Sunkavilli Suranna and Others

Vs

Goli Sathiraju and Others

Civil Appeal No. 424 of 1958

(K. N. Wanchoo, K. C. Das Gupta, J. C. Shah, Raghuvar Dayal JJ)

18.09.1961

JUDGMENT

SHAH, J. –

One Thammiah had two sons - Gangaraju and Ramayya - and four daughters - Ammanna, Seshamma, Gangamma and Bhavamma, of these, the two sons and the daughter Ammanna died during Thammiah's life time. Gangaraju left him surviving his widow Chetamma and Ramayya his widow Venkamma. Ammanna was survived by her son Rudrayya, who was brought up by Thammiah. Thammiah died in 1885, Seshamma in 1904, Gangamma in 1930 and Bhavamma in 1935. After the death of Bhavamma, Paddaraju (hereinafter called the plaintiff), son of Gangamma filed Suit No. 53 of 1944 in the court of the Subordinate Judge at Rajamundhry against the descendants of Seshamma and Ammanna for a decree for partition and separate possession of a third share in 17 lands, described in Schedule B to the plaint as "agricultural land and measuring in the aggregate 51 acres 72 cents in Patta No. 12 in village Pandalpaka in Pithapur Zamindari" and in Schedule 'C' described as three houses with sites thereof in village Pandalpaka. To this suit Jaggarayudu and Paddaraju, sons of Venkataraju - brother of the plaintiff - were impleaded as defendants 31 and 32. The plaintiff claimed that Thammiah owned occupancy rights in the ryoti lands in the Pithapuram Zamindari and that after Thammiah's death the lands were managed with the permission of the plaintiff and his brother Venkataraju, in the first instance, by the two daughters-in-law of Thammiah - Chetamma and Rammanna, son of Seshamma and their "possession and management was on behalf of heirs and persons entitled to maintenance out of the estate" and that the right to sue for partition accrued on the death of Bhavamma on March 18, 1935.

The suit was resisted by the descendants of Seshamma and Ammanna principally on the plea that in the lands described in Schedule 'B' Thammiah had not proprietary right and that occupancy right therein accrued to Rudrayya and Veeriah (husband of Seshamma) by virtue of the Madras Estates Lands Act, 1908. It was also pleaded that Thammiah had made an oral will devising his estate in favour of Veeriah - who was his illatom son-in-law - and Rudrayya in equal shares. This plea about the oral will was negatived by the Court of First Instance and the High Court and need no longer be considered, because it is not canvassed before us in this appeal. The trial Court held that Thammiah had no proprietary interest in the lands in Schedule 'B' and on that view decreed the plaintiff's claim for partition of the houses and sites described in Schedule 'C' only and awarded a third share to him, another third share to Ramanna and the remaining third share collectively to defendants 31 and 32 - sons of Venkataraju.

In appeal, the High Court of Madras modified the decree of the trial court holding that in the agricultural lands Thammiah had occupancy rights which on his death devolved on his surviving

daughters, and directed that those lands be also partitioned, and that a third share be awarded to the plaintiff and a third share to defendants 31 and 32 together with mesne profits from March 18, 1935, the date of Bhavamma's death. With certificate under Article 133, this appeal is preferred by the descendants of Seshamma and Ammanna.

The principal question which falls to be determined in this appeal is whether Thammiah had, as claimed by the plaintiff, occupancy rights in the lands described in Schedule 'B', or as the contesting defendants contend, Thammiah was an annual tenant of the Zamindar and that after his death the lands were held on similar tenure by different members of the family of Thammiah and that the occupancy right was acquired by Rudrayya and Veeriah by virtue of the Madras Estates Lands Act, 1908. The lands are within a permanently settled zamindari under Madras Regulation XXV of 1802, and it is common ground that Thammiah was cultivating the entire area of the lands during his life time. There is no evidence indicating that his possession was ever disturbed during his life-time. There is again no evidence about the commencement of the occupation of Thammiah or his predecessors : commencement of their occupation is therefore lost in antiquity. The lands are described in the various documents, to which we will presently refer, as "jeeroyati lands", Thammiah as "jeeroyati ryot", and after his death his daughters-in-law and grandson Ramanna were similarly described.

