Privy Council Appeal No. 41 *of* 1946

Kumbham Lakshmanna and Others - - - - - *Appellants*

v.

Tangirala Venkateswarlu and Others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JUNE, 1949

Present at the Hearing:

LORD PORTER
LORD MACDERMOTT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR MADHAVAN NAIR]

This is an appeal from a judgment and decree of the High Court of Judicature at Madras dated 28th September, 1943, which reversed a judgment and decree of the Subordinate Judge of Masulipatam dated 6th September, 1941, and allowed the plaintiff's suit with costs.

The appellants before the Board were defendants 1 to 30, and will hereinafter be referred to as the " defendants ". The first respondent was the sole plaintiff in the suit. He will be referred to hereinafter as the " plaintiff ". The other respondents were defendants, and are said to have changed sides and now joined the first respondent.

The appeal arises out of a suit instituted by the plaintiff, an Inamdar (holder of an inam), to eject a large number of cultivating ryots of lands, 20.28 acres in extent, situated in the village of Lellagaruvu, in the taluk of Bandar, Kistna District.

Inam is a well known word of " arabic " origin which means reward or favour. The word came into use after the Muhammadan conquest. In ancient days, grants of land, or revenue, were made by Hindu sovereigns to individuals, particular families, or communities for various purposes, or to religious institutions, for their upkeep. These were known as " Manyams ". The practice was continued by the Muhammadan rulers and later, by the East India Company also, till it was discontinued in the earlier years of the 19th century, as a result of instructions received from the Directors of the Company. Thenceforward, gifts of land were granted only in special cases, the ordinary cases being provided for by the grant of money pensions.

Inams in the presidency of Madras are of two kinds; first, those where the proprietary right in the soil and the right to the Government share of the revenue derivable from land coalesce in the same individual, and secondly, those where the proprietary or occupancy right is vested in one or more individuals, whilst the Government share of the revenue has been granted to another (para. 71, Mr. W. T. Blair's report on the operations of the Inam Commission dated 30th October, 1869).

" An inam holding may be of a field only, or a village, or a tract of several villages ". (Land Systems of British India by Baden Powell Vol. III p. 140.) Grants consisting of a whole village or more than one village are technically called Major inams to distinguish them from Minor

inams which are grants of something less than a village. (See *Secretary of State* v. *Thinnappa Chettiar* 1942-43, L.R. 70 I.A. 112.) The suit inam being only a small portion of a village is a Minor inam and is mentioned as such, in exhibit N.

In paragraph four of his well-known report Mr. Blair thus describes the origin of the Minor inams:

> "During the period of anarchy which followed the overthrow of the Native dynasties and which continued, though in a less degree, after the establishment of the Mohammadan rule in Southern India, the power of granting inams was assumed by various petty chiefs, officers of Government, and others, who alienated the revenues to a considerable extent. Of such origin are most of the minor inams granted by the zemindars, by the various faujdars and even by renters in the Northern Circars; and those given by the numerous poligars of the Ceded Districts and the southern provinces of the Presidency."

Two questions arise for decision in this appeal:—

1. Whether in a suit by a holder of a minor inam to eject the tenants from the holding, the burden is on the plaintiff to make out a right to evict by proving that the grant included both the melvaram and the kudivaram interests or that the tenants or their predecessors were let into possession by the Inamdar under a terminable lease, or whether the burden is on the tenants to prove that they have occupancy rights.

2. Whichever way the burden lies, whether the burden has been discharged in the present case by the party on whom it lies.

The first is a question of law, and the second is mainly a question of fact.

The suit inam was granted to one Putcha Viswanadham Bhotlu as personal inam by one Bhanojee Suryaprakasa Rao in the year 1677, at a time when the moghuls were exercising authority over the country in which the land is situated. The grantor was obviously not a sovereign ruler. The inam is described as "Bhatta-Vritti" inam which means an inam granted for the support of the Brahmins. The grantee was a "non-resident *vaidiki* Brahman" who lived "in Dantaloor in Guntur District". The grant is lost and has not been produced.

In 1808, the Putcha family transferred half of the inam to the Tangirala family whose successor in title is the plaintiff. By two transfers in 1912 and 1913, the Putcha family conveyed the remaining half of the inam to Tangirala Narasimha the father of the plaintiff. As a result of these transfers the Tangirala family owned as Inamdar the entire extent of the inam which had been originally granted to the Putcha family.

The plaintiff alleged in his plaint that the village was uninhabited and overgrown with shrubs and bushes in which animals moved about, that his predecessors in title obtained both melvaram and kudivaram rights under the grant, that the land gradually became fit for cultivation, that registered leases had been executed by defendants in 1908, and in various subsequent years, containing admissions of the plaintiff's rights, and that as the present owner of the land, he is entitled to eject the defendants.

