

Aluru Kondayya and Ors.

Vs

Singaraju Rao and Ors.

Civil Appeal No. 341 to 343 of 1961

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, J. C. Shah, S. M. Siskri JJ)

20.09.1965

JUDGMENT

SHAH. J. -

In these appeals a common question - Whether a shrotriem grant of lands known as Challayapalem Shrotriem formed an estate within the meaning of s. 3[2] [d] of the Madras Estates Land Act, 1908 - arises. The Court of first instance on a review of the evidence was of the opinion that the grant was of the whole Challayapalem village within the meaning of s. 3 [2] [d] of the Madras Estates Land Act, 1908, in force at the relevant time, and that the tenants held rights of occupancy in the lands held by them. The High Court of Madras disagreed with that view and held that on the evidence it was not proved that the original grant was of a whole village or even of a named village within the meaning of s. 3 [2] [d] of the Madras Estates Land Act, 1908, and the first Explanation thereto, and that the onus to prove that the grant was of a whole or of a named village being upon the tenants in occupation of the lands in dispute, the claim of the shrotriemdars must succeed. With certificates granted by the High

Suit No. 42 of 1942 was filed by certain tenants of lands in the village Challayapalem, District Nellore, for a declaration that they hold occupancy rights in lands in their occupation and for an injunction restraining the shrotriemdars of the village from interfering with their possession. The tenants claimed that they and their ancestors were in possession and enjoyment of the lands for many years and had been paying rent to the shrotriemdars, and were dealing with the lands as owners, that all transactions in the Challayapalem shrotriem were being on the footing that the village was an estate under the Madras Estates Land Act 1908, and that in any event the tenants held permanent rights of occupancy in the lands acquired in virtue of the provisions of the Madras Estates Land [Amendment] Act, 1936. This suit was later numbered 37 of 1947.

The shrotriemdars filed suit No. 2 of 1946 against fifteen named defendants for a declaration that the tenants in occupation of the lands in the village did not hold permanent occupancy rights. Later, permission under O. 1 r. 8 code of Civil procedure to sue the named defendants as representatives of all the tenants in the lands of the shrotriem grant was obtained. In this suit the shrotriemdars did not claim any relief for possession: they merely sought to representatives to institute separate proceedings in that behalf and claimed that they were entitled in enforcement of notices served upon then out of the named defendants to call upon them to deliver possession of lands occupied by them.

There was one more suit No. 93 of 1947, which raised dispute as to the right of occupancy in a small area of land admeasuring 1-90 acres. The plaintiff in the suit claimed that he had acquired the right of occupancy by purchase from the original tenant of the land. The fourth defendant in the suit

who was the principle on testing party claimed that he was a grantee of occupancy rights from the shrotriendars.

The three suits were tried together. The tenants claimed in the principle suit No. 2 of 1946 occupancy rights in the lands held by them, on three grounds:

[1] that the tenants of agricultural lands were, by immemorial custom of the locality in the Nellore District, occupancy tenants;

[2] that the tenants had acquired by prescription or by the doctrine of lost grant the rights of permanent occupancy; and

[3] that the grant was of an estate within the meaning of s. 3 [2] [d] of the Madras Estates land Act, 1908, and the tenants of the lands in the estate were by virtue of s. 6 of the Act permanent occupancy tenants.

The trial Court, relying upon the statement made in Boswell's Manual of the Nellore District, that the tenants..... of Challayapalem like their brothers in other villages of this District had right to occupy the land from generation to generation on payment of rent prescribed by custom, held that the tenants plea on the first head must be sustained. The High Court declined to raise such a presumption in favour of the tenants of the District including tenants of the village Challayapalem, and correctness of that view was not challenged in this court. On the second ground, the trial court held that on the evidence that the tenants rights were independent of prescription, and that they had not raised any plea of acquisition of right of occupancy by contract, express or implied. The High Court observed that on the evidence on foundation is laid for invoking the presumption of lost grant to give a legal original, or lawful title to long continued possession of the land by a particular tenant or tenants, and tha