Three documents - Exts. D-1, D-2 and D-3 - which establish that Thammiah was cultivating the lands throw important light on the problem under discussion. Exhibit D-1 is a muchilika dated July 1, 1883, executed by Thammiah in favour of the zamindar. Exhibits D-2 and D-3 are similar muchilikas dated respectively August 10, 1884, and July 15, 1885. Each of these muchilikas is in respect of the seventeen pieces of lands described in Schedule 'B' and the 'cist' settled is Rs. 419/8/-. The terms of the three muchilikas are identical. Thammiah is described in the muchilikas as "jeeroyati ryot" and the lands are described as "jeeroyati pampus". It is recited in the muchilikas "I have executed and delivered this muchilika agreeing that I should pay the said cist amount of Rs. 419/8/- every fasli according to the instalments mentioned hereunder to the Officials on your behalf and to obtain receipts;..... that during the last year of the term, I should not raise gingelly or chiruveru crop on these pampus but that I should leave sufficient land for purposes of garden cultivation and seed beds; that I should not cut down any kind of trees without your permission; that I should not raise permanent gardens or construct houses on these lands without your permission; that I should not cause damage to these lands so as to make them unfit for cultivation purposes; that if at the end of the term you should lease out these pampus to anyone, whom you like, for a cist amount advantageous to you, I should not raise objection thereto; that if you had leased out these lands to other ryots for the ensuing year after the expiry of the term, and if the said ryots should carry on necessary works for purposes of cultivation during the ensuing year by way of ploughing seed-beds, sowing seeds and planting tender sugarcane even before the expiry of this term, I should leave sufficient land to them without raising any objection whatsoever. " By the covenants of the muchilikas Thammiah had undoubtedly undertaken not to raise certain crops, nor to cut trees, nor to put up permanent constructions and had also undertaken to give certain facilities to other tenants inducted in the lands by the zamindar. The evidence does not justify the inference that Thammiah was inducted on the land by Ext. D-1. There is even no evidence that the land was acquired from the zamindar by the members of Thammiah's family or that the ancestors of Thammiah were not on the land before the zamindari rights accrued to the zamindar. It is also not disputed that land in zamindaries in the Madras Presidency were even held in occupancy right by many ryots before the Madras Estates Lands Act, 1908, was enacted. As observed in Venkata Narasimha Naidu v. Dandamudi Kotayyo ((1897) I. L. R. 20 Mad. 299) at 301 that "there is absolutely no ground for laying down that the rights of ryots in zamindaries 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. For, in the first place, sovereigns, ancient or modern, did not here set up more than a right to a share of the produce raised by raiyats in lands cultivated by them, however much that share varied at different times. And, in the language of the Board of Revenue which long after the Permanent Settlement Regulations were passed, investigated and reported upon the nature of the rights of ryots in the various parts of the Presidency, "whether rendered in service, in money or in kind and whether paid to rajas, jagirdars, zamindars, poligars, mutadars, shrotiemdars, inamdars or to Government officers, such as tehsildars, amildars, amins or thannadars, the payments which have always been made are universally deemed the due of Government"..... Therefore to treat such a payment by cultivators to zamindars as 'rent' in the strict sense of the term and to imply therefrom the relation of landlord and tenant so as to let in the presumption of law that a tenancy in general is one from year to year, would be to introduce a mischievous fiction destructive of the rights on great numbers of the cultivating classes in this province who have held possession of their lands for generations and generations. " It was also observed in that case (at p. 303), "It thus seem unquestionable that prima facie a zamindar and a raiyat are holders of the melvaram and kudivaram rights, respectively. When, therefore, the former sues to eject the latter, it is difficult to see why the defendant in such a case should be treated otherwise than defendants in possession are generally treated, by being called upon, in the first instance, to prove that they have a right to continue in possession. " The right to occupy land under the revenue system prevailing in Madras may arise by reason of the customs in the district in which they are situate. In any event, there is no presumption that the holder of the land under a zamindar is a tenant at will. In each case the rights of the ryot have to be ascertained in the light of the facts proved.

In Appa Rau v. Subbanna ((1889) I. L. R. 13 Mad. 60), Muttusami Ayyar and Wilkinson, JJ., were called upon the consider whether a zamindari ryot could mortgage his interest in his holding. It was observed in that case that "According to the course of decisions, therefore, in this presidency the landlord may determine the tenancy if there is a contract, express or implied, by exercising his will in accordance with his obligations; that there is no presumption in favour of a tenancy at will; that an occupancy right may exist by customs; that a pattadar or raiyat in a mitta is entitled to continue in possession so long as he regularly pays rent and has a saleable interest, and that by reason of special circumstances in evidence the onus of proof may be shifted, even in regard to a permanent occupancy right, from the tenant to the landlord. " The court also observed that it would be "monstrous to hold that every tenant in a zamindari is presumably a tenant at will".