The defendants denied that the land was waste land, and averred that the Putcha people had only melvaram right under the grant, and that they (the defendants) were in possession of the land from time immemorial enjoying the kudivaram right. They also stated that the statements referred to by the plaintiff, contained in some of the lease deeds, were not binding on them as they were illiterates, and were executed by them without knowledge of their contents.

It may be stated at once that though the Subordinate Judge has described the suit land as a wild tract "overgrown with shrubs and bushes where animals like deer were roaming about" there is no evidence to show that it was waste land and no reference was made to it, either in

the High Court or in the arguments before the Board. Their Lordships are not therefore called upon to consider the recognised inference that may be drawn—as pointed out in judgments—regarding the existence of the melvaram and kudivaram rights in favour of the Inamdar who claims proprietorship over such land.

The Trial Court raised a number of issues of which only the following are now material:

> "(1) Whether the plaintiff has right to eject the defendants from the suit land?
>
> (4) Whether the defendants have acquired occupancy rights otherwise than under the Madras Estates Land Act? "

Issue (1) in its legal aspect, involves preliminarily a consideration of the question regarding the burden of proof which their Lordships have already set out at the beginning of the judgment. In its evidentiary aspect it merges into issue (4).

Before stating the findings of the courts, it will be advantageous to refer briefly to a few decisions of the Board which have a direct bearing on the first issue, as the evidence has been discussed by the courts in India in the light thrown by those decisions on the question of the burden of proof i.e., on the question, whether the burden lies on the plaintiff to prove he has the right to eject the defendants, or whether it lies on the defendants to prove that they have occupancy rights. After stating the facts, all the judgments start with a discussion of these cases.

It is scarcely necessary to mention that kudivaram and melvaram interests comprise the entire proprietory interests in the land. Their Lordships have pointed out that kudivaram represents a cultivator's share in the produce of land held by him as distinguished from the landlord's share received by him as rent which is designated as melvaram. Kudivaram interest is generally understood as meaning a permanent right to occupy the land. Shortly stated, for a long time the courts in Madras took the view that an inam grant conveyed to the grantee only the melvaram interest in the land. In *Suryanarayana* v. *Patanna* (1917-1918, L.R. 45 I.A. 209 ; 1918, I.L.R. 41 Madras 1012) the Board held that there is no such presumption. This view was affirmed in *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu* (1918-1919, L.R. 46 I.A. 123 ; 1919, I.L.R. 43 Madras 166) in which their Lordships held that when the question arose each case must be considered on its own facts. These decisions of the Board were differently understood by different Division Benches of the High Court. In certain cases, it was held that both the melvaram and the kudivaram interests passed to the grantee unless the contrary was shown ; while in others, it was held that there was no such presumption according to the Privy Council decisions. In the Full Bench decision in *Muthu Goundan* v. *Perumal Iyen* (1921, I.L.R. 44 Madras 588) it was held that underlying the exposition of law by their Lordships there was an initial presumption of law in favour of the grant of both varams which would mean that in a suit in ejectment by the Inamdar against a tenant the onus of proving that he has permanent rights of occupancy lay on the tenant. The Full Bench decision was expressly overruled in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (1921-1922, L.R. 49 I.A. 286 ; 1922, I.L.R. 45 Madras 586) in which their Lordships stated there is no such presumption and that each case must be dealt with on its facts, which would mean that the burden lay on the plaintiff of proving his case. Then came the much discussed decision of the Board in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (1923-1924, L.R. 51 I.A. 83 ; 1924, I.L.R. 47 Madras 337) in which the judgment contained the statement:

> " It cannot now be doubted that when a tenant of lands in India in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant."

The decision in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (*supra*) was not referred to, in the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (*supra*). It began to be argued in

India that there is a conflict between the two decisions respecting the rule as to the burden of proof applicable to suits in ejectment, and that their Lordships in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (*supra*) have abandoned their previous view as indicated in the decision in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (*supra*), and held that in a suit for ejectment brought by an Inamdar who claimed both the varams in the land, the burden of proving that he has rights of occupancy lay on the tenant.

In *Zamindar of Parlakimedi* v. *Ramayya* (1926, 51 M.L.J. 510) decided by Phillips and Madhavan Nair JJ. the Inamdar (the plaintiff) claimed that the grant to him consisted of both the varams and he relied on the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (*supra*) as throwing the burden of proving that they had permanent rights of occupancy upon the defendants (ryots). The Court held that that was not the effect of the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (*supra*). In two separate and concurring judgments it was pointed out that the so-called conflict between the two decisions of the Board did not exist if the facts of the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (*supra*) are correctly understood, and that the decision in that case by which the burden of proving occupancy rights is thrown on the tenant " is only applicable in cases where the Inamdar is proved or admitted to be the owner of the land itself " (see the judgment of Phillips J. at p. 514). Thus understood, the decision did not contravene the principle that in a suit for ejectment the burden lies on the Inamdar as plaintiff to prove his right to evict and was in conformity with the decision in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (*supra*).