The grant was, it appears, made by a Carnatic Nawab which is recognised on all hands to be a shrotriem grant. There is, however, on the record no evidence to prove the date of the grant, the names of the grantor and the grantee, the extent and terms of the grant, the purpose and nature of the grant, and whether the grant was of Kudiwaram as well as of melwaram alone. The original deed of grant has not been produced and there is no other direct evidence of the terms of the grant from which the terms of the grant may be gathered. The trial court held that the later documents, such as the statement in the Inam Enquiry, the Inam Fair Register and other documents, conduct of the Shrotriendars and the tenants, and recognition accorded to the rights of the tenants viewed in the light of probabilities justified an inference that the grant was of the whole village, but according to the High Court the evidence on the record was inconclusive and the case must be decided against the tenants because the onus to prove tha

The problem must be approached in two distinct branches - Whether the evidence justifies an inference that the grant was of a whole village, and if there be no such evidence whether s. 3 [2] [d] Explanation [1] of the Madras Estates Land Act gives rise to a presumption in favour of the shrotriendars of the tenants. Between the years 1640 to 1688 the territory which now forms the District of Nellore was under the sovereignty of the Sultan of Golkonda. In 1688 this territory along with Golkonda passed under the Moghal dominion. After the War between the East India Company and Sultan Hyder Ali, it was arranged between the Government of Madras and the Nawab of Carnatic that the latter should bar the cost of the military defence of the Carnatic region. The Nawab agreed to assign the revenues of the Carnatic region for a period of five years to the East India

Company, and in pursuance of this arrangement, the East India company, and in pursuance of this arrangement, the East India Company took over the administrat

"You shall pay as per installments varahas 283 [two hundred and eighty three] being the beriz in respect of your shrotriem known as Chellayapalem village in Gandavaram paraganas, as entered in the circar shrotriem jabitha, into the Nellore Treasury, obtain receipt and happily enjoy the produce realised from that village, you shall enjoy happily by giving shares to the kapus as per mamool."

Administration of the territory by the East India company came to an end on August 31, 1792. On July 31, 1802 the East India Company assumed sovereignty over the District of Nellore and one Travers was appointed Collector in September 1801. Travers recognised 207 shrotriem villages without disturbing the arrangements which were then in existence dispensed with the duties of sthalakarnams and collected quit rent on their inams. It appears that the shrotriem of Challayapalem was continued under the arrangement of the year 1790 which we have set out.

Soon after the East India Company took over the administration of what later came to be known as the presidency of Madras, regulation 31 of 1802 setting up machinery for the better ascertainment of titles of person holding or claiming to hold lands exempt from payment of revenue to Government under grants and for fixing assessment on such lands was promulgated. A register of Inams in Government Taluks was prepared and in Col. 14 of the Inam Register the Inams registered pursuant to the Regulation were set out. In the village Challayapalem are found mentioned in that Register - three Inams - the Challayapalem shrotriem [which is in dispute in the present case], and two other personal Inams each of an area of 0-93 cents. Apart from the preparation of this Inam Register, nothing substantial was done under the Regulation till 1860. About the acting of the Shrotriemdars and the tenants between 1802 and 1860 there is very little evidence. There is no evidence as to when the five minor inams, including those two me

The next public document to which reference may be made is the Descriptive Memoir of Chellayapalem shrotriem village in the Kovur Taluk of the Nellore District - Ext. A-7. It recites that the boundary of the village had remained unchanged by settlement; the area prior to settlement was [omitting fractions] 469 acres, and by the settlement it was found to be 767 acres, showing an increase of 298 acres, but nothing had been merged in this village by the Settlement. According to the settlement accounts of land, the total cultivable area was 682 acres, minor inams 18 acres and poramboke 67 acres. Under the head minor inams included in the village were personal Inams 5-08 acres. Religious Inams 8-64 acres, village officers 2-87 acres and village artisans 1-80 acres. Under Ext. A-7 the whole village was described as the Challayapalem shrotriem. Apparently the village was identified with the shrotriem.

These are all the extracts from public records which have a bearing on the principal question in dispute.

The plaintiffs in suit No. 2 of 1946 are purchasers under two deeds Exts. A-101 and A-102 respectively dated January 14, 1889 and August 7, 1889 from the previous holders. They are strangers to the family of the original grantees, and it is not surprising that they are not in possession of the deed of grant, and the earlier record relating to the management of the village.