In Vencata Mahalakshmamma v. Ramajogi ((1892) I. L. R. 16 Mad. 271), a zamindar served a notice upon the defendant, who was a cultivating ryot in the zamindari calling upon him to deliver possession of his holding, and on default of compliance sued to evict him from his holding. The defendant pleaded that he and his ancestors had been "jiroyati ryots" of the holding from times immemorial. According to the High Court, the zamindar having failed to prove that the ryot's tenancy had commenced under the zamindar or his ancestors, the suit should be dismissed. The court observed that "in cases in which the raiyats' holding is not shown to have commenced subsequent to the permanent settlement, and when upon the evidence it is possibly as ancient as the zamindari itself, the principle laid down with reference to tenancies which admittedly commenced under the zamindar" had no application, and that "in such cases it is not unreasonable to hold that the onus of showing that the tenancy commenced under the plaintiff or his ancestors rests or the zamindar, and that until he shows it, the zamindar may be fairly presumed to have been the assignee of Government revenue, and the tenant liable to pay a fair rent and entitled to continue in possession as long as he regularly pays rent.

In Venkata Narasimha Naidu v. Dandamudi Kotayya ((1897) I. L. R. 20 Mad. 299), which we have already referred, it was held that a ryot in a permanently settled estate is prima facie not a mere tenant from year to year but the owner of the kudivaram right in the land he cultivates, and in a suit in ejectment, the zamindar "is to prove that the kudivaram right in the disputed land subsequently passed to the defendant or some person through whom he claims under circumstances which give the plaintiff the right to eject. " The Court observed that there is no substantial analogy between an English tenant and an Indian ryot for the right of ryots came into existence mostly, not under any letting by the Government of the day or its assignees, the zamindars, but independently of them, according to the Indian traditions such right were generally acquired by cultivators entering upon land, improving it and making it productive. After referring to the judgment of Turner, C. J., and Muttusami Ayyar, J., in Siva Subramanya v. The Secretary of State for India ((1885) I. L. R. 9 Mad. 285) that the Hindu jurisprudence rested private property on occupation as owner, and to Secretary of State v. Vira Rayan ((1885) I. L. R. 9 Mad. 175) that the right to the possession of lands acquired by the first person who makes a beneficial use of the soil, it was observed that the well-known division in the Madras Presidency of the great interests in land under two main heads of the melvaram interest and the kudivaram interest made the holder of the kudivaram right, far from being a tenant of the holder of the melvaram right, a co-owner with him.

In Cheekati Zamindar v. Ranasooru Dhora and others ((1899) I. L. R. 23 Mad. 318), Shephard, J., observed at p. 322, "Many of the occupants of zamindari lands are not tenants in the proper sense of the word, and the fair presumption is that, when new occupants are admitted to the enjoyment of waste or abandoned lands, the intention is that they should enjoy on the same terms as those under which the prior occupants of zamindari lands held. It is open to the zamindar to rebut the presumption. He may show as was shown in Achayya v. Hanumantrayudu ((1891) I. L. R. 14 Mad. 269) that the usual condition of things does not prevail in his estate or he may adduce evidence as to the particular contract made between him and his tenant. In other words, he may show that the terms of the contract were different from those which ordinarily prevail between a zamindar and the occupant of zamindari lands. " Subrahmania Ayyar, J. observed, "Practically the whole of the agricultural land there is not cultivated by persons who merely hire it for a limited time. The raiyats most generally hold by no derivative tenure. And even where the right to cultivate passes to them from zamindars the payment made by them, in the absence of a contract, is regulated by custom in the last resort, as provided in section 11 of the Rent Recovery Act. The raiyats are generally entitled to hold the lands for a unlimited time, that is as long as they wish to retain it subject to the performance of the obligations incident to the tenure. Nor can it be said that this is true only is regard to so much of the land in the hands of the raiyats as cannot be shown to have been obtained by them from zamindars. For in the case of lands which have been relinquished by the former occupants or which have been lying waste from time immemorial, they too, when taken up by a raiyat, are treated exactly on the same footing as land into the possession of which it is not shown that the raiyat was let in by a zamindar, and the raiyat holds possession of them for an indefinite period".