In *Ayyangars* v. *Periakaruppa Thevan* (30 L.W. 583) decided three years later, and without reference to the decision in *Zamindar of Parlakimedi* v. *Ramayya* (*supra*), which was apparently not cited to them, the learned judges, Wallace and Odgers, JJ., were inclined to hold that the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (*supra*) being later in point of time was binding on them and that " . . . it laid down that the onus therefore rests upon the defendants to show that they possess such right of occupancy in their holdings as will prevail against the plaintiffs' *prima facie* right to eject " (see the judgment of Wallace J.).

At a later stage, their Lordships will deal with the above cases more fully, and will also refer to other cases which have a bearing on the question.

To resume the narrative, the Trial Court held on issue (1) that the suit being one in ejectment the onus of proving that he has the right to eject the defendants lay on the plaintiff. Considering the evidence from this standpoint the court held on issues (1) and (4) that the plaintiff has no right to eject the defendants from the suit lands, and that the defendants have acquired occupancy rights even otherwise than under the Madras Estates Land Act. The plaintiff's suit was accordingly dismissed with costs.

The appeal against the judgment of the Trial Court was heard by Krishnaswamy Ayyangar and Horwill JJ.

After noticing the decisions mentioned above, Krishnaswamy Ayyangar J. stated " there is thus a definite conflict of decision between two Division Benches of this court " regarding the interpretation of the decision of the Board in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (*supra*). But the learned judge did not express his opinion as to which view is right. He allowed the appeal after a consideration of the evidence adduced by the parties, holding " that the tenants have failed to make out that they have any occupancy rights in the land ". Apparently the learned Judge's view was that the burden of proving that they had occupancy rights lay on the tenants.

Horwill J. differed from Krishnaswamy Ayyangar J. on the question of onus, and held that he was bound to follow the decision in *Zamindar of Parlakimedi* v. *Ramayya* (*supra*) where it was held that the burden

lies on the Inamdar as plaintiff to prove his right to eject. In that view, he held that the plaintiff has failed to discharge the burden and that the appeal should be dismissed.

He also stated that if the burden lay on the defendant to prove that the grantee was not given both the varams " it would perhaps be difficult to say " that the facts that the two families have been in enjoyment of the land from time immemorial and have had their partitions recognised by the Inamdars, and that the grant was made to a non-resident Brahmin, would be sufficient to discharge that onus ". He also added, that if the case can be disposed of, without considering on which side the burden lies, on the evidence which he thought was " not sufficient for the suit to be disposed of in this way ", he was of opinion " that the three circumstances referred to immediately above are entitled to more weight than the admissions (assuming that the tenants knew the contents of the muchilikas) of ignorant and illiterate ryots ".

As there was thus a difference of opinion between the two learned judges they stated under clause 36 of the Letters Patent the following points (already quoted at the commencement) of law and fact:

> " (1) Whether in a suit by a holder of a minor inam to eject the tenants from the holding, the burden is on the plaintiff to make out a right to evict by proving that the grant included both the melvaram and the kudivaram interests or that the tenants or their predecessors were let into possession by the Inamdar under a terminable lease or whether the burden is on the tenants to prove that they have occupancy rights.
>
> (2) Whichever way the burden lies, whether the burden has been discharged in the present case by the party on whom it lies."

and the case was posted for disposal before King J. who held, as will appear from the extract of his judgment quoted below, that the burden of proof lay on the tenant, which appears to have been the opinion of Krishnaswamy Ayyangar J. also as he allowed the appeal on the ground that the tenant had not discharged the burden of proof.

After referring to the various judgments noticed above the learned judge concluded his judgment as follows:—

> " Now the question for me to decide is whether 47 Madras is binding upon this Court in the present case or not. Mr. Govindarajachari in a very able argument for the appellant contends that, whatever may be the practical difficulties involved in applying one or other of the two Privy Council decisions, there is no fundamental inconsistency between them. 47 Madras deals with the wider issue raised by a claim to rights of permanent occupancy; 45 Madras deals with the narrower issue of the establishment of such rights by proof of one particular fact, viz., the subject-matter of the original grant to the Inamdar. The two issues may sometimes in practice be co-extensive, but they are not necessarily so, as it is always open to a ryot to prove, if he can, that he has acquired a right of permanent occupancy otherwise than by proving that his landlord had no original title to the kudivaram. I see no reason why this argument should not be accepted.
>
> From the view of 47 Madras taken by the learned Judges in 51 M.L.J. I must express my most respectful dissent. From the way in which the judgment in 47 Madras is constructed, and from the manner in which the paragraphs follow each other it seems to my mind beyond dispute that their Lordships have dealt with the *whole* of the evidence from the point of view of the necessity for the ryots positively to prove their claim to occupancy rights. Their Lordships state on page 344 as a matter not disputed that the ryots were tenants of the temple. They admitted that the temple had the melvaram rights, and claimed the kudivaram rights for themselves. Immediately after that statement of the issue in the case comes the broad and general proposition that a 'tenant of lands in India' must prove a right of permanent tenancy which he claims. No

