintiff on the authority of XXI Allahabad page 496 and the unreported Judgment of the Madras High Court found at page 376 of the Madras

Weekly Notes, 1910 the mere knowledge on the part of the landlord that improvements have been made by his tenants is not sufficient to estop him in a suit for possession, but the circumstances in these cases are peculiar, and appear to me in all but the case of survey No. 33(a) to justify the legal inference that the plaintiff or his predecessors-in-title have by implication contracted that the right of tenancy should be changed into a right of permanent occupancy. In the unreported case found at page 376 of Madras Weekly Notes, 1910 there had been enhancements of rent which there was nothing to show had not been accepted by the tenants without protest. In these cases not only have the tenants paid a uniform rate of rent for a very long period, but it would appear in the case of survey Nos. 153, 157(1), 159, 181, 187, 190 and 251 that the value of the wells sunk by the tenants is considerably greater than the value of the lands themselves, which the plaintiff admits to be not higher than Rs. 40 an acre. It is of course true that there is no evidence that the present appellants ever sold their wells to the landlords or that the latter acquiesced in sales by the appellants to others, but in view of sales of wells by other tenants to the pattadars, it is I think not unreasonable to assume that the landlord created or encouraged an expectation that in the case of these lands the appellants should have a right of permanent occupancy, and that the latter laid out the money they have invested in the wells with the knowledge of the landlords, and without objection by them, upon the faith of such promise or expectation. In this view I find that the appellants in second appeals 634 and 636 (defendants in O.S. 1179 and 1180) specified in the tabular statement appended to the previous paragraph have a permanent right of occupancy in the garden lands mentioned in that statement, and that the plaintiff is estopped from denying that they have this right. With regard to the appellants in second appeal 635 (defendants in O.S. 1181), the value of survey No. 33(a) is Rs. 276 and the value of the two wells sunk thereon by defendants 43, 44, 55 and 56 is only Rs. 240. In this case I am not prepared to say there is any estoppel or to hold that the defendants have made out that they have a right of permanent occupancy in the lands. I therefore find Issues 1 and 2 in respect of this suit in favour of the plaintiff.

11. The fourth issue next is considered.

12. These second appeals coming on for final hearing, after the return of the above findings.

13. In these cases the suits were instituted by a mirasidar of the village of Karapathur in the district of Trichinopoly to eject a large number of ryots

who were in occupation of different plots of land for which the plaintiff held pattah under the Government. The lands in question are part of the

Samudayam lands in the village, that is, lands held in common by the mirasidars without being divided into individual holdings. The samudayam was

divided into 50 pangus or shares, of which the plaintiff was the owner of 141/2 shares. In 1897 the plaintiff instituted a suit against his co-sharers

for partition of the samudayam lands, and obtained a decree therefor. The plaintiff alleged in his plaint that the lands now sought to be recovered

from the defendants were allotted to him at the partition made by court between himself and his co-sharer-mirasidars and that he was resisted in his

attempt to take actual possession by the defendants, the cultivating ryots. He gave notice to them to terminate their tenancy and instituted these

suits to recover the lands with arrears of rent and mesne profits.

14. Several of the defendants agreed to surrender the lands in their possession and others did not appear to oppose the suit. The contesting

defendants besides raising certain technical objections to the maintainability of the suits pleaded that they were entitled to a permanent right of

occupancy in their holdings, that they had made large improvements by constructing wells and raising buildings on the lands and that, if they were

ejected, they were entitled to compensation for those improvements to the extent of Rs. 1,50,000.

15. The principal question in the cases related to the contention that the defendants had occupancy rights in their holdings. The lands in question

consists of three classes, garden, dry and pasture lands. It is admitted that all the lands were originally waste and that the dry and garden lands

were brought under cultivation subsequently by the ryots. The District Munsif held that, as the plaintiff was the pattadar, the onus was on the

defendants to prove that they at some time acquired occupancy right in the lands from the plaintiff or his predecessors, and that they had not

succeeded in showing how they acquired such right. He, however, held that with regard to the garden lands the plaintiff was equitably estopped