In Kumbham Lakshmanna and Others v. Tanjirala Venkateswarlu and Others ((1949) L. R. 76 I. A. 202), the Judicial Committee of the Privy Council held that in a suit to eject the tenant of an inamdar from his holding the burden is on the plaintiff to make out a right to evict by proving that the grant included both the melvaram and the kudivaram interests, or that the tenants or their predecessors were let into possession by the inamdar under a terminable lease. The dispute in that case was between inamdars and a tenant and had to be decided by the Civil Court, for having regard to the definition in section 3(2) (d) of the Madras Estates Land Act, 1908, the Act did not apply to inamdars. By section 6 of the Act in having been provided that "every ryot now in possession or

who shall hereafter be admitted by a landholder to possession of ryoti land situated in the estate of such landholder shall have a permanent right of occupancy in his holding, " all tenants in possession of land at the date on which the Act came into operation, were declared to be holders of permanent occupancy rights, but the Act did not justify the inference that the holders prior to that date did not and could not hold occupancy rights. The Privy Council was of the view that in any action by an inamdar to evict his tenants and by a zamindar prior to 1908 to evict his raiyats from their holdings, the burden was on the plaintiff to make out the right to evict by proving that the grant included both the melvaram and the kudivaram interests or that the holders of land or their predecessors were let into possession by the inamdar or the zamindar under a terminable lease. The Privy Council judgment, therefore, recorded its approval to the view expressed in the earlier cases to which we have referred.

But counsel for the respondents contended that this was not a suit between a zamindar and a ryot and the rule as to the onus of proof in a suit as between a zamindar and a ryot did not apply where the suit was filed by a person like the plaintiff claiming a share in the occupancy right in land in possession of the defendants, and unless the plaintiff establishes affirmatively that the common ancestor was before 1908 in possession as an occupancy tenant, his suit must fail. We do not think that this is a permissible approach. The presumption which arises in a suit by a zamindar against a ryot for possession of the letter's holding, rests not on the narrow ground of burden that whoever alleges title and claims relief on that footing must establish it; the presumption has its roots in the system of land tenure and in custom of the area in which the lands are situate, and applies in a suit between persons claiming under the ryot, as well as in a suit against the ryot by the zamindar.

Counsel for the respondent relied upon certain circumstances which appeared from the evidence as lending support to the plea of the contesting defendants that the lands were not held by Thammiah in occupancy right. Reliance was placed upon the covenant in Exts. D-1, D-2 and D-3 that the zamindar may on the expiry of the year of the muchilika, let out the lands to any tenant at "cist" advantageous to the zamindar. It is true that in Exts. D-1, D-2 and D-3 it is recited that if at the end of the terms of the muchilika the zamindar should lease out the land to any one for a "cist" advantageous to him, Thammiah would not object thereto, and he further agreed that he would leave sufficient land, without raising any objection, for the ryot to carry out the necessary work for cultivation during the ensuring year. But such a covenant is by itself not sufficient to justify the inference that the ryot's tenure was precarious. It appears that since the decision of the Madras High Court in Chockalinga Pilli v. Vythealinga Pundara Sunnady ((1871) 6 M. H. C. R. 164) that neither the rent Recovery Act, nor the regulations operated to extend a tenancy beyond the period secured by the express or implied terms of the contract creating it, the zamindars were accustomed to take muchilika or other writings from their ryots admitting, notwithstanding the true nature of their rights, that their tenure was restricted or precarious. In Vencata Mahalakshmamma v. Ramajogi ((1892) I. L. R. 16 Mad. 271), in dealing with a muchilika executed by a ryot for a period of tone year only, Muttusami Ayyar J., observed, "Neither a patta nor a muchalka granted or executed under Act VIII of 1865 during the continuance of the holding is conclusive evidence that the holding is a tenancy from year to year. A patta or muchalka is ordinarily nothing more than a record of what the tenant has to pay for a particular year with reference to the pre-existing relation of landlord and tenant. The fact cannot also be lost sight of that the zamindar is always a man of education, status and influence and often exercises revenue power and control over the village records. On the other hand, the raiyats are illiterate persons and it would be easy enough to get them sign anything as long as there is no attempt to interfere with their actual occupation and enjoyment of the land. " It would be unreasonable, therefore, to attach any undue importance to the recitals of the nature contained in Exts. D-1, D-2 and D-3. The Privy Council in Kumbham Lakshmamma's case ((1949) L. R. I. A.

