Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Seena Pena Reena Seena Mayandi Chettiyar v. *Chokkalingam Pillay and others, from the High Court of Judicature at Madras; delivered the 26th February* 1904.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.
SIR JOHN BONSER.

[*Delivered by Sir Andrew Scoble.*]

The suit out of which this Appeal arises was brought by the Appellant as Trustee or Manager of the Temple of Kayarohanaswami, of Negapatam, in the District of Tanjore in the Madras Presidency, to recover possession of certain lands in the village of Vadagudi, of which the Temple is Mirasdar, from a number of Defendants, who are admittedly tenants under the Temple, but who claim a permanent tenure as cultivators, dependent only on the payment of *Ayan* and *Swamibhogam*, that is to say, of the revenue due to Government and a money-rent to the proprietor. So long as these payments are made, they deny the right of the Temple to eject them; and their title is said to be derived, either directly or indirectly, from two persons named Virdhachala and Subbaien, with whom a settlement of the lands was made by the Collector of Tanjore in the year 1833. The Subordinate Judge of Negapatam, and the District Judge of

Tanjore decided the suit in favour of the Appellant, but the High Court of Madras, upon Appeal, reversed their decision. The question which their Lordships have to determine is the nature of the interest which Virdhachala and Subbaien had in the lands in question; for it is not disputed that whatever interest they had has passed to the Respondents. It is much to be regretted that the Respondents did not appear upon this Appeal, and that the case has to be decided *ex parte*.

In the written statement of the principal Respondent it is alleged that "the whole of the "lands mentioned in the Plaint belonged to our "ancestors. Two hundred years ago they gave "away the *miras* right which they had in them "to the Temple of Kayarohanaswami and "retained the permanent *olavadaikani* (or right "of cultivation). In accordance with the said "*olavadaikani* right, our ancestors and ourselves "have, for the last 200 years, been enjoying the "lands, cultivating them and paying the *Ayan* "and *Swamibhogam* amounts to the Temple." There was no reliable evidence as to the origin of the relation between the tenants and the Temple, but in support of their allegation of the character of their tenancy three documents were produced by the Respondents, to which great weight is attached in the judgment of the High Court. These documents were more than thirty years old, came from proper custody, and may be presumed to be authentic. By the first, which is dated 11th March 1813, the then Manager of the Temple gave a permanent lease of one-half of the lands in dispute to Chokkanada Pillay, the father of Virdhachala, and the other half appears to have been granted on a similar tenure to one Nalla Pillai. Nalla Pillai appears to have transferred his interest, after Chokkanada's death, to Virdhachala, and

by the second document, which is dated 26th January 1820, Virdhachala obtained the entire land on permanent lease from the Manager of the Temple. The third document, which is dated 6th July 1822, is a sub-lease of a half-share of the property by Virdhachala to two persons named Visvanatha Mudaliar and Namasivaya Mudaliar. The first and second documents are described as *Vara Adai Olai Chits*, which is translated as "deeds letting "land for cultivation and providing for share "of produce," and the character of the tenure granted is described as *Ulavadaikani* or "cultivation-right land," that is to say, land which the grantee and his heirs were to have a hereditary right to cultivate. In the third the tenure is described as *Ulavadai Miras*, a phrase which is not employed in the transactions between the Temple and the grantees. There is some uncertainty as to the precise meaning of this last phrase; but the Courts below concur in holding that the two grants by the Temple Manager, if still valid and subsisting, confer a permanent and heritable title.

It must be observed, however, that the second and more important of these grants bears a date subsequent to the passing of Madras Regulation VII. of 1817, which vested the general superintendence of all charitable endowments "in land or money" in the Board of Revenue, and made it the duty of the local agents of the Board (of whom the Collector was one *ex officio*) to report to the Board "any instance in which "they may have reason to believe that lands or "buildings, or the rent or revenues derived from "lands, are unduly appropriated," care being taken not to infringe private rights. These grants were thus liable to objection not only on the ground that "to create a new and fixed rent "for all time, though adequate at the time, in

" lieu of giving the endowment the benefit of an " augmentation of a variable rent from time to " time would be a breach of duty " in the Trustee, unless there were special circumstances of necessity to justify it (*Maharani Shibessouree Debia* v. *Mothooranath Acharjo*, 13 Moore I. A. 270, at p. 275), but also because the effect of the Regulation was to supersede the powers of managers to alienate charitable property, and to sanction the revision of existing appropriations, if unduly made.