Exhibit B-1 the letter addressed by Dighton to the shrotriemdars may at first blush suggest that the village was accepted and confirmed as one of the shrotriem village in the Gandavaram Paragana.

But Ext. B-1 was not of the nature of a sanad : it did not contain a reference to the terms of the grant, the date of the grant, the names of the grantor and grantee, and was based on information by a Jabitha [list] relating to Circar's shrotriems". In Boswell's Manual it is recited that Dighton had investigated the title of the inamdars in the District and had granted sanads, but Ext. B-1 did not purport to be a confirmatory sanad or a fresh grant, or deed embodying the result of any investigation regarding the title of the Mutharaju to the village. Exhibit B-1 undoubtedly refers to Mutharaju Ramachandrayya as Chellayapalem shrotriemdar and fixes the revenue at 283 pagodas in respect of your shrotriem known as Challayapalem village. But Dighton was a Collector of Revenue appointed by the East India Company which wa

The statement of Mutharaju Subbarao and Subbarammayya - Ext. B-195 - Suggest that the original grant was in favour of Mutharaju Sithanna - their ancestor. The statements in col. 6 that the grant is from the Nawab whose name is not mentioned, and in Col. 7 about the details of the entire extent of the village, do not furnish any evidence as to the character and extent of the original grant. It is true that the boundaries of the lands granted are described as if the grant was of a whole village, and nothing is mentioned about the origin of the minor inams. Exhibit A-1 the Inam Fair Register Extract - is in respect of 453-03 acres where as the total area of the village as then measured exceeded 46 acres. The area of 13 acres was undoubtedly held by minor inamdars in respect of which entries Exts. A-2 to A-6 were posted in the Inam Fair Register. Those entire are of no assistance in tracing the source of the minor inams. In each of those extracts under the head. By whom granted and written instrument in support

In Exts. A-48, A-49, A-104, A-105 and A-103 the predecessors in interest of the present inamdar had described the village as Challayapalem Shrotriem; in Exts. A-102, B-44, B-45, B-12, to B-19, B- 20 to B-43, the present inamdars grandfather was a party and therein also the inamdars were described as shrotriemdars of Chellayapalem. There are documents Exts. B- 2, B-3, B-4, B-5 to B-6, B-112, & B-116 and other documents in which the village is described as Chellayapalem shrotriem. But these recitals have no evidentiary value in support of the case that the whole village was granted.

The statements in Ext. B-195 related only to a part of the village and that the income realised by the inamdar was Rs. 1,449-5-5 per year, out of which the revenue payable to the Government was Rs. 1,225-12-2 and the balance enjoyed as inam was only Rs. 223-9-3. Exhibit A-1- Extract from the Inam Fair Register-does not lead to the inference that the area of the entire village was granted. The recommendation made by the Deputy Collector was confined to the shrotriem. The shrotriem was confirmed merely because it was more than fifty years old, and what was confirmed was not the area of the entire village, but the shrotriem grant admeasuring 453-06 acres out of a total area of 466 acres.

Evidence on the record about the acting of the shrotriemdars and the tenants for the period 1790 to 1862 is vague and inconclusive. It appears from the Inam Register that for a period of 25 years the shrotriem was under an Ijara. The Inam Fair Register recites that garden lands were irrigated from the private wells of the shrotriemdars. From the amounts for Fasli 1216 it appears that more than a hundred acres were than lying uncultivated, but for sometime before 1862 the whole village was under cultivation.

On the other hand there is the evidence that the tenants successors were recognized in place of their predecessors, family partitions were approved, and the shrotriemdars received their proportionate shares from the divided shares, and the tenants were not disturbed in their possession.

Chellayapalem has at all material times been included in the list of village maintained in the Collector's office. It was within the boundaries which are not shown to have been altered. A village in the Madras region is a geographical area of arable and waste lands, and contains the establishment of a Karnam, village munsif and watchmen, and Chellayapalem has at all material times been recognised as a village, and has been administered village, and popularly and even in the public records the village was identified with the shrotriem. The shrotriemdars have failed to produce their books of account relating to their management. It is however admitted by them that they were collecting jodi from the holders of minor inams and pa

But long possession, fixity of rent, assertion of title in formal deeds may not necessarily justify an inference of permanent occupancy rights. Again the mere fact that the village was treated as one unit for the purpose of revenue administration does not justify any positive inference and the fact that five separate sanads were issued in respect of the minor inams without any evidence to prove the date and the terms of the grant leaves the matter in doubt. Some of these circumstances may prima facie support the inamdars and the other the tenants, but on a careful review of all those circumstances, we are unable to disagree with the opinion of the High Court that the grant was not proved to be of a whole village.

