

ANDHRA PRADESH HIGH COURT

Singaraju Rama Rao

Vs.

Nellore Linga Reddy

A.S. Nos. 342 of 1949; 789 of 1950 and 551 of 1951, in O.S. Nos. 2 of 1946, 93 and 37 of 1947

(Satyanarayana Rao and Satyanarayana Raju, JJ.)

02.09.1955

JUDGMENT

Satyanarayana Rao, J.

1. This is a batch of three appeals arising out of a common judgment by which the suits were disposed of in the lower Court. Appeal No. 342 of 1949 is an appeal against O. S. No. 2 of 1946, Appeal No. 551 of 1951 arises out of O. S. No. 37 of 1947 and Appeal No. 789 of 1950 arises out of O. S. No. 93 of 1947. The evidence being common, it was recorded in O. S. No. 2 of 1946, and the parties filed a joint memo to the effect that the evidence in that case might be treated as evidence in the other connected cases.

2. The suit O. S. No. 2 of 1946 was the main suit and it was filed by the shrotriamdar for establishing that the defendants and the other tenants in occupation of the lands do not own occupancy rights. The suit O. S. No. 37 of 1947, out of which Appeal No. 551 of 1951 arises, was by the tenants for a declaration that they have occupancy rights in the lands in their possession. Under Order 1, Rule 8, Civil Procedure Code, permission was obtained to institute the suit not only on behalf of themselves but also on behalf of all the tenants in the village in a representative capacity. In O. S. No. 93 of 1947, out of which Appeal No. 789 of 1950 arises, the dispute was as between two rival tenants who were entitled to occupancy rights in a land of the extent of acre 1-90 cents. In all the suits the main question is whether the lands comprised in the shrotriam grant form part of an 'estate' within the meaning of Section 3 (2) (d) of the Estates Land Act, both before and after its amendment in 1936.

3. There is also the further question that even if the suit lands do not constitute an 'estate', whether the tenants acquired occupancy rights in the lands and whether the plaintiff is entitled to the declaration that he is the owner of both the warams. As the plaintiff is suing for a declaration of his absolute ownership of the land, he has naturally to establish that contention. In Appeal No. 342 of 1949 a further question is raised that the suit was not maintainable under Section 42 of the Specific Relief Act as the plaintiff, who sued for declaration, was in a position to claim a further relief, namely, possession of the lands and he did not claim that relief in this suit. There were also other issues in the case on which findings were recorded by the trial Court but nothing was

mentioned regarding those issues in the course of the arguments before us. The findings therefore on those issues must be accepted.

4. Apart from the objection based on Section 42 of the Specific Relief Act, the main questions that require determination in these appeals are, firstly, whether the lands are comprised in an 'estate' under Section 3 (2) (d) of the Madras Estates Land Act, both before and after its amendment in 1936; secondly, even if it is not an estate, whether the plaintiffs are entitled to both the warams in the inam; thirdly, whether the tenants are entitled to occupancy rights apart from the Estates Land Act. It may be mentioned that the claim for permanent rights of occupancy, apart from the Act, was based in the written statement on custom, lost grant and prescription. The learned trial Judge negatived the claim based on the prescription and grant. He also held that they had not established their rights on the basis of a lost grant. Though he found in para. 99 of the judgment that there was no oral documentary evidence in the case in support of the custom, curiously he reached the conclusion that the tenants were entitled to occupancy rights by custom. In the arguments, however, before us, the learned counsel for respondents did not seek to support the judgment on the basis of custom but rested his case on lost grant. It will therefore be necessary to examine the claim for occupancy rights, apart from the Act, whether it could be justified on the theory of lost grant.

5. On the main question the findings of the learned Judge were against the plaintiffs. He further found that the suit was bad under Section 42 of the Specific Relief Act.

6. The judgment of the learned Subordinate Judge is very lengthy but some of his conclusions are based not only on the evidence on record but upon a reference to Boswell's Manual of the Nellore District of 1873 and the District Gazetteer.

7. The first and the most important question is whether the shrotriam lands constitute an 'estate'. Before dealing with this contention it is necessary to state how the plaintiffs claim to have acquired title to the property. The date when the shrotriam was granted is not known nor is there any evidence to show who the grantor was and who the grantee was. But it is certain that the title to the property in the Inam Proceedings of 1862 was recognised and a title deed in favour of the Mutharaju family was granted, which is T. D. No. 1762. The village in which the lands are situated is known as Chellayapalem in Nellore District. In 1874 under Ex. A-109, dated 1st July 1874, Mutharaju Venkata Krishnarao mortgaged a half-share in the property to one Boorla Rangareddi. In this document the property is described as Chellayapalem shrotriam and the boundaries are given and within the boundaries the half-share of the mortgagor of the extent of acres 192-50 cents was mortgaged for a sum of Rs. 1,600. On 26th of July 1882, there was in favour of the said Boorla Rangareddi, yet another mortgage by Mutharaju Venkatasubba rao and Mutharaju Venkatakrishnarao for a sum of Rs. 4,736-12-0 and they mortgaged under it their half share excluding half-share of Mutharaju Sivaramiah. On the 29th of July, 1887, there was another mortgage by Mutharaju Venkatasubbarao in favour of Boorla Rangareddi mortgaging his half-share of the property in which reference was made to the earlier mortgage of 26th July 1882. The property was described by boundaries and within the boundaries all the dry lands, wet lands, garden lands, pastures and vanam thotas, stone-wells, etc., were mortgaged. On the 26th July 1882, trader Ex. A-48 an Ijara cowle was granted in favour of Boorla Rangareddi by Mutharaju Venkatasubbarao and Mutharaju Venkatakrishnarao for a period of eleven years from Fasli 1292 to 1302. The person who obtained the Ijara was required to pay to the Government half the share

of the quit rent due in respect of the lands and he was given liberty of raising any crops which he pleased and to enjoy the lands. At the end of the period Rangareddi delivered possession of the property to Mutharaju people. Under Ex. A-49 a similar Ijara was granted on 8th November 1882, by the other branch, Sivaramiah and Venkatakrishna Rao's minor son Venkatachalam for the same period of eleven years, from Fasli 1292 to 1302. It also refers to various kinds of lands which were in the enjoyment of the ancestors of Mutharaju people and this document also contains a similar liberty to raise whatever crops the Ijaradar liked and to enjoy the land and deliver possession of it after the expiry of the Ijara period.

8. Under two sale-deeds, Ex. A-101, dated 14th January 1889, executed by Mutharaju Venkatasubbarao and Ramamma in favour of Singaraju Venkatasubbarao for Rs. 10,000 and Ex. A-102, dated 7th August 1889, executed by Sivaramiah and Venkatarao in favour of Singaraju Venkatasubbarao, the latter became the complete owner of the two halves of the property. This Venkatasubbarao it may be mentioned, was a District Munsif and his son, the 2nd plaintiff, is a retired Subordinate Judge. The 1st plaintiff is the son of the 2nd plaintiff and he is an advocate. The purchase by Singaraju Venkatasubbarao under the two documents of 1889 was noted in the Inam Fair Register as would be seen from Ex. A-1, col. 20. The remark was made by the Deputy Collector on the 15th of November 1890, that the entry was made in pursuance of the Nellore Tahsildar's arzi. He was therefore recognised in 1890 as the owner of the property. Ever since he and his descendants have been in possession and enjoyment of the property.