202) referred to the practice among zamindars of taking muchilikas from ryots negativing the existence of the occupancy rights as being prevalent and to the judicial recognition of such a practice in Peravali Kotayya v. Pnnopalli Ramakrishnayya ([1937] 2 Mad. L. J. 573) and Zamindar of Chellapalli v. Rajalapati Somayya ((1914) 27 Mad. L. J. 718). The Judicial Committee referred with approval to the observations of Wallis, C. J., in the latter case to the effect : "In this connection it is to be borne in mind that numerous instances have come before the courts in which subsequent to the decision of the Chokalinga's case ((1871) 6 M. H. C. R. 164) (1871) zamindars succeeded in inserting in pattas and muchilikas terms negativing the existence of occupancy right", and pointed out that they could not neglect the consideration that a ryot so long as he is not evicted, might be prepared to sign anything and that the evidential value of such a contract should be judged accordingly. It is true that if there were some reliable or substantial evidence to show that the tenancy had commenced after the zamindari rights accrued or that otherwise the tenant's right was restricted, the value to be attached to the recitals of the nature set out may be greater; but there are no circumstances in this case lending strength to the recitals contained in Exts. D-1, D-2 and D-3.

After the death of Thammiah, muchilikas were obtained and pattas granted by the zamindar not in favour of the daughters of Thammiah, who were under the Hindu Law his heirs, but in favour of his daughters-in-law, in the first instance, and thereafter, in favour of one of the daughters-in-law and Ramanna, grandson of Thammiah. These documents are Exts. D-4, D-5, D-5(a), D-6 and D-8. Ext D-4 is a muchilika executed on August 15, 1891 by Venkamma and Chetamma, daughters-in-law of Thammiah. Ext. D-5 is another muchilika executed on August, 15, 1893 by Venkamma and Chetamma. Each of these muchilikas is for period of one year, Ext. D-5(a) is a patta executed on October 10, 1893 by the zamindar corresponding to muchilika Ext. D-5. Ex. D-6 is a patta executed on May 21, 1904, by the zamindar in favour of Chetamma and Ramanna - minor by his guardian Veeriah - and there is Ext. D-8 which is a patta dated January 16, 1906 also in favour of Chetamma and Ramanna. All these muchilikas and pattas related to the same seventeen pieces of land which were originally in the possession of Thammiah, and the covenants thereof are identical. It is true that in respect of the first two muchilikas the ryots were Chetamma and Venkamma, and in Exts. D-6 and D-8; the ryots were Chetamma and Ramanna. Counsel for the defendants asks us to infer from Exts. D-4 to D-8 that the zamindar had at the end of the year for which the muchilikas or pattas were executed exercised his right of eviction and had taken possession of the lands and had given them to other persons of his own choice. But it is difficult to draw that inference in the absence of any reliable evidence that the zamindar had evicted ryots who had executed the muchilikas and had then inducted fresh ryots on the land. The reason why Venkamma was omitted after 1893 from the muchilikas and pattas of the land and in her place Ramanna was substituted will be presently mentioned. After the death of Thammiah, his rights in the land would undoubtedly devolve by the law of inheritance upon his surviving daughters with limited interest. But the fact that muchilikas were taken from persons who were strictly not heirs according to Hindu law, but were still representatives of the family, will not justify an inference that the right of the of the original ryots were extinguished and fresh rights in favour of persons who executed muchilikas were created. The two daughters-in-law - Chetamma and Venkamma - after the death of Thammiah, continued to live in the family house together with Sesharama, Veerayya and Rudriah, and it is not unlikely that the zamindar regarded the two daughters-in-law as representatives of the family and took muchilikas from them. There is no warrant for the inference that they were inducted on the land in independent right by the zamindar and not as representatives of the descendants of Thammiah. The learned Judges of the High Court observed that "in 1895 (when Ext. D-4 was executed) in country parts like Pandalpaka, it is too much to assume such a sound knowledge of Hindu law. Besides, Venkamma, and Chetamma were, admittedly, living along with Veeriah and Rudrayya and Ramanna and

Bhavamma during Thammiah's life time, and continued to live in that same house after his death... So, we have no doubt that the Maharaja of Pittapur, the zamindar, never intended in the least to take away the B Schedule lands from Tammayya's heirs and given them to Venkamma and Chittemma who were not heirs and we hold that he renewed the patta in favour of these two widows, as they were considered by him to be representing Tammayya's estate, being his widowed daughters-in-law. " In our view, this in the circumstances of the case, is a correct inference.