from ejecting the defendants as they had to the knowledge of the plaintiff and his predecessors in title and his co-sharers constructed wells and had been in the habit of alienating them to the knowledge of the pattadars. He passed a decree for the ejectment of the defendants from the dry lands and the pasture lands in their possession and dismissed⁵ the suit with regard to the garden lands. On appeal the District Judge was of opinion that the rule of equitable estoppel was not applicable to the case and that the plaintiff was entitled to eject the defendants from the garden lands also, but that they were entitled to compensation for improvements, if they had made any, and requested the District Munsif to submit a finding on the question, which of the defendants were entitled to compensation for any and what improvements. When the District Munsif returned his finding, the District Judge refused to accept it and held that the defendants had failed to give evidence that they were entitled to any compensation and passed an unconditional decree for ejectment from all the lands in the defendants' possession. When these second appeals first came on for hearing, this Court considered it necessary to remand the case for fresh findings on the following issues: - ""(1) Whether the appellants in these appeals are tenants from year to year or whether they have a permanent right of occupancy in the lands in dispute; (2) Whether the plaintiff is estopped from denying that the appellants in these appeals have a permanent right of occupancy; (3) What compensation, if any, each of the appellants in these appeals is entitled to for effecting improvements on the land by digging wells and ponds? (4) What is the nature and value of any buildings constructed by each of the appellants in these appeals? (5) What mesne profits will each of the appellants in these appeals be liable for in case of ejectment."" The court pointed out in the order of remand that the Judge was wrong in starting with the assumption that ryots holding under a pattadar must be held to have been originally tenants from year to year and that they are bound to show that their right was subsequently converted in some way or other into a permanent right, and that thus was a great deal of evidence adduced both by the plaintiff and the defendants which would enable the court to give a decision on the question of the defendants' occupancy right irrespective the onus of proof in such a suit. The District Judge in this order submitting his findings has, notwithstanding the caution given by this Court, again assumed that the defendants' original

right was that of tenants from year to year and that it lay on them to prove an express or implied contract by which the right of tenancy from year to

year was changed into a right of permanent occupancy. He considered himself justified in doing so by certain observations of Shephard and

Subramania Aiyar JJ. in *Cheekati Zamindar v. Ranasooru* ILR (1899) M. 318, and he pointed out that, while in second appeals Nos. 1471 and

1472 of 1909 this Court observed that the court is not in all cases bound to presume that a tenancy under a Government pattadar is one from year

to year and to throw the onus of disproving it on the tenant, it abstained from expressing any opinion on the question of onus in this case in the

order of remand. The Judge found that the defendants did not succeed in proving that their original tenancy was converted into a permanent

occupancy with regard to the dry and pasture lands and some of the garden lands; but that in the case of other garden lands, having regard to the

value of the improvements made by the ryots, the landlord must be taken to have impliedly contracted to give a permanent occupancy right. In the

cases of ryots whose improvements exceeded the original value of the land, he raised this implication of a contract. But he refused to do so where

the improvements were of less value than the land itself. We are of opinion that this criterion is absolutely indefensible.

16. Before dealing with the question of occupancy rights, it will be convenient to refer to the findings of fact bearing on that question which have

been arrived at by the judge and the facts admitted by the parties. It is conceded that the defendants have been in possession for very many years

and that there is no evidence that the mirasidars themselves were ever in possession of the samudayam lands. It must be taken, therefore, that the

defendants have established that they and their predecessors in title have been immemorially in possession of the lands. It is also admitted that all

the samudayam lands were originally waste and were reclaimed and brought under cultivation by the ryots of the village. The total extent of the

samudayam is 3008 acres belonging to the 50 shares into which the village is divided. Out of this extent the mirasidars had pattah for about 1,600

acres originally. They subsequently obtained a pattah for the remainder. The wet lands in the village covered 400 acres, and for these the

mirasidars obtained separate pattahs. They held a single pattah for the samudayam land, until plaintiff obtained a decree for partition in O.S. No.

247 of 1897, as already observed. The lower courts have found that all the wells in existence were dug by the ryots. The learned vakil for the

respondent has objected to this finding and referred us to Exhibit AA1 as showing that some of the wells were not dug by them, although he did

not venture to go to the length of saying that they were dug by the mirasidars. But, as pointed out by the District Munsif the "Government wells" in

Exhibit AA1 could not be taken to mean any thing more than that those wells were in existence before a certain date. See Exhibit 53. The District

Judge has also found that the defendants and other ryots have always paid a uniform rate of rent. The respondents' pleader objects to this finding

also, and says that the rents were enhanced on two occasions, once in 1868 and again in 1897. The District Munsif was of opinion that Exhibits E