9. A number of old documents have been produced in the case by one side or the other. As required by Section 4 of the Rent Recovery Act (Madras Act VIII of 1865), the inamdar exchanged pattas and muchilakas and the files of the muchilakas the inam-dars obtained from the tenants have been produced and exhibited in the case as Exs. A-27 to A-45 and they commence from 1895 and end with 1936.

10. The documents bearing on the question whether the inam is an 'estate' or not, are very few. The earliest document is Ex. B-1, dated 15th November 1790, the extract from the Inam Fair Register relating to the inam (Ex. A-1), the inam statement Ex. B-195, and the Inam Fair Register extracts relating to five minor inams, two devadayams and three personal, which are marked as Exs. A-2 to A-6, Title Deeds Nos. being 1759 to 1761 and 2034 and 2035. The total extent of these minor inams is acres 13-48 cents. The grant is not forthcoming, and even at the time of the Inam Proceedings of 1862, the inamdars were not able to produce any grant in support of their claim.

11. Strong reliance was placed on behalf of the respondents on Ex. B-1 to establish that the inam was treated as a grant of a named village and that Ex. B-1 is really in the nature of a sanad. It is therefore urged that in the absence of the grant we must take Ex. B-1 as evidencing the terms of the original grant According to the entries in the Inam Fair Register extract, Ex. A-1, as shown in cols. 11, 12 and 13, the grantor's name, the grantee's name and the date of the grant are not known. The Inam Statement, Ex. B-195, however, contains a remark in col. 6 that it was granted during the time of the Nabob for maintenance so as to be enjoyed from son to grandson and so on in succession, but the name of the Nabob was not given. It is therefore not possible to fix the date of the grant though an attempt was made by the learned Subordinate Judge to fix the date some time about 1701. But that is based on mere surmise and it would not be safe to base any conclusions on mere guess work. Learned counsel for the respondents did not attempt to support

the view taken by the learned Subordinate Judge.

Exhibit B-1 purports to be a proceeding issued by one Richard Dighton, Collector of Nellore District, addressed to Chellayapalem Shrotriamdar. It states:

"You shall pay as per instalments varahas 283 (two hundred and eighty-three) being the beriz in respect of your shrotriam known as Chellayapalem village in Gundavaram paragana, as entered in the Sarkar shrotriam 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."

12. From Boswell's Nellore District Manual of the year 1873, pp. 460 to 464, one would gather the circumstances under which Mr. Dighton came to be appointed as the Collector of the Nellore District. As a result of the war with Hyder Ali, the Madras Government fell into pecuniary difficulties. They applied to the Nabob of Carnatic to bear the cost of the military defense of the country. Being unable to meet the cost of the military defense of the country, the Nabob assigned the revenues of the Carnatic for a period of five years to the British Government to enable them to collect the dues and meet the expenditure. Soon after the agreement was reached, the Nabob failed to keep up the arrangement and the British Government decided to take over possession of the Carnatic themselves. In July 1790, the Government appointed Collectors for the various districts and Mr. Dighton was appointed Collector for the Nellore District. At p. 464 of the Manual, we find instructions issued by the Board of Revenue to Mr. Dighton under date 18th August 1790, which was followed by a proclamation as appears at p. 465 of the said Manual. Mr. Dighton found that a number of villages in the district were alienated on shrotriam tenure, i.e., as many as 207 villages by Fasli 1211. He investigated in 1790 the title of the various inamdars and granted also a number of sanads. The management by the Government did not last long and was terminated on the 31st of August 1792. On 31st of July 1801, the British Government, however, got back the district and Mr. Travers was then appointed as Collector. From the statement in the Manual at p. 499 that Mr. Dighton investigated the title to some of the inams and issued sanads, it is contended on behalf of the respondents that Ex. B-1 is one of such sanads and therefore is a very important document to gather the terms of the original grant. The sanads, it was stated in the Manual, were issued after investigation of the title. If that was so and this document, Ex. B-1, is one of such sanads, one would naturally expect a reference to the terms of the grant, the date of the grant, the names of the grantor and the grantee as well as the extent covered by the grant. Significantly enough all these are absent in Ex. B-1 but on the contrary we find that the document was based on information furnished by a jabitha (list) relating to sarkar's shrotriams. It is on that basis Mr. Dighton directed Mutharaju Ramachandriah, the Sthala Karnam, the Karnam of a number of villages, (something corresponding to despondas) to pay the beriz or the demand on the shrotriam, which came to be known by that date as Chellayapalem village, into the Treasury. The shrotriam of 283 pagodas which was payable by Ramachandrayya in instalments, it was stated in the document, was entered in the jabitha which was available with Mr. Dighton and on the basis of it he made the demand. In those days, it is common knowledge and is borne out by public records, that when lands were granted either in Ijara or rented out or granted by way of inam, the grantees, in their anxiety to make as much money as possible from the persons in possession, the tenants, were extracting as much money as possible not only by the rent imposed but also by adding illegal exactions which were known in Northern India as abwabs.

The rent being payable in those days in kind, they were also attempting to vary the proportion of the waram payable to the landlord. To prevent this Mr. Dighton added in Ex. B-1 that the mamool shares should be given to the kapus, i.e., the proportion of Ike produce which was being rendered to the landholder should not be altered. In other words, that they should not while paying this beriz amount to the Government exact more from the kapus who were cultivating. Merely because the shrotriam is known as Chellayapalem village, it does not necessarily follow that the original grant contained such a description. Exhibit B-1 does not purport to be either a confirmatory grant or a fresh grant or a document which embodies the result of any investigation regarding the title of the Mutharajus to the shrotriam. Too much importance therefore cannot be attached to a casual expression that the shrotriam was known as Chellayapalem village to infer that the original grant should have been of a village. As pointed out by the Judicial Committee in *Venkata Sastrulu v. Seetharamudu*¹, from the expressions used in a confirmatory grant it would not be safe to believe and infer that at the date of the grant, which is of course not known, these words must have occurred also in the grant.

13. The next document is the Inam Statement, Ex. B-195. In col. 1, the name of the inamdar and name as entered in the dowle and the name of the then enjoyer', Mutharaju Sithanna was entered and the present enjoyer was shown as Mutharaju Subba-rao and Subbaramayya. In col. 4 it was stated that Mutharaju Subbarao and Subbaramiah were the original grantees (Sithanna's) grandsons, thereby implying that the original grantee was Mutharaju Sithanna. In col. 6 the grant was stated to have been made by a Nabob whose name, however, was not given. Column 7 contains the details regarding the gudicut or the entire extent of the village of which 21 and odd gorrus was poramboke, 5 and 1-3/4 visams inams, and the balance of 123 and 3-3/4 visams was the cultivated land, which consisted of dry, wet and garden. Column 10 gives the boundaries of the village. Column 12 shows that the income realised by the inamdars was Rs. 1,449-5-5 per year, out of which the payment of the Sarkar or Government was Rs. 1,225-12-2 and the balance enjoyed as inam was Rs. 223-9-3. Most of the income realised as would be seen was taken away by the Government and a small amount was left to the inamdar.