doubt their Lordships go on to cite in support of this proposition two previous decisions of the Privy Council which are distinguishable from the case of an inam grant before them, but in their sixth paragraph they do state, most definitely, that they will consider whether the defendants *have proved* that they had rights of permanent occupancy under the Madras Estates Land Act, which can mean on the facts of that case only whether they have proved that the lands which they were cultivating were part of an estate, which again can mean only whether in those lands the melvaram alone was granted to the Inamdar. If their Lordships meant the doctrine as to burden of proof which they laid down in their fourth paragraph to apply only to cases where the landlord's title to both varams was already admitted or proved, then that paragraph was bound logically to come not before but after the decision of their Lordships on the evidence as to the terms of the grant. Whether 47 Madras be held inconsistent with earlier Privy Council decisions or not, I cannot resist the conclusion that the proposition of law in the fourth paragraph is a general proposition of law which must be applied to a case such as the one now before me. The juxtaposition of the third and fourth paragraphs, and the language of the sixth show clearly that a tenant who admits a melvaram right in his landlord and claims an occupancy right in himself, must prove that right and that the Privy Council has not excluded such a tenant from the expression ' tenant of lands in India.'

I hold accordingly on the first of the points for my decision that the burden in the present case lay upon the defendants.

The second point now requires no more than a very brief discussion. It is common ground in this case that on the evidence adduced the defendants have failed to discharge the burden, and both learned Judges who have heard the appeal agree that this is so. I accordingly find formally that the defendants have failed to discharge the burden which lay upon them.

In the result this appeal must be allowed, . . . with costs throughout."

The case was certified to be a fit one for appeal to His Majesty in Council under section 109 (*c*) C.P.C. by the learned Chief Justice and Lakshmana Rao J. They stated in their order ". . . . There is undoubtedly a serious conflict of opinion with regard to the effect of these two judgments of their Lordships (already mentioned) and the question involved is of great public importance as such suits as the present one are not uncommon . . .".

Their Lordships will first deal with the question of the burden of proof, and then consider whether the burden on whichever party it lies has been discharged by that party.

The onus of proof in ejectment suits brought against the tenants in zemindary and inam lands turns upon the nature of the relationship between the landlord and the tenant. The controversy in early days which was very acute centred round the question whether the tenant was a tenant from year to year as strictly understood, or whether he was a co-owner of the land with the landlord according to the customary law of the country, he owning the kudivaram, and the landlord owning the melvaram interest in the land. In *Secretary of State* v. *Virarayan* (I.L.R. 9 Mad. 175) it was observed by Turner, C.J., and Muttusami Ayyar, J., that according to what is termed " the Hindu Common Law ", " a right to the possession of land is acquired by the first person who makes a beneficial use of the soil ". The same learned judges pointed out in *Siva Subramanya* v. *The Secretary of State* (I.L.R. 9 Mad. 285) that " Manu and other Hindu writers have rested private property on occupation as owner ". In *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* (I.L.R. 20 Mad. 299) it was pointed out that there is no substantial analogy between an English tenant and an Indian ryot for the simple reason that the rights of the ryots in most cases came into existence not under any letting by the government of the day or its assignees, the zemindars, but independently of them. This view was fully developed

in the well-known case of *Cheekati Zamindar* v. *Ranasooru Dhora* (1899, I.L.R. 23 Madras 318). It was also pointed out in *Venkatanarasimha Naidu* v. *Dandamudi Kottayya* (*supra*) " that the interest in the land is divided into the two main heads of the kudivaram interest and the melvaram interest, and that the holder of the kudivaram right, far from being a tenant of the holder of the melvaram right, is really a co-owner with him. The kudivaram right originated in priority of effective occupation and beneficial use of the soil, and the claim of the government and the assignees of government was always, in these parts, to a share in the produce raised by the ryots." (See *Narayana Ayyangar* v. *Orr* (1903, I.L.R. 26 Madras 252.)

The controversy as between the zemindar and his tenants was settled by section 6 of the Madras Estates Land Act (Act I of 1908) which declares:

> " 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 not being old waste situated in the estate of such landholder shall have a permanent right of occupancy in his holding . . ."

but, having regard to the definition of an " estate " in section 3 (2) (*d*) of the Act, in a case where an Inamdar sues a ryot in ejectment the question still arises whether the Inamdar owns the kudivaram as well as the melvaram when objection is raised by the defendant that the land forms an " estate " within the meaning of the Act and a civil court has no jurisdiction to deal with the case. Section 3 (2) (*d*) of the Act is as follows :—

> " 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."

It may be mentioned here that minor inams do not fall within the purview of the Madras Estates Land Act. The question just adverted to arises in the case of minor Inamdars also—as in the present case—where rights of occupancy are claimed by the ryots—apart from the Act.