8, E 9 and E 14 showed that the ryots agreed in 1869 to pay an enhanced rent. The judge holds that it is not proved that the enhanced rents were

ever paid and he is also not satisfied with the genuineness of Exhibits E 8, E 9 and B 14. We do not consider that the question whether there was

an enhancement in 1868 or 1897 is very material, because it is admitted for the plaintiff that the cause of the enhancement on both occasions was

an increase made by the Government in the revenue of the land. An agreement by the cultivating ryot to recoup the pattadar for the enhanced

revenue payable by him cannot be regarded as a change in the rent which would show that the ryot has no occupancy right. We must therefore

take it that the ryots have paid an unvarying rent for the lands in their occupation. The next finding relates to alienations made by the ryots. The

District Munsif held that the ryots of the village had made many alienations with respect to the garden lands but none with respect to the dry lands.

The judge confined himself to the alienations with respect to the holdings of the appellants and disregarded alienations made by other ryots of the

village. He proceeded to observe that even with respect to other ryots only wells were alienated in some cases and that in other cases where the

land was alienated it was regarded merely as an appurtenance to the well located thereon. The judge was not right in our opinion in putting out of

account the evidence of alienations by other ryots of the village. It is the case of both parties that all the ryots in the village hold on the same tenure

under the pattadars and instances of alienation by other ryots are relevant evidence to prove the nature of the appellants' tenure 24 documents

ranging from 1872 to 1892 have been produced proving alienations of wells constructed by ryots, very recent documents being rejected as not deserving of much weight. In 12 documents from 1868 to 1896 the ryot alienated wells, but stated in addition that the alienee should also have the right under the transfer to cultivate the lands to which the wells were attached. In 7 documents from 1859 to 1896 both land and well were expressly alienated. The learned vakil for the respondent has strongly relied on the language of the first set of documents in which the wells alone were alienated as showing that the ryots were conscious that they had no right in the land. He also contends that the phraseology of the second set of documents also supports the same inference. We shall presently advert to the weight to be attached to this argument. It is admitted that not a single eviction of a ryot is proved by documentary evidence to have taken place against his will.

17. We take it as established (1) that the ryots of the village have been immemorially in possession of the lands and that they have not been proved to have been ever let into occupation by the mirasidars; (2) that they have been paying a uniform rate of rent; (3) that the lands were reclaimed and brought under cultivation by them; (4) that they have made large improvements and carried on the cultivation either of dry or garden crops of their own choice without any interference or objection by the mirasidars : (5) that they have for a very long time been making alienations sometimes of wells, sometimes of wells and lands and sometimes of the right of cultivating the lands along with the wells alienated.

18. The question for decision is whether on these facts the plaintiff is entitled to eject the defendants on the mere ground that he is the pattadar of the lands. Mr. Venkatrama Sastriar for the respondent strongly contends that the pattadar must be treated as the owner, and that any person in occupation must be deemed to be holding under him as tenant from year to year, and that it lies on him to show that he acquired occupancy right from the pattadar in some way or other, that long possession by itself is not sufficient to prove a right of occupancy, that the alienations are not of such a character as to justify us in holding that the landlord acquiesced in the assertion of an occupancy right by his ryots, and that the defendants cannot have a higher claim than compensation for any improvements they may have made. He admits that the decision of the Court in Veeranan

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

Another, , is against his contention, but argues that the case was not rightly decided. His position is that the Government always recognised the

person entitled to cultivate the land as the pattadar and that, therefore, any one under the pattadar is bound to prove his right to permanent

occupation by establishing an express or implied contract on the part of the pattadar giving him such right. He claims that this position is established

by the previous decisions of this Court In Veeranan Ambalam and Others and Peria Kampalam Ambalam and Others Vs. Annasawmi Aiyar by his

mother and next friend Subba Lakshammam and Another, , where a hundred years" possession was established by the ryot, but the facts were

otherwise less strong for him, the Court observed with respect to the proposition contended for in this case ""There is no foundation for the

assumption that ryot who is not a kudivaramdar in the technical sense of that word cannot be a person having a right of occupancy over the land.