¹ ILR 43 Mad 166

14. The Inam Fair Register, Ex. A-1, does not repeat in cols. 4 and 5 the entire gudicut of the village of 150-1/2 gorrus as shown in Ex. B-195. But it shows only the dry, the wet and the garden totalling 123 acres 3 goontas and 12 annas and poramboke 21-12-0 in all acres 453, cents 6. There is no deduction of the inams in cols. 4 and 5 and the inams did not enter into the computation area at all. Column 7 shows the income of Rs. 1,450 and the jodi as Rs. 1,214-3-2 and Sthala Karnam's resums Rs. 11-9-0 totalling Rs. 1,235-12-2. In col. 11, by whom granted and in what year and in col. 12, written instruments if any, and in col. 13, name of the original grantee, were shown respectively as 'not known', 'no grant' and 'not known'. Column 14 is very important. It shows that in the account of Fasli 12.1.1, the name of Mutharaju Sivaramappa was entered. That does not mean that the inam came into existence for the first time in Fasli 1211 or thereabout; for we know that from Ex. B-1 that the grant was anterior to 1790. The gudicut as per Fasli 1216 account was 150 gorrus of which 21-12-0 was minha poramboke, and the remainder, 128-5-8 consisted of dry 22-2-12, wet 45-0-0, garden 11-7-0, pullary waste 30-14-4 plus inams 5-11-4. That information was derived from the account of Fasli 1216. If from 128-5-8 inams of the extent 5-11-4 gorrus is deducted the balance is 123-3-12. The important circumstance that appears here is that in Fasii 1216, out of 123 and odd gorrus 30 and odd gorrus was still waste, though by the time of the Inam Commission, as appears from the remarks in col. 22, almost the whole land was under cultivation and there was no room for further improvement. The Deputy

Collector's recommendation as contained in col. 21 was that the shrotriam being of an older date than 50 years, should be confirmed on a quit rent of 1/8 of Rs. 1,242 inclusive of the jodi and exclusive of rusums and Rs. 1,254 inclusive of all. The rent then payable was Rs. 1,470 which was Rs. 60 above the average for Faslis 1211 to 1220, viz., Rs. 1,413. Rs. 1,450 was accepted as the income derivable from the inam and after deducting the jodi payable on the difference which constituted the inam, 1/8th was taken as quit rent so that in computing the quit rent, the income from 123-3-12 gorus alone was taken into computation and it is on that basis that the quit rent was added to the jodi. In col. 22, it is stated that the shrotriam was under Izara from Faslis 1263 to 1287 for a period of 25 years and we find it continued under Ex. A-48 and A-49 from 1882 to 1893. All that they derived over and above the jodi payable to the Government even during the 25 years period of Izara was only Rs. 244 per year. The garden lands, it was stated, were irrigated under the private wells of shrotriamdars. All the cultivable extent comprised in 123 and odd gorus was by then brought into cultivation and there was very little left by way of further increase in the cultivation. The 30-1/2 gorus which was waste from Fasii 1216 apparently was brought under the plough by the time of the inam proceedings.

There is nothing to indicate in the Inam Fair Register that the entire 'village' was granted or that what was granted was a 'named village'. The recommendation in col. 21 by the Deputy Collector was confined to the shrotriam and under the Inam Rules the Government laid down as their policy to recognise grants of more than 50 years old irrespective of the question, whether there was a lawful sanad or not. This shrotriam was also confirmed under the fifty years rule. What was confirmed to the inamdars was not the village but the shrotriam and the shrotriam, reading it along with cols. 4 and 15 was acres 453 cents 6. It is usual in cases where the grant is of a named village in the sense that the grant did not comprise the entire area of the village but consisted of the major part of the area of the village excluding the minor inams that existed on the date of the grant, to find in cols. 4 and 5 the entire gudikat being mentioned and the inams shown as deductions, as the excluded inams are usually dealt with separately in inam proceedings and title-deeds are granted separately also.

15. The learned Subordinate Judge was carried away by the fact that the village of Chellayapalem was treated as one unit in Revenue accounts. The test is not whether, what was granted was treated as a village for the purpose of revenue, but whether, what was granted was a whole village or a named village. The crucial question to determine is, whether under the grant what was granted was a village or a named village and not the subsequent treatment of it in the revenue accounts. Emphasis was laid by the learned counsel on the fact that the heading of the register contained the expression 'the village of Chellayapalem shrotriam in the taluk of Nellore'. Too much importance cannot be attached to the heading which is contained in the printed register of inams, but even there it does not say shrotriam Chellayapalem' but it says shrotriam in the village of Chellayapalem because it is an inam in, the village of Chellayapalem shrotriam. The learned counsel for the respondents also contended that the shrotriam grants are usually grants of whole villages and not of lands of particular extends in the village and reliance was placed by him on the statement contained in the Maclean's Manual of the Administration, Vol. Ill, at p. 356, where it is stated:-

"Shrotriam: A general term for all favourably assessed whole villages originally held by Brahmins."

But in the same volume at p. 832, while dealing with the word 'Shrotriam' it is stated that shrotriam grant means the lands or a village held at a favourable rate. Wilson in his Glossary of Judicial and Revenue Terms expressed the view at p. 785 that shrotriam grants were grants of melvaram alone and not of both varams; but this view was not accepted by the Privy Council in *Seethayya v. Subramanya Somayajulu*², and reasons were given for not accepting Mr. Wilson's opinion and the Judicial Committee held 'that a shrotriam grant may in fact be a grant of the kudivaram as well as the melvaram'. Even Wilson in his glossary stated that shrotriam means a grant of lands or a village, though he added that shrotriam grant is a grant of melvaram alone and not of both varams. In view of the decision of the Privy Council it is difficult to accept the contention that because the grant is stated to be a shrotriam grant, it could not possibly have been anything than a grant of a village and could not have been a land of a particular extent in the village.

16. More difficulty is created by the existence of five minor inams evidenced by Exs. A-2 to A-6, extracts from the Inam Fair Register. Exhibits A-2 and A-3 relate to devadayam grants. This title-deed in respect of the inam covered by Ex. A-2 is T. D. No. 1759 and that of Ex. A-3 is T. D. No. 1760. The extent covered by Ex. A-2 is 5 acres, 68 cents. Columns 11 and 12 which relate to 'by whom granted and written instruments in support of the claim', recite that the name of the grantor and the written instrument in respect of the claim are not known. For the first time, reference was made to this inam in the account of Fasli 1216. From this, it was argued that while the major grant appeared in the account of Fasli 1211, a reference to this inam was made for the first time in the account of Fasli 1216 and hence it must be treated as a grant later to the major grant and must have been granted by the inamdars.