The second branch of the argument must then be considered. The High Court expressed its conclusion on this branch of the case as follows:

"Whether a tenant raises the plea that the lands were in an estate and therefore ryoti and the civil court has no jurisdiction, or the tenant relies upon the statute in answer to a suit by the landlord either for an injunction,..... or even for a declaration as in the present case, the burden of proof would undoubtedly be on the tenant to establish the case which he put forward either to exclude the jurisdiction or the negative the right of the plaintiff. The burden will be on him to show that the grant was either a grant of a whole village or a grant of a named village."

In so enunciating the law, the High Court relied upon the judgment of the Court in District Board Tanjore v. M. K. Noor Mohamed Rowther and held that in law the burden of proving that a particular grant was a grant of an estate lay upon the tenants in all cases, and the tenants having failed to discharge that burden their claim must fail.

In considering this argument, it is necessary to make a brief review of the history of land tenures and the provisions of the Madras Estates Land Act, 1908 as they were amended from time to time. After the assumption of sovereignty in 1801, the East India Company promulgated the Permanent Settlement Regulation 25 of 1802, which dealt with the tenure of Zamindars in their estates. This Regulation was passed on July 13, 1802 and by s. 4 thereof inams were exempted from its scope. On the same date, another Regulation 31 of 1802 was enacted. This Regulation dealt with inams and provided for making rules for the better ascertainment of titles of persons holding or claiming to hold, lands exempted from the payment of revenue to Government under grants not being Badshahi or Royal and for fixing an assessment on such lands. By s. 15 it was enacted that a register of inams shall be kept in each zillah of the lands held exempt from the payment of revenue, and that the register should specify the denomination of each g

The traditional rights of occupants of land in the southern region were recorded by the Board of Revenue as early as in 1818 in its proceeding dated January 5, 1818 that :

"The universally distinguishing character, as well as the chief privilege of this class of people, is their exclusive right to the hereditary possession and usufruct of the soil, so long as they render a certain portion of the produce of the land, in kind or money, as public revenue; and whether rendered in service, in money, or in kind, and whether paid to rajahs, jageerdars, Zamindars, polygars, motahdars, shrotriendars, amildars, aumeens, or tanadars, the payments which have always been made by the ryot are universally termed and considered the dues of the Government."

The Legislature with a view to define the relations between landlords and tenants in inam villages promulgated Madras Act 1 of 1908. The material part of s. 6 [1] as amended by Madras Act 8 of 1934 and 18 of 1936 provided:

"Subject to the provisions of this Act, 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.

Explanation [1] - For the purposes of this sub-section, the expression every ryot now in possession shall include every person who, having held land as a ryot continues in possession of such land at the commencement of this act.

Explanation [2] :-

Explanation [3] :-

Section 3 sub-s. [2] defined the expression " estate" within the meaning of the Act and insofar as it is material for this case, it provided as originally enacted:

"In this act, unless there is something repugnant in the subject or context-

"Estate " Means -

[a] any permanently - settled estate or temporarily-settled Zamindari.

[b] any portion of such permanently-settled estate of temporarily- settled Zamindari which is separately registered in the office of the Collector;

[c] any unsettled palaiyam or jagir;

[d] any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed, or recognised by the British Government, or any separated part of such village;

[e] any portion consisting of one or more villages of any of the estates specified above in clauses [a], [b] and [c] which is held on a permanent under-tenure."

Kudivaram is a Tamil word, which signifies the cultivator's share in the produce of land as distinguished from the landlord's share received by him as rent, which is called melvaram. Kudivaram has acquired a secondary meaning, it means the cultivator's interest in the land, and melvaram the landlord interest in the land. The definition of estate in cl. [d] gave rise to considerable litigation which called for determination of two questions : [1] whether there was a

grant of the whole village so as to make the area granted an estate; and [2] whether the landlord to whom the land was granted owned the Kudiavaram. In cases which came before the courts it appeared that apart from the grant which was claimed to be a grant of an estate, there were in each village other grants, religious, service and personal and evidence about the commencement of these minor grants and the terms on which they were granted was not forthcoming.