It was pointed, out that ""the legislature has been careful to save agricultural tenancies from the immediate operation of Section 106 of the Transfer

of Property Act that every tenant in the absence of a contract to the contrary should be presumed to be a tenant from year to year."" With regard to

agricultural tenancies the Court observed ""Whether the presumption of a tenancy from year to year will be drawn in any particular case will depend

on the length of possession of the tenant the presence or absence of variation in the rate of rent, the manner in which the tenant has been dealing

with the land and other circumstances in the case."" It is not contended that there is any statutory rule that a ryot holding under a pattadar is tenant

from year to year; nor is it argued that the grant of pattah by the Government could have the effect of destroying any occupancy rights that may

exist at the time of the grant. The only legitimate basis for the presumption of a tenancy from year to year must be that in ryotwari tracts only

mirasidars and no others cultivating the lands had any permanent rights in the lands cultivated by them according to custom. It does not appear in

what year the mirasidars of this village were first granted a pattah; but it may be assumed for the purposes of this judgment that they were

recognised by the Government as mirasidars and given pattah early in the beginning of the last century. But it cannot be assumed that they were

then the actual cultivators of the land and that the defendants or their predecessors-in-title were not the cultivators then. On the other hand it is unlikely that the mirasidars, who were Brahmins, were carrying on the cultivation themselves. It is admitted at any rate that the samudayam lands were not brought under cultivation by the mirasidars. The plaintiff was even unable to state what lands each of the defendants in the suits was in possession of. It is a well known fact that in several districts the right in land was often shared in this country among several persons. In *Krishnasami v. Varadaraja* ILR (1882) M. 345, which came up from the Tanjore district, Turner, C.J., observed that "the circumstances of the several provinces of the peninsula and indeed of districts within provinces have so greatly varied that it would be unreasonable to expect to find now-a-days uniformity in the customary law regulating the relations of landlord and tenant, if at any time it existed." As pointed out by him, the right claimed by the ryots must depend on the customary law applicable to the relations between mirasidars and cultivating ryots in the particular district or part of the district in question. The relations between mirasidars and the cultivators were not the same in all districts. In Chingleput there were two classes of payakaris according to Mr. Place, the Collector, the resident payakari who had a life estate in his holding and was entitled to transmit it to his heirs, and the outsider payakari who was brought in by the mirasidars to cultivate for want of a sufficient number of village payakaris. The former class is compared by him to copyholders in England, who have a hereditary right of occupancy, but who were not recognised in former times to have the right to alienate their land, the feudal lord having the right of reversion in case a copyholder was not able to cultivate. A similar distinction is recognised in the Tanjore district in *Krishnasami v. Varadaraja*¹, between two classes of cultivators, the *ulkudies* or resident cultivators and the nonresident cultivators, the *puraktidies*. The word "purakudi" was often applied to both classes of cultivators and the use of the word would not by itself denote the absence of occupancy right; see page 355. Turner, C.J. points out that a nonresident cultivator might by permanent residence acquire the status of an *ulkudi*. The learned Judge goes on to say : "What length of time was required to effect this change in the status of the cultivator has never been accurately ascertained. In Upper India it was assumed to be 12 years, a term adopted possibly

from the limitation law and it may be that the superior right was acquired not by prescription but by residence coupled with an avowed intention

that it should be permanent and by an acceptance of the tenant by the landholder on the footing of a permanent tenant." It is also pointed out that

the ulkudi's right "rarely extended to a power of sale, though this was not altogether unknown where the cultivator had by the expenditure of his

own money made important improvements in his holding." The opinions of Mr. Harris, Colonel Blackburn and Mr. Wallace referred to in the

judgment show that the cultivators or purakudies often had the right of permanent occupancy in their lands. In a report to the Tanjore Committee,

dated the 9th May 1804, Mr. Harris observed "In every country and in every profession it is usual for the master to find his stock and for his

servants to do the work; but in Tanjore and in agriculture the servants do the work and find the stock too.... In Tanjore the name of purakudi

signifies indeed those to whom land is relinquished, but this is the ordinary and settled state of the Province" See pp. 490 and 491 of the Appendix

to the Fifth Report, Madras Presidency. The object of ryotwari settlement no doubt was, as pointed out at page 61 of the Fifth Report, "to enter

into direct engagements with every ryot or cultivator situated within its boundaries for the revenue he was to pay on account of the land he

occupied." But this policy was by no means carried out in all cases. It was found more easy to collect the revenue from the head inhabitants of a

village than from every individual cultivator. After some experience it was decided to revert to the system of village settlements, that is, settlements

with the villagers as a body for all the land in the village. See page 104 of the report. This reversion was first carried out in the district of Tanjore in

consequence of the recommendation of a committee which had been appointed to investigate the revenue affairs of that district and the principle on

which the land assessment had been formed. A triennial settlement was entered into in 1807 according to the instructions given by the Government.