² ILR 52 Mad 453 at p. 462

It is common knowledge that these ancient accounts are either prepared and maintained under Regulation XXXI of 1802 or earlier accounts. They are never exhaustive of all the inams in the village. The fact that a particular inam was not mentioned in the account of a fasli is not proof regarding the date the grant of the inam. It is beyond dispute that the major grant was long before Fasli 1211, as it existed even by the date of Ex. B-1, in 1790. The mere fact therefore that, for the first time, this inam made appearance in the account of Fasli 1211 does not necessarily lead to the inference that it must have been granted in or about that time. If, as contended on behalf of the respondents, the inam was carved out subsequently by the inamdars, the Government would naturally have included such inam in the major grant itself and would have taken the income of that land also into computation in arriving at the jodi or quit rent on the inam. These inams have been separately dealt with and unfortunately, the dates of the grants of these inams are not known. The devadayam inam covered by Exs. A-2 and A-3 also stand on the same footing. The extent under Ex. A-3 is acres 2, cents 73: Here again the date of the grant and the grantor's name were not known and no sanads were produced. This inam did not find a place in any account earlier to Fasli 1250, i.e., about 10 years prior to the Inam Proceedings of 1862. If really the argument on behalf of the respondents was well-founded, this inam would not have been more than 12 years old on the date of the inam proceedings, and it would not have been confirmed. The inam must have been confirmed of under the 50 years rule. The inam in fact was confirmed to the inamdar which is a clear indication that the origin of the inam was much earlier than Fasli 1216 and the inclusion or exclusion in an account of an anterior date is of no significance in deciding the date of the grant. Exhibits A-4, A-5 and A-6 relate to personal inams of an extent of acres 3, cents 12 dry, 93 cents wet and 93 cents wet respectively. Here also the grantor's name and the date of the grant are not known. The inam covered by Ex. A-4 was, for the first time

found in the account of Fasli 1260 and the inam covered by Ex. A-5 in Fasli 1216 and that covered by Ex. A-6 in the account of Fasli 1216. A cudjan sanad of 1846 was produced in the case of Ex. A-6 before the Inam Commissioner. The Inam Commissioner did not attach any importance to it. If the dates of the grant are not known, it is not possible to say whether these grants were anterior to the date of the major grant or were subsequently granted nor is it possible to say whether the grants were made by the original grantor or by the inamdar of the shrotriam. We have therefore the situation which follows from an examination of these documents, that there was a major grant of about acre 453-00 which was the shrotriam. There were these five minor block grants and we do not know whether these inams preceded the major grant or succeeded it.

17. On an interpretation of Section 3 (2) (d) and the burden of proof under that section, though there was some conflict of opinion, prior to the decision of the Supreme Court in *District Board of Tanjore v. Noor Mohamed*³, the matter must be deemed now to have been set at rest by the authoritative pronouncement of the highest Court in the land. Before the Legislature intervened by introducing Explanation to Section 3 (2) (d) by Act II of 1945, the Madras High Court was of opinion that if from out of the area comprised in a village, the grant of the inam was less even by acre 1-00, it would not be a grant of an inam village within the meaning of the section and the area comprised in the grant would not constitute an estate.

³1952-2 Mad LJ 586

This view was no doubt in conflict with an earlier decision of that very Court in *Narayanaswami Nayudu v. Subrahmanyam*⁴, wherein it was held that "the existence of the '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, shrotriam and mokhasa villages will be excluded" and that if they were excluded from section 3 (2) (d) by reason of the existence of the minor inams, no inam village would come within the section. It was observed therein at page 684 (of ILR Mad) : (at pp. 263-264 of AIR) that in that case it did not appear whether the grant to the temple of the village was made first or whether the inams were granted first.' Notwithstanding this circumstance which the learned Judges treated as immaterial, it was held that the grant of the village with such minor inams constituted an estate under Section 3 (2) (d) of the Act, and though the entire area was not conveyed under the grant, there is no reason to exclude such grants from the purview of the section. This reasoning did not appeal to the learned Judges who decided the cases beginning with *Ademma v. Satyadhyana Thirtha Swamivaru*⁵. In view of the extreme position taken up by the Madras High Court, it was thought necessary for the Legislature to intervene and set right the law by the Amending Act which introduced an Explanation to Section 3 (2) (d). Explanation (1) reads 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 or other tenure or been reserved for communal purposes".

The object of the Explanation is undoubtedly to include in the word "village" occurring in the main part of the section, villages in the sense in which they were understood in ILR 39 Mad 683 , i.e., villages where there were pre-existing minor inams on the date of the grant. But the grant, in such an event must be expressed to be a named village, though the grant did not comprise the

entire area of the village.

18. The contention very strongly pressed before us by the learned advocate for the respondent was that, irrespective of the question, whether the minor inams covered by Exhibits A-2 to A-6 were before or after the grant, the principle in ILR 39 Mad 683 should be applied and for this position he pressed into service the decision in *Janikiramaraju v. Appalaswami*⁶, of Mr. Justice Subba Rao (as he then was) and Mr. Justice Ramaswamy. That decision arose under Section 3 (2) (e) and the question was, whether the words "one or more villages" occurring in clause (e) should be interpreted in the sense in which "village" was understood in ILR 39 Mad 683 or to be construed as meaning the entire area of the village. The learned Judges followed the earlier decisions construing Section 3 (2) (e) held that the principle in ILR 39 Mad 683 would equally apply under Section 3 (2) (e) as under Section 3 (2) (d).

19. The object of the Explanation introduced by Act II of 1945 was not to say that "village" occurring in Section 3 (2) (d) in the main section or in Section 3 (2) (e) should be construed as meaning the entire area of the village, unless it is covered by

⁴ ILR 39 Mad 683 at p.685: (AIR 1916 Mad 263 at p. 264) ⁶ ILR (1954) Mad 980 : (AIR 1954 Mad 772)

⁵1943-2 Mad LJ 289

the Explanation in the case of Section 3 (2) (d). The contention in that case was that, in the absence of a similar Explanation to Section 3 (2) (e), village in that section must be construed as equivalent to the entire area of the village, without any exclusions. This contention, I may say so with respect, was rightly rejected by the learned Judge after considering the decision in 1952-2 Mad LJ 586 . ILR (1954) Mad 980 was concerned with a case where the grantor himself made a subsequent grant of a minor inam. The learned Judges in ILR (1954) Mad 980 did not intend to lay down that in a case where it was proved that the minor grant emanated from the grantor of the major inam himself, the grant even then should be treated as a grant of a whole village. In fact, the learned Judges in ILR (1954) Mad 980 referred to the decision of the Madras High Court in *Venkanna v. Lakshmipathi Raju*⁷, where, in such an event, it was held that the grant could not be treated as a grant of a whole village. At page 990 (of ILR Mad) in ILR 1954 Mad 980 the position is summarized as follows:

"Therefore, after the Explanation, the legal position was this; the whole village could be granted either by name or by including the entire extent within the boundaries of a village. In case a named village was granted, the existence of minor inams in the village before such grant would not make it any the less the grant of the whole village. This result would flow not by reading Explanation I separately from the main part of Clause 3 (2) (d) but by reason of the fact that Explanation I declared the correctness of the pre-existing law."