It appears that after 1895 there arose disputes between Veeriah and Venkamma - and it was arranged to provide maintenance to Venkamma out of the estate of Thammiah. Ext. P-1 dated May 16, 1899 records the terms on which maintenance was granted. This document has a very important bearing on the question which falls to be decided in this appeal. It is recited in Ext. P-1 that all the properties of Thammiah had devolved, after his death upon his "dowhitras" (daughter's sons), Rudriah and Ramanna and that the two "dowhitras" were bound to maintain the widowed daughters-in-law - Chetamma and Venkamma and that accordingly they were being maintained, but a Venkamma was unwilling to live in the family house, it was decided to give her for maintenance expenses Rs. 25 and 240 kunchams of white paddy per year besides a house for residence. This deed recites that out of the estate of Thammiah the two widows - Chetamma and Venkamma were in fact being maintained, that the estate was inherited by Rudriah and Ramanna, and recognises the right of the widows to receive maintenance out of the estate. There is no evidence on the record that besides the lands mentioned in Schedule 'B' there was any other agricultural land of which Thammiah was possessed and which had devolved upon Rudriah and Ramanna. It is admittedly out of the property of Thammiah which had devolved upon Rudriah and Ramanna that maintenance was agreed to be given, and if Thammiah was not possessed of any property other than the lands in Schedule 'B', Ext. P-1 must lend strong support to the inference that the lands in Schedule 'B' were regarded at the date of the maintenance deed as belonging to the estate of Thammiah out of which Venkamma was entitled to maintenance. The assumption that the property had devolved upon Rudriah and Ramanna is evidently not true. So long as the daughters or any of them were alive, they were, according to the Hindu law applicable to the Madras Presidency, owners, though for their life-time only of the estate left by Thammiah. Ext. P-1 does therefore land support to the case of the plaintiff that the property was regarded as belonging to the family in which all persons who were living in the house of Thammiah, including the two daughters-in-law had interest. After maintenance was provided to Venkamma by Ext. P-1 her name was omitted from the muchilikas and the pattas subsequently executed. Pattas D-6 and D-8 are as we have already stated, in favour of Chetamma and Ramanna.

It is true that rent was enhanced by the zamindar from time to time under the muchilikas. During the life-time of Thammiah the annual rent was Rs. 419-8-0 and it remained unchanged, but after his death the rent, even though the area of the land continued to be the same, was enhanced to Rs. 481-8-0 under Ext. D-4. There is some error in totalling up the amount of rent, but the enhancement of rent by Rs. 52 is substantially the result of alteration of rent of Sr. No. 315. Originally the rent of Sr. No. 315 was Rs. 29-3-9 : it was enhanced to Rs. 81-3-9. Under Ext. D-5 the rent is Rs. 537 (it should have been Rs. 473), but that again, is the result of some error in totalling, the only enhancement being in respect of No. 358 which was increased from Rs. 5 to Rs. 6-8-0. In Ext. D-6 of the year 1904 the rent of this land was enhanced to Rs. 60-8-0 and rent in respect of Sr. No. 315 was enhanced to Rs. 91-3-9. The High Court has held that this enhancement of rent of the two lands Nos. 315 and 358 was presumably because the lands were irrigated, and, having regard to the circumstances, we think the inference of the High Court is correct. Enhancement of rent of the lands from time to time does not lend support to the inference that fresh pattas and muchilikas were not in recognition of the previous rights. It is pertinent to note that in the records of the zamindar all the muchilikas in respect of the lands bore No. 12, during the life time of Thammiah and after his death

they bore No. 23. The circumstances that the same area of land remained in the occupation continuously of the family of Thammiah under Exts. D-1 to D-8 for a period exceeding 25 years also lands support to the plea of the plaintiff. It is true that by his notice Ext. D-7 the zamindar called upon Ramanna and Chetamma to vacate the kumatam (which term is translated by the learned counsel for the respondent as 'home-farm') lands of the extent of 51 acres 72 cents. But by the year 1905 it was well-known that legislation of the nature, which was ultimately enacted as the Madras Estate Land Act, 1908, was on the legislative anvil and no reliance can be placed upon the statements made in the notice which does not appear to have been followed by proceedings, for enforcement of the claim on possession. It is common ground that on January 16, 1906, the zamindar issued in favour of Chetamma and Ramanna a patta in respect of the same lands for an annual rental of Rs. 578-4-0, rent having been enhanced in respect of Sr. No. 46 and 358 only.