In *G. Narayanswami Nayudu v. N. Subramanyam*, in a suit filed by the receiver of the Nidadaole estate for possession of certain lands the tenant claimed that the acquired occupancy rights under s. 6 of the Madras Estates Land Act 1 of 1908. There were in the village minor inams of three classes: Archaka service inams, village service inams, and dharamdaya inams, and there was no evidence whether the grant to the plaintiff's estate of the village was made first, or whether the minor inams were granted first. It was contended on behalf of the plaintiff's estate of the village was made first, or whether the minor inams were granted first. It was contended on behalf of the plaintiff estate that inasmuch as there were minor inams in the village, the Venkatapuram agraharam could not be said to be a village of which the land revenue had been granted as inam within the meaning of s. 3[2] [d] of the Act. The court rejected that contention and observed:

" The definition in sub-section 2, clause [d] was obviously intended to exclude from the definition of " Estate " what are known as minor inams, namely particular extents of land in a particular village as contrasted with the grant of the whole village by its boundaries. The latter are known as whole inam village. The existence of minor inams in whole inam villages is very common and if these inam villages do not come within the definition of Estate almost all the agraharam, shrotriyam and mokhasa villages will be excluded. This certainly cannot have been the intention of the legislature. These minor inams are generally granted for service to be rendered to the village or to the owner and that seems to be the nature of the minor inams in this case."

The court therefore held that s. 3 [2] [d] of the Madras Estates land Act excludes from the definition of estate minor inams, and a grant which purports to be a grant of a whole inam village is an estate within the meaning of Cl. [d] of s. 3[2], even though it may be found that there are lands held by grantees under minor inams. The Legislature in 1936 substituted for cl. [d] of s. 3 [2] the following clause by the Madras Estates Land [Third Amendment] Act, 18 of 1936 :

" [d] any inam village of which the grant has been made, confirmed or recognized by the British Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors entitled of the grantee or grantees."

Then came the judgment of the Madras High Court in *Tulabandu Ademma v. Sreemath Satyadhyana Thirtha Swamivaru*. In that case the original grant was lost. In Col. 6 of the statement prepared by the Inam commissioner in that case, it was recorded that the former Zamindars granted the land, comprised within the Chekunama for the math. There is no sanad as it was destroyed by fire. There was no entry under the heading particulars of the inam land mentioned in the sanad, but under the head 'Gudicut' [the total area of the village] was the entry 158.23 acres, from which were deducted 25.10 acres described as private lands, and 5.4 acres inams of other persons leaving 128.6 acres as the area covered by the grant. In Col. 10 it was stated that there was no Chekunama. The court held that the grant being of less than the whole village, the tenant could not rely on s. 6 of the Act. In that case the boundaries of the agraharam as described in col. 10 in the Inam Register were admittedly

the boundaries of the whole village

The Legislature immediately reacted against this view and enacted, by Madras Estates Land [Amendment] Act 2 of 1945 added the following Explanation to cl. [d] of s. 3 [2]. Explanation [1] read as follows:

"Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service of other tenure or been reserved for communal purposes."

This Explanation was made operative retrospectively from the date on which Madras Act 18 of 1936 was brought into force. The Explanation was apparently intended by legislative process to restore the interpretation which the Madras High Court had given to the expression whole village in G. Narayanswami's case. But the legislature had used somewhat involved phraseology in enacting the conditions which gave rise to the presumption. It a minor inam was proved to be granted prior to the date of the grant, by virtue of Explanation [1] the grant expressed to be of a named village had to be regarded as a grant or an estate. If it was proved that the grantee after receiving the whole village created minor inams, the grant was of the whole village and therefore grant of an estate. But where evidence about the creation of the major and minor inams was not forthcoming, the question had to be decided on the presumption that the subject-matter of the grant shall be deemed to be an estate, notwithstanding that it did not