We respectfully agree with the statement of law propounded by the learned Judges in that case. The minor inams were possibly granted before the major grant or if after the grant they must have been carved out by the inamdar himself. They were not called upon to decide upon a situation where it is proved that there was a grant by the grantor himself of some extent as inam after the major grant, thereby implying that at the time of the grant, he reserved to himself a certain portion of the village.

20. In the present case, it is not possible to say one way or the other. What then is the position?

We are therefore driven to the necessity of invoking the burden of proof and decide the case according to the incidents of the burden of proof, as neither party has been able to establish the dates of the various grants. The decision of the Supreme Court in our opinion sets the matter at rest by throwing the burden of the tenant who relies upon the act to establish that the requirements of the section are satisfied. The tenants in this particular case have not been able to exclude the possibility of the minor inams having come into existence at a later date under grants which might have emanated from the original grantor. 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, as in the case before the Supreme Court 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 to 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.

21. The position is the same, whether the plea of the tenant is based upon the Estates

⁷1946-1 Mad LJ 300

Land Act which was amended by Act XVIII of 1936 or under the Act as it stood prior to the amendment. Section 23 of the Act no doubt lays down a presumption and was intended to set at rest the conflict of the decisions of the Judicial Committee beginning from *Suryanarayana v. Patanna*⁸. But for the application of the section, the requirement that the grant was of a village or of a named village must first be established. Then comes in the presumption in aid of the tenant that it shall be presumed until the contrary is shown, that such village or part, is an estate. Of course, the burden of showing the contrary, in such an event, would be on the landlord. This construction of the section that it should be established, in the first instance, that the grant was of a named village, is the view taken by my learned brother in *Vedam Harischandra Reddi v. State of Andhra, represented by the Collector, Nellore*⁹, and I respectfully agree with that view. If, therefore, the tenants failed to establish that the grant was of a village, they fail altogether, whether the matter is considered under the Act as it stands after the amendment in 1936 or before the amendment. In either event, as the tenants, on whom the burden of proof lies have failed to discharge that burden, it must be held that it was not established that the lands are comprised in an estate. The tenants therefore have not acquired permanent rights of occupancy under this Statute. Learned counsel for the respondents strongly relied upon a decision of the Bench of the Madras High Court which related to a document similar to Exhibit B-1 relating to Gangavaram Village. There the inamdar relied on a similar document, Exhibit A-10, before the Inam Commissioner as constituting his document of title. The minor inams in that case were shown to be subsequent inams which must necessarily have been granted by the inamdar. On that finding it would naturally follow that the grant was of the entire village. That decision therefore has no bearing to the facts of the case before us.

22. It will be convenient now to deal with the question, whether the tenants had established occupancy rights apart from the Act. As we have stated already, the case of the tenants rested before us on the sole ground that we should presume a lost grant in their favour as they claim to have established immemorial possession of the lands continuously. In *Mahammed Mazaffar-al-Musavi v. Jabeda Khatun*¹⁰, Viscount Sumner dealt with the doctrine of lost grant. It was there pointed out that the presumption of lawful title was not a mere branch of the law of evidence. Courts have recourse to it, in the absence of evidence. Their Lordships observed as follows: The matter is one of presumption, based on the policy of law, but even considered as an inference

from proved facts, the title presumed is a thing, which may well be regarded as likely to have happened. At the same time it is not a presumption to be capriciously made, nor is it one which a certain class of possessor is entitled to de jure. In a case such as this, where it is necessary, to indicate what particular kind of lawful title is being presumed, the Court must be satisfied that such a title was in its nature practicable and reasonably capable of being presumed, without doing violence to the probabilities of the case. The presumption is not an "open sesame", with which to unlock in favour of a particular kind of claimant a closed door, to which neither the law nor the proved facts would in themselves have afforded any key. It is the completion of a right, to which circumstances clearly point, where time has obliterated any record of the original

⁸ ILR 41 Mad 1012: (AIR ,1918 PC 169) and ILR 43 Mad 166 (same as No. 1)

⁹ W. P. No. 683 of 1953, D/-17-3-1955 (And) ¹⁰ILR 57 Cal 1293 at p. 1298 : (AIR 1930 PC 103 at p. 105) commencement.

23. The doctrine is also referred to by the Supreme Court in *Satyanarayana v. Venkatappayya*¹¹, Das, J., stated the position thus: There is no doubt, on the authorities, that a presumption of an origin in some lawful title may in certain circumstances be made to support possessory rights long and quietly enjoyed where no actual proof of title is forthcoming but it is equally well-established that that presumption cannot be made where there is sufficient evidence and convincing proof of the nature of the grant and the persons to whom it was made."

24. The argument of the learned counsel for the respondents proceeded on the assumption that the tenants were in continuous possession of the same land from time immemorial. He however admitted that in none of the documents on which he relied was there any assertion of an occupancy right in themselves by the tenants in possession of the particular lands. By 1935 and 1936 there were as many as 212 holdings under muchilakas. If the presumption of lost grant is to be invoked, it is necessary and incumbent upon the defendants to trace the history of the different lands in the possession of different tenants and to establish before the Court the length of possession. No such analysis or classification was attempted or made before us. Except the assertion that the tenants were in continuous possession of the same lands from time immemorial, there is no definite evidence in support of it in respect of the various holdings in the possession of the tenants. The only instances that were brought to our notice are those evidenced by Exhibits B-200, B-201 and B-202, Exhibit B-200 relates to Kovvur China Siddiah. It is claimed that he was in possession of certain lands from 1891, but on a perusal of the survey numbers and the description of the lands, the identity of the lands is not clearly established under each of the pattas referred to. That the lands were different is clear from a perusal and comparison of the fields described in the various pattas. The extents of the lands fluctuate and the amount of cist paid also varies. Exhibit B-201 relates to Kanupuru Pichireddi. Here again that the lands were not identical is clear from a perusal and comparison of the various lands described in the different pattas. Exhibit B-202 refers to a tenant Velugu Venkatapathi. Here again the lands change and rents also vary. These are the only three documents or instances which were brought to our notice. With reference to the other tenants, not even such an attempt was made. These documents would not take us, assuming that they relate to the same lands, beyond fasli 1301. The learned trial Judge negatived the right by prescription and also negatived the right based on lost grant. He held in paragraph 98 without referring, to any evidence that it was reasonable to infer that the tenants now in possession of the lands are the descendants of the original cultivators. No evidence in support of this conclusion was placed before us. But notwithstanding that finding, he negatived the claim based on lost grant. Regarding custom he found that there

was no oral or documentary evidence in the case but relying upon certain passages in Boswell's Manual, he inferred that "the tenants, of the Nellore district of Chellayapalem 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." It is difficult to apply a presumption of that nature to all tenants in the district including Chellayapalem.