How the question should be settled when disputes arise between the Inamdar and the tenants has been decided by the decisions of the Board—already referred to, in another connection—but before referring to them again, attention may be drawn to a few enactments which dealt with the ascertainment of the title of the Inamdars to the lands claimed to be held by them in inam.

The Permanent Settlement Regulation (Regulation XXV of 1802), which, generally stated, dealt with the permanency of the tenure of the zemindars in their estates was passed on 13th July, 1802. By section 4 of the Regulation, inams were exempted from its scope by excluding them from the assets on which permanent settlement was based. On the same date, the Regulation XXXI of 1802 (subsequently repealed by Madras Act II of 1869) was passed, dealing with inams, for enacting 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 section 15 of the Regulation the collectors were required to keep a register of the inams. One of such registers is Oakes Inam register noticed by the Privy Council in *Suryanarayana* v. *Patanna* (*supra*). Various measures followed the passing of this Regulation, but nothing effective was done to settle the validity of the titles of the Inamdars till 1859, when the question of examining their titles was taken up by the Inam Commission. As a result of its deliberations various Acts—Madras Acts IV of 1862, IV of 1866, and VIII of 1869—were passed. The history of these enactments, into which it is not necessary to enquire, is fully dealt with by Sir George Rankin in *Secretary of State for India* v. *Srimath Vidhya Sri Varada Thirta Swamigal* (1941-1942, L.R. 69 I.A. 22 at page 39). Attention may however be drawn to the following provision of Madras Act VIII of 1869, which enacted:

"Nothing contained in any title deed heretofore issued to any inam-holder shall be deemed to define, limit, infringe or destroy the rights of any description of holders or occupiers of the lands from which any inam is derived or drawn, or to affect the interests of any person other than the inam-holder named in the title deed ; and nothing contained in Madras Act IV of 1862, or in Madras Act IV of 1866, shall be deemed to confer on any inam-holder any right to land which he would not otherwise possess."

The decision of the Board in *Suryanarayana* v. *Patanna* (supra) and the decisions that followed expounded the principle that should be applied in determining the nature of the respective rights of the Inamdar and the tenants of the land from which the inam was drawn. That principle as already pointed out is that there is no presumption in law that the grant of an inam conveyed only the melvaram and that when the question of the respective rights of the parties in the land arises for decision each case should be decided on its own merits without reference to any presumption in law regarding the existence of those rights in either of the parties. None of the Privy Council cases dealt *expressly* with a minor inam but it is not disputed that the same principle would apply to the minor inams also where the rights are claimed apart from the Act. In such cases, courts have to find out whether the Inamdar has proprietary interests in the land, from the whole circumstances relating to the holding, "so far as these can be ascertained", such as—to mention a few—the terms of the grant when the deed is available, long possession, the course of dealing between the Inamdar and the tenant, dealings with the land by the tenant, etc.

Originally, the zemindars and the Inamdars were placed in the same position as assignees of government revenue. The place of the cultivating ryots in the agricultural economy of Southern India is thus described in a Proceeding of the Board of Revenue of Fort St. George (Madras) dated the 5th January, 1818 :

"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 rajas, jaghirdars, zemindars, poligars, mootahdars, shrotriyamdars, inamdars or Government officers, such as tahsildars, amildars, amins, or tannadars, the payments which have always been made by the ryot are universally termed and considered the dues of the Government."

The Board in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (supra) quoted the above well-known statement apparently with approval, but left it without any comment, obviously because it had been already decided by the Board in *Suryanarayana* v. *Patanna* (supra) that in an ejectment suit brought by an Inamdar against the cultivating ryot no presumption in law exists that the grant conveyed only the melvaram, and the decision was accepted as not open to any question.

Their Lordships will now proceed to consider how the question as to the onus of proof raised in the first question before the Board should be decided when the merits of the case are examined, without any reference to the supposed presumption in law that an inam grant conveys only melvaram rights, which has now been held not to exist. Admittedly, no question strictly relating to onus of proof as such, arose for decision in *Suryanarayana* v. *Patanna* (supra). That case only dealt with the presumption in law as regards the nature of the interest that exists in lands granted in inam. In that case, the ryots claimed rights of permanent occupancy under section 3 (2) (*d*) of the Madras Estates Land Act. They contended that the grant to the agraharamdar (the subject matter of the suit was an agraharam village) was of the land revenue alone and relied on a presumption that such a grant was so restricted. The Madras High Court in *Suryanarayana* v. *Patanna* (I.L.R. 38 Madras 608) held that:

> " The presumption is that an Inamdar like a zemindar, is not the owner of the kudivaram right," and that " The presumption is the same whether the grant of the inam was by Government or by a zemindar."

It was pointed out that the rule would apply whether the inam is a major inam or a minor inam in a village.

In appeal, that decision was set aside by the Board in *Suryanarayana* v. *Patanna* (*supra*) in which it was held that:

> " There is no presumption in law that the grant of an inam by a Native Ruler prior to British Rule conveyed only the melvaram (Revenue due to the state)."