There is nothing on the Record to show at what date the Collector took in hand the direction of the affairs of this particular Temple, but on the 4th December 1831 a Petition in the following terms was presented to him :—

" To

" N. W. KINDERSLEY, Esquire,

" *Principal Collector of the Tanjore Province.*

" *Durkhast* (tender or application for land presented to the " Revenue Department) written and given by the two persons " Vadagudi Virdhachalla Pillai and Subbaien who are *Purakudi* " (*Purakudis*) of the assessed lands owned in the village of " Vadagudi by Kayarohanaswami of Negapatam, Andanapettai " Maganam, Kivalur Taluq.

" As we shall not only continue to pay for one year the " current Fusli 41, Swamibhogam paddy 51 kalams 4 marcals " to the temple paying also the Circar assessment taking on " *Durkhast* for the current Fusli 41, the wet land 20 velis, " 5 mahs, 40¾ gulis and dry land &c., 6 mahs, 81 gulis of the " said village and cultivating and enjoying the land, but shall " also furnish adequate cash security therefor (or cash security " adequate thereto), we request that orders may be passed to " settle (or make certain) and give for *Ekasal* (a Revenue " expression meaning one year) *Durkhast Ijara* (contract or " lease granted upon application to the Revenue Department) " in our names accordingly.

" (Signed) Virdhachallam.

" („) Subbaien.

" (Signed) Venkata Row,

" 4th December 1831. *Tahsildar.*

In this Petition which, it will be observed, is in the names of two persons, Virdhachala and Subbaien, no reference is made to the antecedent grants held by Virdhachala. The Petitioners

are described as *Purakudis*, that is to say, "tenants who provide themselves with seeds and "ploughing cattle, and cultivate the land by "personal or hired labour, receiving a share of "the produce in return." The application is for a lease for one year, and no distinction in status is made between the two applicants. There is also some difference between the quantity of the land mentioned in Virdhachala's grants and that applied for in the Petition. When it is borne in mind that one of those grants was made only four years before, and the other three years after, the passing of the Regulation of 1817, it does not seem improbable that the existence of these grants was not brought to the notice of the Collector, by whom their validity might have been questioned, and that the Petitioners preferred to base their application on grounds less open to controversy. Be this as it may, neither in the *Muchilika* of 10th January 1832 nor in the security bond of 11th January 1832 which followed the Petition and completed the tender of the applicants for a lease of the lands, is there anything to indicate a claim to occupancy tenure, except that the applicants are described as *Ulavadai miras* instead of as *Purakudis*. On the other hand, the *Muchilika* clearly contemplates a tenancy for more than one year, for it provides that "if, in any year," garden crops are raised by means of irrigation, a higher money-rent is to be paid. In like manner it is stipulated that if "in any *fusli*, damage is caused by flood or "drought," allowance is to be "made for the "damage, according to custom and discretion." And the applicants further agree that "as "*kayam taram thirwa* (permanent classification money-assessment) has been fixed from "the current *fusli* 1241 . . . we shall pay the "Circar the *thirwa* (money-assessment) of each "*numberwari* land." In explanation of the

phraseology used, it is stated that classification-settlement is a settlement of assessment made with reference to the quality of each field (or number) as opposed to the settlement of a village in gross; and that such a settlement was at that time in progress in the Tanjore district.

No *Puttah* appears to have been granted in exchange for the *Muchilika*, but the order passed by the Collector is shown in the following extract from an official diary containing copies of orders sent to the Tahsildar of Kivalur, the district in which the property is situated:—

"Received your Arzi, dated 18th January last, stating that, "as the two persons *Virdhachala Pillay* and Subbaien who "had *given Durkhast* (presented a petition or tender) for the "previous *one Sal* (one year, termed also Ekasal) as per "order for the assessed wet, dry, &c., land owned by Kayaro-"hana Swami of Negapatam, said taluq, in the village of "Vadagudi, had agreed to *Taram Faisal* (classification settle-"ment) permanently at the rate of 51 kalams of paddy per "annum (on account of) Swamibhogam to the temple paying "the Circar kist due for the said land, you had obtained "*Muchilika*, &c., from him (them) and forwarded the same "and soliciting orders for putting him (them) in possession "of the land.

"Referring to that matter, you shall put the *Ijaradar* "(tenderer) in possession of the said land and collect duly as "per instalments what is *due to the Circar* as well as the "Swamibhogam.

"(Initialled) M. K.

"Camp Vallam,
"14*th February* 1833."