¹¹ 1953 SCJ 283 . At page 284 (of SCJ)

25. Our attention was also drawn to the oral evidence of witnesses examined on the defendants' side, D. Ws. 1, 2, 3, 4, 5, 6 and 8. D. W. 1 says that the lands in his family were in their possession from a long time. He relies upon the mortgage-deed Exhibit B-9 but the mortgage only refers to his right under the cowle obtained from the shrotriamdar and does not say that he possessed any right in the land and much less permanent occupancy rights. He has not been able to produce any document prior to his father's time. He was the Secretary of the Ryots Sangham, which was carrying on agitation against the landholders. He was an attesting witness to some of the relinquishment applications filed on behalf of the Inamdar, Exhibit A-47 and Exhibit A-46. What happened in this village was when the ryots were unwilling to cultivate the lands they gave up the lands and the Inamdar inducted new tenants into possession. This witness's evidence is not very helpful because he does not produce any document to establish his continuous possession of any particular land from before the time of his father and the mortgage Exhibit B-9 does not contain any assertion of occupancy rights in themselves.

26. D. W. 2 is another tenant who claimed that the lands were in their possession from his grandfather's time. He was the mortgagor under Exhibit B-9 and that debt was discharged by selling lands to D. W. 1. As stated already, Exhibit B-9 refers only to the right of cowle" obtained from the shrotriamdar, and not a permanent occupancy right from time immemorial. He says that there are pattas for the lands. He also attested some of the relinquishment applications.

27. D. W. 3 owns acre 1-8 cents wet land which he purchased for Rs. 500. He says he gave an application for grant of patta in his favour as his vendor relinquished his interest in the land. He executed a sale deed in respect of this land in favour of his wife. In cross-examination he says that he acquired property by using the jewels of his wife and does not even remember the name of the vendor. He then adds that his name was one Jangavadu. He then stated that the land was purchased by borrowing from one D. Rukminamma. There is however nothing to show that he borrowed.

28. D. W. 4 is a person who claims to own 7 1/2 acres wet and 2 acres 11 cents dry. The name of the wet land is given as Malavada Thurupu. The dry land is Settupalli-Narasayya's garden. He claimed that the pattas stood in his father's name. His father died in 1944. He stated that his father purchased one acre in D. No. 194-B from Holla Narasayya but there is no sale deed for it. His evidence shows that his father was a party to Exhibit A-19 but he added that false recitals were introduced into it to please the plaintiff's father. The two muchilakas he executed were Exhibits A-50 and A-51, and those muchilakas contained clauses recognising the rights of the Inamdar. He does not complain in his evidence that those recitals were introduced falsely at the instance of the Inamdar. He is the person who prepared Exhibits B-200 to B-203 from other exhibits.

29. D. W. 5 claims to own 10 acres of land under a patta. The lands were divided. The division was as disclosed from the cross-examination 25 years after the death of the father. There is no document to evidence the partition. The brothers sold their lands. He purchased 2 1/2 acres five

years after partition. He does not know what cist was collected on the land prior to his purchase. He also executed muchilakas in favour of the plaintiff and does not complain of the terms contained in them.

30. D. W. 6 owns acre 7-80 cents of wet land and 4 acres of garden land. He claims that they were ancestral lands and that his father had a patta. He stated that he did not file the pattas. When he was shown the pattas, he corrected himself and admitted that he filed Exhibits B-11 to B-43. He denied that he had executed any muchilakas. There was no enhancement of cist. In cross-examination he says that he executed muchilakas, Exhibits A-65 to A-70, though he denied the execution of the muchilakas, in the chief-examination. He pays rent for the well. He attested some other documents in this suit.

31. D. W. 8 is the 3rd defendant in this suit. He is a resident of a neighbouring village and he was in possession, according to him, of Padamati Muttachenu of the extent of 3 acres 32 cents and other lands. His brother's descendants and others were given pattas for the extents got by them. Exhibits B-54 to B-57 are the pattas in the name of his father. The patta land that fell to his share was evidenced by Exhibits B-73 to B-83. He claimed that he made improvements but he did not maintain any accounts. His attention was drawn to the term in Exhibit A-8 and he had no explanation to offer why the term was allowed to be introduced in the document. He was not paying cist from fasli 1354. He attested relinquishment applications.

32. This is all the oral evidence, in the case and on such evidence it is very difficult to find immemorial possession of the various lands in the village.

33. The alienations relied on are not many. They are Exhibits B-2, B-3, B-4, B-5, B-9 and B-116. To none of these documents were the plaintiffs or their predecessors parties, and 'these documents describe Chellayapalem as shrotriam. But the significant circumstance is that in the sales and mortgages no reference was made to occupancy rights in the lands. Exhibit A-7, dated 2nd July, 1913, was a survey and settlement register prepared by the Government for the purpose of land cess. There was a taram classification of the lands and the lands were divided into blocks and there were various survey numbers, 120 in all. Of these the minor inams of the extent of 13 acres ana odd were shown separately and there were artisan inams also. The owner is shown in this Register of 1913 as Singaraju people under title deed No. 1762. There is no trace of any tenant having occupancy rights in the lands.

34. Apart from this the learned advocate for the respondents relied on a recital in Exhibit B-1, in which Mr. Dighton directed Mutharaju Rama-chandrayya to render to Kapus the share as per mamool. This recital in a later document would only establish that the rent was divided in shares between the land-holders and the cultivating tenants in a certain proportion. The existence of tenants on the land would not in our opinion indicate that they were tenants with occupancy rights. None of the present tenants has been able to trace his possession to tenants who were alleged to be in possession in 1790. As appears from the Inam Fair Register, Exhibit A-1, in fasli 1216 itself about 30 gorrus and odd of land was waste. We do not exactly know the condition of the land in 1790, how much of it was banjar and waste and how much of it was brought under plough.

It was no doubt true it was once thought that there was a presumption in favour of a tenant in zamindari areas that he is a tenant possessing occupancy rights. Merely because according to the

usage a tenant is allowed to continue in possession so long as he rendered the share due to the landholder, it does not thereby imply that that tenant possessed permanent rights of occupancy is made clear by the decision of the Judicial Committee in *Ramayya v. Lakshminarayana*¹², In that case the grant was by the zamindar in the year 1810 after the Permanent Settlement. There was evidence of cultivating tenants being in possession of the lands prior to the date of the grant. But there was no proof that they possessed permanent rights of occupancy. The question arose whether they being tenants in a zamindari estate, they could not be presumed to possess occupancy rights under what was described as the common law doctrine, recognised by the Madras High Court in *Venkatanarasimha Naidu v. Dandamudi Kotayya*¹³, and *Cheekati Zamindar v. Ranasooru Dhora*¹⁴, Their Lordships held that there was no such presumption. At page 450 (of ILR Mad) it is stated as follows :

"But the appellants contended that the fact of there having been cultivating tenants in the village prior to the grant of 1810 raised a presumption of fact that the zamindar had not the kudivaram right, and that accordingly the grant did not include that right. But, in their Lordship's opinion, the existence of such a presumption was expressly negatived, and certain decisions of the High Court at Madras and the High Court at Bombay, which had given effect to such a presumption, were overruled by the decision of this Board in ILR 41 Mad 1012 . The appellants sought to rely on the subsequent decision of this Board in ILR 52 Mad 453 , but that case was decided on construction, of the terms of the particular grant which were before the Board, and not on any presumption of fact. Indeed, it is expressly stated in the judgment that there is no presumption either way as to the inclusion or non-inclusion of the kudivaram right."