In expressing the first view the non-obstante clause in the Explanation was read as prescribing the conditions on proof of which the statutory presumption arises. The Explanation was apparently read as implying that the conditions for the raising of the presumption were that the grant as an inam is expressed to be of a named village, and that the other lands not included in the grant were granted before that date on service, or other tenure or reserved for communal purposes. If this be the true effect, the Explanation had little practical utility. The intention of the legislature apparently was to declare right of occupancy of tenants in inam villages, and it would be difficult to believe that the legislature intended to place upon the tenants onus of proof which in normal cases would be well nigh impossible to discharge. A large majority of the inams are ancient and the records bearing on the commencement, extent and nature of the grant would invariably be in the possession of the inamdars. To expect that

In expressing in the cases of Rama Rao and Ramadhan Chettiar the view that the burden lay upon the tenants to prove that the grant was of an estate, it was assumed by the Madras High Court that this court had rendered a Considered decision in the District Board of Tanjore's case that the onus of proving that a grant of land is a grant of an estate lies upon the tenant. But it appears that no such decision was given by the court in that case. In District Board of Tanjore's case the defendant who had taken a lease for three years of a piece of land belonging to the "District Board claimed that he had acquired permanent occupancy right under s. 6 of the Madras Estates Land Act, because after the expiry of the period of the lease that Board had not resumed possession. It was the Board's case that after expiry of the period of the lease, the Board had taken possession of the land and had brought it under cultivation. The Subordinate Judge held that the land did not constitute an estate within the meaning of s. 3 nts neither of which could be called a grant of a village. Chandrashekhara Aiya, J observed that there were two personal grants under one Parvangi to two different persons, and it could not be said that there was a grant of a whole village or of a named village, smaller areas having been carved out therefrom prior to the date of the grant on service of other tenure, and the

remaining part still being recognised and treated as a revenue unit with a nomenclature of its own. It is abundantly clear that the court decided the case on evidence and did not place reliance on the onus of proof. It is true that Mahajan J, in his judgment has recorded that :

"It was conceded by..... the learned counsel for the respondent that the burden of proving that certain lands constitute an Estate is upon the party who sets up the contention. :

and Chandrashekhara Aiyar, J. observed that :

"A Small area of 5 acres and 40 cents was granted under the same grant in favour of Chinna Appu Moopan. If this conclusion is correct - and nothing satisfactory has been urged on the side of the respondents why such an inference is not open on the entries found in the Inam Register, the 1st respondent should fail, as the burden is on him to establish that what was originally granted was in estate.

But these observations are not susceptible of the meaning that when it is proved that an inam is expressed to be of a named village, the presumption under Explanation [1] does not arise. Both the learned Judges were of the view that there was no grant which could be regarded as a grant of a whole village or a named village, and on that view the true effect of the Explanation did not fall to be determined. The concession before the Court by counsel was only that when a person alleged that certain land was an estate, the burden of proving that case lay upon him.

The second view minimizes the operation of the statutory presumption which is expressly enacted by the legislature to arise on proof that the grant is of a named village. In terms the Explanation provides that the grant of an area as a named village shall be deemed to be a grant of an estate. If the clause prescribes the condition on which the presumption arises, the onus would be discharged by the presumption on proof that the grant was of named village. Adoption of the second view is likely to give rise to some anomalous situations of which the present set of cases is a good illustration. For instance, if the inamdars as well as the tenant sue for relief in respect of their respective cases, the application of this rule would require the Court to adopt the somewhat unusual course of dismissing the cross actions, when evidence does not justify a positive inference in favour of either party.

In *Varada Bhavanarayana Rao v. State of Andhra Pradesh and Others*, this court expressed its preference for the second view. That was a case in which the appellant held a major part of certain villages covered by five inam grants. The Inam Commissioner had granted fresh inam title deeds in confirmation of the original grants. The Special Officer appointed by the Madras Government under s. 2 of the Madras Estates Land [Reduction of Rent] Act, 1947 decided that the inam lands covered by the fresh inams were Estates within s. 3[2] [d] of the Madras Estates Land Act, 1908, and recommended fair and equitable rates of rent for the ryoti lands in this estate. Subsequently the Government of Madras by a notification in the Gazette fixed rates of rent in accordance with this recommendation. The inamdar instituted an action in the Civil Court for a declaration that the grant was not of an estate within the meaning of s. 3 [2] [d] of the Madras Estates Land Act. The Trial Court upheld the contention, but the High Court i