The settlement was made with the mirasidars or if they were unwilling with the purakudies. The purakudi always got a definite share in the produce.

There can be absolutely no doubt that with whom-so-ever the settlement may have been made by the Government, it had no intention whatever to

affect the existing right of any class of persons. If the ryots cultivating under the mirasidars had permanent rights in the land, they certainly remained

unaffected by the fact that the patta was granted to the mirasidars. The settlement with mirasidars had no doubt the effect of gradually destroying the rights of cultivating ryots. This would generally happen where the pattadar himself was a small holder able to cultivate the land himself and interested in getting as much out of it as possible. But if the mirasidar was a large holder, he might not interfere with the cultivators. The same might be the result if the land was held in common by a number of mirasidars with a body of ryots cultivating under them. In this very village it appears that the wet lands were divided between the mirasidars long ago, who got individual pattahs for their holdings. There is no trace of any occupancy right with respect to those lands in the cultivators. The samudayam land on the other hand was held in common, and it is admitted that the cultivators were never disturbed, but were left to bring the land under cultivation and to improve it with their own money and were not interfered with when they alienated their holdings. In these circumstances there is no reason for the presumption that the ryots ever agreed to cultivate as tenants from year to year. In reality it is a mistake to assume that they ever agreed to hold as tenants of the mirasidars in the proper sense of the word "tenants." As pointed out already, there is no evidence that they entered on the land as tenants; nor is there any evidence that they at any time agreed to hold in that capacity. In *Venktanarasimha Naidu v. Dandamudi Kotagya* ILR (1897) M. 299, it was pointed out that there is absolute no ground for laying down that the rights of ryots in *Zaminclaris* invariably or even generally had their origin in express or implied grants made by the Zamindar. The view, that in the large majority of instances it originated otherwise, is the one most in accord with the history of agricultural land-holding in this country." This observation would be equally true with regard to ryotwari villages in some places. If a presumption can be drawn with respect to any land that the ryot has no permanent occupancy right, that must be on the ground that the customary mode of holding in the district or place where the land is situate would justify such presumption, and not on the ground that the Government granted a pattah to the mirasidar. In *Kittu Hegadthi v. Channamma Shettathi* ILR (1904) M. 528 it was held by this Court that in the district of South Canara, where both mulgeni and chalgeni holdings are common, a landlord is not entitled to the presumption that a ryot in possession of his land is a

chalgeni and not a mulgeni holder. The observations in Cheekati Zemindar v. Ranasooru Dhora ILR (1900) M. 318, referred to by the District

Judge do not support his view. Shephard, J. referred to an admission of the Advocate-General who appeared for the Zamindar in that case that

the presumption of occupancy right would arise far more readily in the case of a Zamindari tenant than in that of a tenant holding under a

Government ryot. Submmania Aiyar, J. distinguished between the cases of a ryot holding under a Zamindar and one holding under a ryotwari

pattadar, and referred to the observations of Collins, C.J. and Muthuswami Iyer, J. in Chidambara Pillai v. Thiruvengadathiengar (1886) 7 M.L.J.

1, where those learned Judges observed that in a taraf village in Tanjore 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 ordinary incidents of property is n.

bound to establish."" Subramania Aiyar, J. understood the view taken in Ghidambara Pillai v. Thiruvengadathiengar (1886) 7 M.L.J. 1, to be based

on the ground that permanent holdings under ryotwari proprietors were unusual and exceptional. 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 mirasidar has no

occupancy right. Thiruvengadam Pillay v. Thiruvengadathiengar (1886) 7 M.L.J. 1 itself really does not warrant any such inference. There were

various facts in that case which justified the presumption against the existence of an occupancy right in the ryots. There were various leases

executed by them for terms of years in which they promised to quit the land at the end of the term; the rents paid varied from time to time; it was

admitted that the ryots had no right in the topes and house-sites in the village; there was no evidence of immemorial occupation. In the

circumstances the presumption against occupancy right was certainly justified, as also the observation to which our attention was drawn that the

contention that mere length of enjoyment in the capacity of tenants or purakudies irrespective of other circumstances is prima facie proof of

occupancy right cannot be supported. It was the other circumstances already referred to that the court held made it right that a presumption of

occupancy right should not be made from mere length of possession. On the other hand in Krsihnasami v. Varadaraja and Varadaraja v.