The subsequent decisions of the Board in *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu* (supra) affirmed and developed the above rule by adding to it another rule, viz. that

> " Each case must therefore be considered on its own facts ; and in order to ascertain the effect of the grant . . . resort must be had to the terms of the grant itself and to the whole circumstances so far as they can now be ascertained."

The question of onus was first pointedly referred to by the Board in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (supra) where after referring to the above cases it was pointed out that:

> " When the entire evidence on both sides is once before the Court the debate as to onus is purely academical."

and the Board referred to the decision in *Seturatnam Aiyar* v. *Venkatachala Goundan* (1919-1920 L.R. 47 I.A. 76 ; 1920 I.L.R. 43 Madras 567) where, with reference to the facts of that case, it was stated that:

> " The controversy had passed the stage at which discussion as to the burden of proof was pertinent ; the relevant facts were before the Court, and all that remained for decision was what inference should be drawn from them."

Observations to the same effect were made in *Mohammad Aslam Khan* v. *Feroze Shah* (1931-1932 L.R. 59 I.A. 386 ; 1932 I.L.R. 13 Lah. 687, though not a case between landlord and tenant ;) where Sir Lancelot Sanderson said:—

> " A question was raised as to the party upon whom the onus in respect of this matter rested. Their Lordships do not consider it necessary to enter upon a discussion of the question of onus, because the whole of the evidence in the case is before them and they have no difficulty in arriving at a conclusion in respect thereof."

Where no difficulty arises in arriving at a conclusion, as in the cases above-mentioned, the question respecting the onus recedes into the back-ground, but where the court finds it difficult to make up its mind the question comes to the foreground and becomes the deciding factor. In *Yellappa Ramappa* v. *Tippanna* (1928-1929 L.R. 56 I.A. 13 ; 1929 I.L.R. 53 Bombay 213 ;) Lord Shaw said:—

> " In any case *onus probandi* applies to a situation in which the mind of the judge determining the suit is left in doubt as to the point on which side the balance should fall in forming a conclusion. It does happen that as a case proceeds the onus may shift from time to time. . . ."

What is called the burden of proof on the pleadings should not be confused with the burden of adducing evidence which is described as " shifting ". The burden of proof on the pleadings never shifts, it always remains constant (see *Pickup* v. *Thames Insurance Co.* (1878) 3 Q.B.D. 594). These two aspects of the burden of proof are embodied in sections 101 and 102 respectively of the Indian Evidence Act. Section 101 states:—

> " Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Section 102 states:—

"The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

This section shows that the initial burden of proving a *prima facie* case in his favour is cast on the plaintiff; when he gives such evidence as will support a *prima facie* case, the onus shifts on to the defendant to adduce rebutting evidence to meet the case made out by the plaintiff. As the case continues to develop, the onus may shift back again to the plaintiff. It is not easy to decide at what particular stage in the course of the evidence the onus shifts from one side to the other. When after the entire evidence is adduced, the tribunal feels it cannot make up its mind as to which of the versions is true, it will hold that the party on whom the burden lies has not discharged the burden; but if it has on the evidence no difficulty in arriving at a definite conclusion, then the burden of proof on the pleadings recedes into the background.

How the above rules relating to onus operate in a case is thus described by Lord Dunedin in *Robins* v. *National Trust Co. Ltd.* (1927 A.C. 515 at 520):—

"Their Lordships cannot help thinking that the appellant takes rather a wrong view of what is truly the function of the question of onus in such cases. Onus is always on a person who asserts a proposition or fact which is not self-evident. To assert that a man who is alive was born requires no proof. The onus is not on the person making the assertion, because it is self-evident that he had been born. But to assert that he was born on a certain date, if the date is material, requires proof; the onus is on the person making the assertion. Now, in conducting any inquiry, the determining tribunal, be it judge or jury, will often find that the onus is sometimes on the side of one contending party, sometimes on the side of the other, or as it is often expressed, that in certain circumstances the onus shifts. But onus as a determining factor of the whole case can only arise if the tribunal finds the evidence pro and con so evenly balanced that it can come to no such conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to a determinate conclusion, the onus has nothing to do with it, and need not be further considered."

Their Lordships may here observe that in shifting the burden from one side to the other by adducing evidence, parties may rely on presumptions in law, which are really inferences of fact, in place of actual facts. If there was a presumption in law that an Inamdar was the owner of both kudivaram and melvaram interests in the land then he could rely on that presumption to discharge the initial burden of proof that lay on him to prove his title to eject. In this sense the presumptions arising from law are connected with the question of onus of proof.

It is settled law that in a suit for ejectment the burden of proof lies on the plaintiff to show that he has a right to eject the defendant before the onus is shifted to the defendant to prove that he has a right of permanent occupancy. Their Lordships have now to see whether this rule has been departed from in the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra). In that decision, as already pointed out, Sir John Edge said:—

"It cannot now be doubted that when a tenant of lands in India, in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant."