The decisions in ILR 20 Mad 299 and ILR 23 Mad 318, were referred to in the judgment of the High Court by Wallace, J., as appears from page 445 (of ILR 57 Mad), and in fact these decisions were also cited in the arguments before the Privy Council in the case in ILR 41 Mad 1012 . Therefore the presumption that a zamindari tenant is entitled, according to the old Board's Proceedings referred to by Ameer Ali, J., in *Sivaprakasa Pandara Sannadhi v. Veerama Reddi*¹⁵, and Subramania Ayyar, J., in ILR 20 Mad 299, followed in ILR 23 Mad 318 to remain in possession so long as he rendered the rent in kind or service or in money would not imply thereby that he is entitled to permanent rights of occupancy. The reference therefore in Exhibit B-1 would not help the respondents to establish that they possess occupancy rights from time immemorial. We do not know the holdings which were in the possession of the various tenants by 1790 and what connection they have with the persons now in possession. It is not established that the tenants now in possession are the successors-in-title of the persons who were alleged to have been in possession at the time of Mr. Dighton's direction in Exhibit B-1.

35. The case in *Ramalinga Mudali v. Ramaswami Ayyar*¹⁶,

¹² ILR 57 Mad 443 ¹⁴ ILR 23 Mad 318 ¹⁶ 29 Mad LW 760 at p. 786 (AIR 1929 Mad 529 at p. 543)

¹³ ILR 20 Mad 299 ¹⁵ ILR 45 Mad 586

was relied on in support of the interpretation which the respondents' counsel sought to place on Exhibit B-1. In that case there was also a direction to Chamier Sutan to continue to give their ryots their due share according to the usual custom which was construed as indicating that at the date of the grant there were tenants with occupancy rights. The interval between the direction to

the Sultan and the grant was very short; the particular grant was in 1763 and the direction was in 1782. Under these circumstances it may be legitimate to infer that these tenants existed even at the date of the original grant. But no such presumption can be made in the present case as we do not know the date of the grant and how long after the grant Exhibit B-1 of 1890 was issued.

36. For all these reasons we are of opinion that on the evidence on record no foundation is laid for invoking the presumption of lost grant to give a legal origin or lawful title to a long continued possession of the land by a particular tenant or tenants. The acquisition, therefore, of permanent rights of occupancy on the basis of lost grant is not established.

37. Relying upon the decision of Mr. Justice Madhavan Nair in the Judicial Committee in *Lakshmanna v. Venkateswarlu*¹⁷, it was contended on behalf of the respondents that the plaintiff suing for declaration of his melwaram and kudivaram right to the land has to establish that he is the owner of both the varams and that as in the present case the origin of tenancy of these various tenants is unknown, the burden is not shifted to the tenants by reason of the admissions contained in the various muchilakas which have been filed in the case. The question of burden of proof, as noticed by the learned Judge, becomes material only either when there is no evidence on record or when the evidence on record is conflicting and the Court is not able to make up its mind. The learned Judge adverted to this at pp. 587 and 588 (of ILR Mad) : (at pp. 284-285 of AIR). The learned Judge also recognized that when the entire evidence on both sides is placed before the Court, the debate as to onus is purely academical. As stated at p. 588 (of ILR Mad) : (at p. 285 of AIR,

"where no difficulty arises in arriving at a conclusion, as in the cases above mentioned, the question respecting the onus recedes into the background, but where the Court finds it difficult to make up its mind the question comes to the foreground and becomes the deciding factor."

38. It is always no doubt difficult to state precisely when the origin of the tenancy commenced and what were its conditions. In the agricultural economy of the villages it is a common feature that the tenants are allowed to continue so long as they pay the rent stipulated to the land-holder and nobody thinks of disturbing the tenant's possession even if he had been in possession for a long time. The mere fact, therefore, that the tenant was not turned out or that after the tenant's death his successor was recognized in his place, or in a family partition the land, which was the subject-matter of the lease, was allowed to be divided into various shares and the landholder agreed to receive his proportionate share from the individual so divided, are not circumstances which by themselves establish that they own permanent rights of occupancy.

¹⁷ ILR (1950) Mad 567

The requirements needed to establish occupancy rights and the circumstances which negative the existence of occupancy rights have been the subject-matter of decisions, both of the Judicial Committee and of the Madras High Court. Long possession, fixed rent, assertion of title as occupancy ryots or tenants in mortgages and sales and partitions, and acting on the footing that for a long time the tenants owned the permanent rights of occupancy, may point to the conclusion that they had acquired permanent rights of occupancy apart from the Act. In contrast with that, the frequent changes of tenants, the increase in rents, the pulling out one tenant from one land and putting another, admission by tenants, not illiterate and ignorant, of the rights of the land-

holder not only in muchilikas or pattas but in other documents, may all be taken into consideration in arriving at the conclusion whether the land-holder or the tenant was the owner of occupancy rights. The circumstances which negative the existence of occupancy rights in the tenant may warrant the conclusion that the land-holder was the owner of that right. Similarly circumstances which negative the existence of the kudivaram right in the land-holder may establish the right in the other. The evidence therefore has to be considered in its entirety and the conduct of both sides extending over a long period must be considered in detail to come to the conclusion on the question as between the two, the inamdar and the tenant, who was the owner of the kudivaram. The whole history of the tenures in the village has to be scrutinised and examined before a conclusion is reached on the subject. If at the end of such investigation it becomes difficult for the Court to make up its mind one way or the other, then the question of burden of proof as laid down in ILR (1950) Mad 567 , becomes very important.

39. Now, let us see what exactly are the circumstances which emerge from the evidence on record. We do not know when exactly the grant originated and what were the circumstances that existed on the date of the grants. Whether it was entirely wasteland, or whether it was a tenanted village which was granted to the Inamdar is not known. All that we gather is that in the year 1790 at the time when Mr. Dighton was the Collector there were certain Kapus in possession of the land. Between 1790 and 1852 we have no evidence regarding the relationship between the cultivating tenants and the Inamdars. But from the Inam Register it is clear that for a period of 25 years the inam was under Ijara, the amount payable to the Ijaradar being Rs. 240 over and above the jodi payable to the Government. It also appears from the Register, Ex. A-1, that the garden lands were irrigated under private wells of the shrotriamdars.