But as already observed the language used by the Legislature in enacting Explanation [1] to s. 3[2] [d] expressly directs a presumption to be raised. That presumption arises when it is proved that a grant as an inam is expressed to be of a named village, the area which forms the subject matter of the grant shall be deemed to be an estate. Raising of the presumption is not subject to any other

conditions. The legislature has by the non-obstante clause affirmed that such presumption shall be raised even if it appears that in the grant are not included certain lands in the village which have before the grant of the named village been granted on service or other tenure or have been reserved for communal purposes. The presumption, it is true, is not a conclusive presumption; it is a presumption of law, and is rebuttable. It may be rebutted by proof of other facts, but not the facts mentioned in the Non-obstante clause.

Section 23 was added by s. 5 of the Madras Estates Land [Third Amendment] Act 18 of 1936. It reads:

"Where in any suit or proceeding it becomes necessary to determine whether an inam village or a separated part of an inam village was or was not an estate within the meaning of this act as it stood before the commencement of the Madras Estate Land [Third Amendment] Act, 1936, it shall be presumed, until the contrary is shown, that such village or part was an estate."

The presumption under s. 23 in terms applies only to cases in which the question whether an inam village was an estate before the commencement of the Madras Estate Land [Third Amendment] Act, 1936. Under the Act, before it was amended in 1936, a grant of a village could be deemed a grant of an estate where only melvaram was granted to the inamdar and not where both the melvaram and the kudivaram were granted. By enacting s. 23 the Legislature intended to declare that in determining whether under a grant of an inam village both Varmas were granted or only the melvaram was grand, it shall be presumed, until the contrary was shown, that such village or part thereof was in estate, that is, only the melvaram was granted. Under a the Act before its amendment, one of the conditions of applicability of s. 3 [2] [d] was that the grant in favour of the inamdar was only of the melvaram, and that it did not include the kudivaram, and the legislature by s. 23 as amended provided that in dispute arising between the landlo

In our view the following passage from the decision of the Madras High Court in Mantravadi Bhavanarayana and another v. Merugu Venkatadu and others correctly interprets s. 3 [2] [d] :

"It is now settled law that by reason of the amendment made in 1945, which added an explanation to section 3 [2] [d] of the Madras Estates Land Act and numbered it as explanation 1, a grant constitutes an estate if it is expressed to be a named village irrespective of the fact that some of the lands in the village had already been granted on inam or service grants, or were reserved for communal purposes."

We do not deem it necessary to decide whether the suit for a mere declaration that the tenants were not occupancy tenants at the instance of the shrotriendars, after determining the tenancy of some of the tenants was maintainable. The High Court has dismissed the suit against defendants 1 to 10 who were served with notices to quit, but against whom the shrotriendars did not claim a decree for possession. There is no appeal by the shrotriendars must fail in its entirety.

In Appeal No. 342 of 1961 the decision recorded by us on the principal question does not put an end to the litigation. The dispute arose between two rival claimants to the rights of occupancy of land. The respondent in this appeal claims that he is a transferee of the original tenant, and the appellants claim to have acquired the rights of occupancy from the shrotriendar. In suit No. 93 of 1947. Four substantive issues were raised, and the issues are discussed in paragraphs 106 to 120 of the judgment of the Trial Judge. The High Court did not separately deal with those issues, but decided

Appeal No. 789 of 1950 on the view of the law which it declared in the principal appeal. We have disagreed with the High Court for reasons already set out and the other issues which have not been tried by the High Court have now to be tried.

On the view taken by us Civil Appeal No. 341 of 1961 will be allowed, and the decree passed by the High Court set aside and the decree passed by the Trial Court restored with costs throughout. In Civil Appeal No. 343 of 1961 also the decree passed by the High Court will be set aside and the suit decreed with costs throughout. There will be one hearing fee in this courts.

In Civil Appeal No. 342 of 1961 arising out a Appeal No. 789 of 1950 from suit No. 93 of 1947, the appeal will be remanded to the High Court with a direction that the questions which remain to be determined will be decided according to law. No order as to costs in Appeal No. 342 of 1961.

C. A. Nos. 341 allowed. C. A. No. 342 remanded.

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