In the present case, relying on the above statement, King J. has—as already stated—held that since the defendants claimed a right of permanent occupancy in the lands the onus of proving that they had such right lay

on them and that since they failed to prove that they had such right, the plaintiff is entitled to eject them—no matter whether he (the plaintiff) has proved that he has such a right.

In *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) their Lordships stated as follows, in paragraphs 3 and 4, the facts of the case, and the principle mentioned above, referring to two decisions on which that principle was based:—

> "The lands in respect of which a decree of ejectment has been made in each suit are part of the village of Mangal in Tanjore, and are part of the endowed property of the temple. It is not disputed that the defendants were tenants of the temple of lands to which the suits relate, nor is it now disputed that they received notices to quit. The defendants admit that the *melvaram* rights in the property in question are vested in the temple, but their case is that the *kudivaram* rights in that property are vested in them and never were vested in the temple, and they claim that they have permanent rights of occupancy in the lands under section 6 of Madras Act I of 1908, and also independently of that Act." (Para. 3.)

> "It cannot now be doubted that when a tenant of lands in India, in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant. In *Secretary of State for India in Council* v. *Luchmeswar Singh* (L.R. 16 I.A. 6; (1889) I.L.R. 16 Calc. 223) it was held that the onus of proving that they had a permanent right of occupancy in lands was upon the defendants, who alleged it as a defence to a suit by their landlord to eject them, and that proof of long occupation at a fixed rent did not satisfy that onus; and in *Seturatnam Aiyer* v. *Venkatachela Goundan* (supra) in a suit by landlords for the ejectment of the defendants from lands in a *ryotwari* district in Madras, the giving of notice to quit not being disputed, it was held that the onus of proving that the defendants had rights of permanent occupancy was upon them." (Para. 4.)

Instead of making the presumption that the landlord is the absolute owner of the land and dealing with the case on that assumption their Lordships proceeded to consider the terms of the grant, and after finding that the melvaram and kudivaram interests in the land were at some time granted to the temple, they began to consider "whether the defendants have proved that they, or those through whom they claim title as occupiers of the lands in suit, obtained at any time a right of permanent occupancy in the lands." This being their method of approach to the case it seems to their Lordships that, as pointed out in *Zamindar of Parlakimedi* v. *Ramayya* (supra) "when the principle above-mentioned was laid down . . . the words 'tenant of lands' must mean 'tenant of lands belonging to his landlord', that is to say, that the landlord has a right not merely to the *melvaram* but to the land itself. In this view the two judgments [*Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (supra) and *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra)] are not inconsistent."

A close examination of the *two decisions relied on* by their Lordships in support of the principle stated by them, and *also of the facts of the case* as dealt with by them, show clearly that the usual rule as to the burden of proof in an ejectment suit has not been in any way departed from by their Lordships.

In *Secretary of State for India in Council* v. *Luchmeswar Singh* (supra) —the first case relied on by their Lordships—they state thus:—

> "The Government undoubtedly are tenants of the Darbhanga Raj. It is for them to show why the landlord may not recover. . . . If we could not find out the origin of these things, there would be strength in that argument. But as the origin of them is known the argument loses its force."

In the above case the government who had been let into possession of a village by a Raja for a limited purpose claimed a permanent right of

occupancy. It was rightly held that a person let into possession should prove that he had a permanent right of occupancy.

In *Seturatnam Aiyar* v. *Venkatachala Goundan* (supra) which dealt with a dispute between a pattadar and a ryot in a Ryotwari tract Sir Lawrence Jenkins observed as follows:—

> "The plaintiff's title was conceded, and the notice by which he purported to terminate the defendants' tenancy was not disputed. It was also admitted that the defendants held under, if not from, the plaintiff. To resist the plaintiff's claim the defendants set up a permanent tenancy or an occupancy right in themselves. If this was not established then the defendants must fail, and to adapt the language of section 101 of the Evidence Act, as the defendants were bound to prove the existence of their permanent tenancy or occupancy right, the burden of proof as to it lay on them."

In the above cases, it was either admitted or found as a fact that the tenants had been let into possession by the landlord who was the absolute owner. When the tenant claims rights of occupancy in such circumstances their Lordships, in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra), laid down the principle that the burden will be on him to prove that he has such rights.

Read in the light of the above cases the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) by which the burden of proving occupancy right was thrown on the defendant did not enunciate any rule as to burden of proof inconsistent with the decisions in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (supra).

In this connection it may be stated that it is not correct to say, as was boldly argued, that a ryotwari pattadar has no proprietorship in the land he holds under the government. In his Land Systems of British India, Baden Powell gives the following definition of the ryotwari system:—

> "A system of land revenue administration in which there is no middleman or landlord over the individual ryots, who are severally liable for the land revenue assessment on the holding."