This being the state of the title of the Defendants, as shown by the documentary evidence in the case, the following issue was raised in the Court of the Subordinate Judge:—

"Whether under the terms of the Muchilika "of the 10th January 1832, Virdhachella Pillai "and Subbaiyen were tenants from year to "year or acquired a right of occupancy?" And the Subordinate Judge found that "looking at "the Muchilika by itself it does not evidence "more than a contract of letting from *fusli* to "*fusli* at the yearly rent specified;" and he

further held that from the Petition it was plain that Virdhachala, "owing to his inability to "cultivate the land, or from some other reason, "must have given up his right of perpetual "lease granted to him under" the grant of 26th January 1820. The District Judge of Tanjore came to the same conclusion. He says "In "some way or other it is perfectly clear, as the "Subordinate Judge points out, that on the 4th "December 1831" (the date of the Petition to the Collector) Virdhachala "had either given up "or had lost all his right to the perpetual lease "granted to him" by the Temple authorities; and he held that "all he and his successors in "title have to depend upon is the fresh contract "that was made" (with the Collector) "in 1832," under which no permanent right of occupancy was conferred.

The learned Judges of the High Court took a different view. They held that the tenancy began, not under the *Muchilika*, but under the grant from the Temple authorities in 1813; that there was no sufficient evidence to prove that the tenancy under the grant of 1813 and 1820 was ever determined, and that the transaction evidenced by the *Muchilika* was not a new lease, but a confirmation of the previous grant, with a modification as to the mode of paying the rent. In support of these conclusions, they attach much importance to the description of the applicants, in the *Muchilika* and security bond, as *Ulavadai Mirasidars;* and they hold that this description differentiates the present case from cases in which the High Court had, under similar circumstances, decided otherwise. They accordingly reversed the Decrees of the Courts below, and dismissed the Plaintiff's suit with costs throughout.

Upon a careful consideration of the whole of the evidence in the case, their Lordships are

unable to adopt the conclusions arrived at by the learned Judges of the High Court. It seems to them incredible that if the previous grants had been brought to the knowledge of the Collector in 1831–33, there should not have been some reference to those grants in the proceedings taken before him. Not only is there no such reference, but the applicants come before him in the same character as *purakudis*, and their description as *Ulavadai Mirasidars* does not occur in any document emanating from the Collector's office, but only in documents put forward by the applicants themselves. The words, moreover, do not appear to have a well-established meaning. The Judges of the High Court translate them as "persons with an hereditary right to "cultivate"; but the Subordinate Judge says that, although the meaning of the words taken separately is clear enough, "the meaning of both "the words put together is not explained," nor does the combination find a place in Wilson's Glossary. It would be extremely unsatisfactory to rest the decision in a case of this importance on a vernacular expression of doubtful signification.

On the other hand, their Lordships find that the term *purakudis*, which is employed by the applicants in their Petition to the Collector, has a well-understood and definite meaning, and the character of the tenure created by the proceedings before the Collector in analogous cases has been determined by judicial decisions. In the case of *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady* (6 Madras H.C. Rep. 164), in which the circumstances were very similar to those of the present Appeal, and there was a *Muchilika* in similar terms, it was held that no permanent tenancy was created. "The language of the "agreement," said Scotland, C.J. (p. 168), "had, "I think, no greater effect than the ordinary

" form of muchalka given by a ryot in exchange " for a puttah, except so far as it indicated the " intention that its terms should apply to every " successive fasli for which the holding might be " continued by neither party exercising the right " to terminate it at the end of a fasli." This decision was followed by the Madras High Court in the case of *Thiagaraja* v. *Giyana Sambandha Pandara* (I. L. R., 11 Madras 77), in which the circumstances were almost identical; and their Lordships see no reason to differ from the conclusions at which those learned Judges arrived, upon a state of facts which cannot be distinguished, in any material degree, from those in the present suit. In a third case, *Krishnasami Pillai* v. *Varadaraja Ayyangar* (I. L. R. 5 Madras 345), in which there was no *Muchilika* and the decision turned on length of occupation, it was held that the term *purakudi ulavadai*, by which the tenant's predecessor in title was described in his Petition to the Collector, did not necessarily imply a right of occupancy; but, in other respects, the decision does not affect the question now before their Lordships which, in their opinion, must be decided upon the contract sanctioned by the Collector in 1833.

Their Lordships will humbly advise His Majesty that this Appeal ought to be allowed, and the Decree of the High Court reversed with costs, and the Decrees of the District Court of Tanjore restored. The Respondents will pay the costs of the Appeal.