The High Court placed strong reliance upon the circumstances that in all the muchilikas and pattas the lands were described and "jeroyati lands" and the tenants were described as "jeroyati ryots". The High Court observed that "jeroyati ryot" was a well-known term indication prima facie possession of occupancy rights. However, the state of the authorities in the Madras High Court to which our attention has been invited does not justify us in expressing any definite opinion on that plea. In Zamindar of Bodokimidy v. Badankayala Bhimayya (A. I. R. 1927 Mad. 76), Curgenven J., held that the phrase 'on jirayati tenure' is only used where occupancy rights exist. But beyond the bare statement in the judgment that "the phrase" on jirayati tenure "being, so far as my experience goes, only used where occupancy rights exist", there is no further elaboration in the judgment. In (Ivaturi) Lingayya Ayyavaru v. Kandula Gangiah (A. I. R. 1928 Mad. 58), Wallace, J., without referring to the earlier judgment of Curgenven, J., observed that the term "Jeroyatidar" did not imply that the executant was an occupancy ryot. Here also no reasons appear to have been given in support of the view. In Dadamudy Tatayya v. Kelachina Venkata-subbarayya Sastri (A. I. R. 1928 Mad. 786), Devadoss, J., in the course of hearing an appeal called for a finding from the trial Court as to the meaning of the word "jeroyati" as used in the Vuyyur Zamindari and as to the meaning of the expression "savaram jeroyiti" used in documents in that estate. The Subordinate Judge recorded evidence on the question referred to him, and observed after referring to Brown's Dictionary and Wilson's Glossary, that the word "jeroyiti land" may mean "cultivable or arable land", but it was only the context that must decide which meaning was to be given to the word. He also observed that the word "jeroyiti" especially when prefixed to the word "right" or hakku had come to mean "rights of occupancy". This report of the Subordinate Judge, it appears, was accepted by the High Court. These are the only decisions of the Madras High Court to which our attention was invited. The task of this Court, in ascertaining the special meaning which an expression used in the revenue administration and by the residents of a certain area has acquired, is indeed difficult. If the expression "jeerayot" is a local variation of "Zeerait" used in the revenue administration, especially in Northern India, it may mean "assessed" land, or "agricultural" land. On the materials placed, we are unable to express any definite opinion on this part of the case of the plaintiff.

To summarise, there is no evidence to show that occupation of the lands by Thammiah commenced under the zamindar; and there is no evidence as to the terms on which Thammiah or his predecessors were inducted on the lands : the commencement of the tenancy and the terms thereof are lost in antiquity, but Thammiah and his descendants are proved to have continued in possession of land uninterruptedly till the enactment of the Madras Estates Land Act, 1908. In the light of the presumption that the zamindar is, unless the contrary is proved, the owner of the melvaram and the ryot the owner of the kudivaram the inference is irresistible that Thammiah was the holder of the occupancy rights in the lands and that these rights devolved upon his successors and that the occupancy rights in the lands were not acquired by virtue of the provisions of Madras Act I of 1908.

Before parting with the case, a minor question relating to mesne profits awarded to the plaintiff and defendants 31 and 32 must be mentioned. By his plaint the plaintiff claimed mesne profits in respect of his share for three years prior to the date of the suit. He valued the claim for mesne profits at Rs. 3,800 - past profits on plaintiffs 1/3rd share for two years 1940 and 1941 at Rs. 2,280 and past mesne profits on plaintiff's 1/3rd shares for the year 1942 at Rs. 1,520. The trial court dismissed the plaintiff's suit as to his share in property described in Schedule 'B'. The High Court in awarding a third share to the plaintiff and another third share to defendants 31 and 32 collectively also awarded past mesne profits from the 18th of March, 1935, i. e., the date of the death of Bhavamma, along with future mesne profits regarding the shares in the B and the C Schedules properties. But the High Court could not award mesne profits prior to August, 1940 which had never been claimed by the plaintiff in the suit. We therefore modify the decree of the High Court and direct that mesne profits before the suit are awarded from the 4th of August, 1940. Subject to that modification, the decree passed by the High Court is affirmed and the Appeal is dismissed with costs payable by the contesting defendants to the plaintiff.

Appeal dismissed subject to modification.

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