Venkataahala ILR (1882) M. 345, seventy years" possession was considered sufficient to justify a presumption in favour of occupancy right.

Reference was made on behalf of the respondent to two other cases, Seshamma Shettati v. Chickaya Hegade ILR (1902) M. 5074, and

Rangasami Reddi v. Gnana Sambandha Pandara Sannadhi ILR (1902) M. 507 The former case has really no bearing on the question. The

defendants there set up not a permanent right as occupants of the land but a permanent lease-hold right under the land-holder, it being admitted

that they came into possession under him. The onus of proving the permanent lease was held to lie on them. In Rangasami Reddi v. Gnana

Sambandha Pandara Sannadhi ILR (1898) M. 264 it does not appear that any immemorial possession was shown by the ryots. Moore, J. referred

to the observation already mentioned in Chidam-bara Pillai v. Thiruvengadathiengar (1886) 7 M.L.J. 1, but that observation, as already pointed

out, was made with respect to strong facts appearing against the ryots there. In the present case there is hardly a single circumstance in the

plaintiff's favour except the bare fact that he is the pattadar of the land. We see no reason to depart from the ruling in Veeranan Ambalam and

Others and Peria Kampalam Ambalam and Others Vs. Annasawmi Aiyar by his mother and next friend Subba Lakshammammal and Another, that

this by itself is not sufficient to entitle the appellants to a presumption that the defendants either originally came in as tenants from year to year under

the mirasidar or subsequently agreed to hold as such. The plaintiff has made no attempt to prove that the customary mode of land-holding in the

particular tract of country where the village is situated would justify such a presumption. On the other hand there can be no doubt that purakudies

with occupancy rights were by no means uncommon in the district where the lands in question are situated. There is no reason why the ordinary

rule that a person who wants to eject another from land of which he is in possession must prove that the occupant came into possession as his

tenant under a contract which entitles him to eject. See Venkatacharlu v. Kandappa ILR (1891) M. 95 The fact that the defendants brought the

lands in the village under cultivation and spent their own money in making improvements without any help from the mirasidars is of the greatest

possible weight against the respondent.

19. It is perhaps necessary to refer to the argument based on the circumstance that in a large number of cases the ryots alienated only their wells and that in some other cases they merely alienated the right to cultivate as subsidiary to their wells and did not purport to alienate the land itself. It will be noticed from what has been already stated that ryots holding under mirasidars, though entitled to hereditary occupancy, were formerly held not to have the right to alienate the land. The right of alienation is of comparatively modern growth in the case of ryots. Mr. Place in distinguishing between the mirasidars and payakaris in the Chingleput district speaks of the rights of mirasidars as rights in the land itself and the rights of the payakaris as in the right of cultivating the land. The mirasi right was the highest right in the land. See appendix to the fifth Report, Madras Presidency, page 303. This is a sufficient explanation of the absence of any reference to the land in some of the alienations and of the right of cultivation alone being transferred in other cases. On the other hand the land itself was transferred in some instances, we have in this case all the characteristics of a permanent right of occupancy in the defendants and hardly a single circumstance in favour of the plaintiff's right to eject. We hold that the mere fact of the plaintiff being the pattadar does not entitle him to any presumption in his favour and we also hold that, even if that fact could be of any use to him, the various circumstances proved unrebutted by anything in the plaintiff's favour necessarily raise a presumption that the defendants have occupancy rights. We do not think any distinction can be drawn between the garden lands and the dry lands in the defendants' occupation. In the case of both, the reclamation of waste was made by the ryots and they have held the land always at a uniform rate of rent. The absence of any alienation with regard to the dry lands cannot be regarded as a circumstance against them, as it is admitted that the lands are of a poor* quality and would probably therefore not attract purchasers. The question of pasture lands remains to be considered. They have not been brought under cultivation by the defendants. The plaintiff as pattadar is entitled to bring waste lands included in his pattah under the plough. It does not appear that the defendants have exercised any right of enjoyment over them which would justify us in holding that they have occupancy rights in them.

20. We are therefore of opinion that the decree for ejectment must be confirmed with regard to the pasture lands. The claim for rent has been settled by agreement between the parties. We modify the decrees of the courts below by giving the plaintiff a decree for the pasture lands only specified in the finding of the District Judge and dismiss the suit with respect to the dry and garden lands. The decrees in so far as they relate to the rent will stand so far as the appellants are concerned. Both sides will have proportionate costs throughout.