Thirty gorus of the land was pullari waste in Fasli 1216, though by 1862, the whole land was brought under cultivation. We also get the income of the inamdar from Fasli 1211 to 1220, which was of course fluctuating, as it was waram rates that were then obtained. The existence of private wells in garden land of the shrotriamdars will certainly indicate that they had the ownership in the kudivaram interest in the land. After the period of Ijara referred to in Ex. A-1 was over, we find in Ex. A-48 and A-49 that for a period of eleven years the Mutharaju people gave their respective halves of Ijara. In 1889 it was that the Singaraju people purchased the property, and we find that in these Ijaras liberty was given to the lessee to raise whatever crops he liked, which implies that the lands were at his disposal and he was in a position to command the particular crop which the tenants could raise. We have the earliest document Ex. B-12 of 30th December 1891, executed in favour of Subbarao Pantulu Garu for Fasli 1301, by one Pancheti Venkatamma.

The cowle refers to the wet and dry lands in their shrotriam and they were given for cultivation on cowle during Fasli 1301. The schedule gives the numbers of the lands and the cist payable. There is a clause in the cowle that the lessee should not interfere with the trees and that she should take care of them and after the expiry of the cowle put the lessor in possession of the trees and the land as well. This document, it is not suggested, was brought into existence by any coercion or undue influence or persuasion by the Inamdar, and it was produced and marked on behalf of the defendants. This was a time when nobody ever thought of any dispute about occupancy rights in the lands. There is no over-powering or any other motive suggested in introducing these recitals in the document. The land is claimed to be owned by the shrotriamdar and the tenant agrees to quit the land at the end of the period.

40. Then we have a number of muchilakas filed from 1893. The files are Exs. A-8, A-9 and A-27

to A-45. The muchilaka files, therefore, begin from 1893 onwards, and the holdings have been increased from 98 in Fasli 1311 to 212 by Fasli 1345 and Fasli 1346. All these muchilakas voluminous in number, contain in some form or other, admission by the tenants that the Inamdar was the owner of both the varams, as appears from the undertaking to vacate the land at the end of the term or by admitting the ownership of the kudivaram. All these documents have not been printed because they are numerous. But we have ourselves examined some of the documents and we do not see any reason why the inference, should not be drawn from them that the tenants had no occupancy rights in the land and that the owner of the kudivaram was the Inamdar. The unique feature of this case is that the Inamdars have not only kept regularly all the old records but they have frankly placed all the records before the Court. For example, we have got the dittams produced from Fasli 1301, Exs. A-10 to A-15. We have got a file of relinquishment applications which shows that as the old tenants were unable to cultivate the land they gave up the land, and we have also applications made by other persons who were ready and willing to take up those lands, which shows that those tenants who took up the lands were inducted into possession for the first time after the relinquishments which were accepted. Exhibits A-46 and A-47 contain a file of these relinquishment applications. We have also adverted to the Survey and Settlement Register of 1913, Ex. A-7, in which the Inamdar was shown as the owner of the land by the Government Apart from this, there were also certain land acquisition proceedings, Exs. A-98 and A-99, in which the compensation was paid to the Inamdar and there is no trace of any claim by any occupancy ryot. Certain tabular statements were filed in the lower Court which were prepared on both sides. Exhibit A-112 is a statement showing that the tenancy of particular tenants therein specified originated in the Fasli mentioned therein. New tenants' list is Ex. A-113. Exhibit A-114 is a list of leases and conditions for remission of rents on account of reclamation and improvements. That the Inamdar increased also the rates of rent is shown by Ex. A-115. Exhibit A-113 (a) also shows new tenants. Of course, we have not been taken through all the documents referred to in the list but on the tenants' side also tabular statements, Exs. B-200, B-201, B-202 and B-203 were also filed, which we have already adverted to. It would therefore be seen from this narration of facts that all along the conduct of the parties was one way and one way alone, namely, that the Inamdar was the owner of the kudivaram and there was no protest or any dispute of any sort until the year 1936 when for the first time Section 3 (2) (d) was amended. In view of the foregoing, we have no doubt in finding in favor of the plaintiffs that they were not only the owners of the melvaram but also the kudivaram.

41. The decision of Madhavan Nair, J., in ILR 1950 Mad 567 , was considered by My Lord the Chief Justice and Mr. Justice Bhimasankaram in an unreported decision in *Anagh Venkata Lakshmi Narasimharao v. Tirumala Lakshmi Narasimha*¹⁸, The learned Judges also keeping in view the principles laid down by the Privy Council in ILR 1950 Mad 567 , and the evidence on record came to the conclusion that the inamdar was the owner of the kudivaram. We respectfully follow the reasoning in that case.

42. There remains the objection based on Section 42 of the Specific Relief Act. The answer given on behalf of the plaintiffs was that the cause of action for ejection and recovery of possession of the property from the defendants other than defendants 1 to 10 was not complete because notice to quit were not given to them and the other tenants in the village. The plaintiff's father gave notice to quit only to defendants 1 to 10, vide the evidence of P.W. 1. The action so far as defendants are concerned is a representative action and even if the cause of action against the defendants 1 to 10 accrued by the date of the institution of the suit the plaintiff could have

sued for possession of the same, that would not apply to defendants 11 to 15 and other tenants whom they represent. The suit cannot therefore be dismissed in toto except against defendants 1 to 10.

43. Mr. Vedantachari, the learned advocate for the respondents, argued that no notice terminating the tenancy was needed and the cause of action was complete against all the defendants even by the date of the institution of the suit. Reliance was placed by him on the decision in *Namdeo Lokman Lodhi v. Narmadabai*¹⁹, which lays down as a principle of justice, equity and good conscience, the principle in Section 111 (g) of the Transfer of Property Act could not be applied to agricultural tenancies. This case was followed by the Madras High Court in *Narasimham v. Atcheyya*²⁰. But that decision has no bearing because we are not now concerned with any case of forfeiture which require a further act to indicate that the landlord wants to take advantage by virtue of the forfeiture. It cannot be said that when once possession was given under a lease without a notice to quit, the tenancy could not be terminated and possession cannot be recovered. No authority was cited in support of the proposition that notice was not required to terminate a tenancy before suing for eviction.

44. In the result Appeal No. 342 of 1949 is allowed and a declaration granted in favour of the plaintiffs against defendants other than defendants 1 to 10. The appeal against defendants 1 to 10 must be dismissed with costs and the petitioner will be entitled to his costs against other defendants.

45. So far as A. S. No. 551 of 1951 is concerned, in view of our decision in A. S. No. 342 of 1949, the appeal must be allowed and the suit dismissed with costs here and in the Court below. The only argument advanced on behalf of the appellants, apart from

¹⁸ A. S. No. 640 of 1950 and 9113 of 1954, D/d. 6-1-1955 (Andhra)

¹⁹1953-1 Mad LJ 715

²⁰1954 -2 Mad LJ 83

the decision on the main question was that the lands were let for pasturage and therefore the tenants would not acquire occupancy rights. That is not correct. The lands were given for cultivation purposes, though the actual use to which the tenants put it was pasturage. That would not take away the statutory right of occupancy as the lands were let for cultivation and not for pasturage. That objection therefore cannot be upheld. In view of our finding that the plaintiff is entitled to both the warams, the appeal must be allowed and the suit dismissed with costs here and in the Court below.

46. The other Appeal No. 789 of 1950 is allowed and the suit is dismissed with costs here and in the Court below.

Order accordingly.