Again, quoting from the Settlement Manual from Madras, he describes the Ryotwari System as follows:—

> "Under the ryotwari system every registered holder of land is recognised as its proprietor. He is at liberty to sub-let his property or to transfer it by gift, sale or mortgage. He cannot be ejected by government so long as he pays the fixed assessment, and has the option of (annually) increasing or diminishing his holding or of entirely abandoning it. The ryot under this system is virtually a proprietor under a simple and perfect title, and has all the benefits of a perfect lease without its responsibilities."
>
> In this System of Land Holding "it may be assumed that the Pattadar is the owner of the Kudivaram right, as opposed to the Malvaram right which is vested in the government" (*Veeranan Ambalam* v. *Annasawmi Aiyar* 21 M.L.J. 845).

The settlement by the government under the Ryotwari System was with the actual cultivator; under Regulation XXV of 1802, it was with the Zemindar, who had the right of receiving rent from persons who were in occupations of lands. It is familiar knowledge that pattadars under the ryotwari system let out the land for cultivation to under-ryots. When such under-ryots claim rights of occupancy the burden of proving that they have such rights would necessarily be on them. It was in connection with the claims made by such ryots that the Board observed in *Seturatnam Aiyar* v. *Venkatachala Goundan* (supra) that:—

> "Permanence is not a universal and integral incident of an under-ryot's holding; if claimed, it must be established. This may be done by proving a custom, a contract, or a title, and possibly by other means. . . ."

Language very similar to the above was used in similar Madras cases in describing the claim of an under-ryot in ryotwari land. In *Cheekati Zamindar* v. *Ranasooru Dhora* (supra) Subrahmania Ayyar J. referred to a decision by Collins C.J. and Muttusami Ayyar J. in which the position of an under-ryot in ryotwari land was thus described:—

> "Admittedly the village in suit is a taraf village of which the temple is the registered proprietor entitled to both the melvaram and the mirasvaram as against the appellant. This being so, the claim of an occupancy right as overriding the proprietor's right to cultivate his own land is of a special character, and as such, it is one which the party seeking to derogate from the ordinary incidents of property is bound to establish. . . . Ordinarily the mirasidar or proprietor in a taraf village has the right of cultivation also and he is therefore at liberty to arrange for it from time to time either by granting leases or letting it to purakudies for varam or under what is usually called the pannai system by means of labourers who are paid wages in grain."

Subramania Ayyar J. added:—

> "In other words, the view of the learned Judges was that permanent holdings under raiyatwari proprietors being unusual and exceptional, the onus is on the party setting up such a special kind of holding."

The cases which arise between ryotwari pattadars and their under-ryots are not in point in disputes between Inamdars and cultivating ryots.

The principle of the burden of proof laid down in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) when read in the light of the facts of the case also, does not appear to contravene the rule that in a suit for ejectment the initial burden lies on the plaintiff to prove that he has the title to immediate possession. The lands in respect of which a decree in ejectment was sought were the endowed property of a temple. It is stated in paragraph 3 of the judgment that "it is not disputed that the defendants were tenants of the temple." The tenants were let into possession under muchilikas executed by them (page 354). After referring to the muchilikas their Lordships state significantly that:—

> "In 1870 Sir C. H. Scotland, C.J., held that when a tenancy in the Presidency of Madras commenced under a terminable contract there was nothing to prevent the landlord from ejecting the tenant at the end of the term from the lands which had been let to him."

Lower down they state:

> "No tenant of lands in India can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands."

The above references show in what light the position of the tenant was regarded by their Lordships in the rule stated by them in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra).

To summarise: The decisions above discussed, and the facts of the case show clearly that the word "tenant" in the principle stated by their Lordships in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) should be read, as explained in *Zamindar of Parlakimedi* v. *Ramayya* (supra) in the stricter sense of persons who had been let into possession by a landlord. The term does not apply to tenants in the looser sense of the word as those in cultivation of land, the origin of whose rights is not known.

The view expressed in *Zamindar of Parlakimedi* v. *Ramayya* (supra) as regards the scope of a decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) was accepted by Panduranga Rao and Venkataramana Rao JJ. in *Jagannatha Pillai* v. *Ramanatha Chettiar* (1938, M.W.N. 1284), and again by Venkataramana Rao J. in *Lakshmana Reddiar* v. *Ellinganaickenpatty Kumara Koil* (I.L.R. (1938) Madras 888). The learned judges differed from the decision in *Ayyanars* v. *Periakaruppa Thevan* (supra) relied on by King J. as containing the correct interpretation of the rule stated in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra).

In *Basiruddin Sarkar* v. *Sahebulla Pramanik* (1927 32 C.W.N. 160) Mukerji and Mallik JJ. took the same view of the Privy Council decision as in *Zamindar of Parlakimedi* v. *Ramayya* (supra). The learned judges observed:

> "In an action in ejectment one of the things that the plaintiff must prove is his title to immediate possession. This is a proposition as old as the hills. In a case where the defendants' tenancy is admitted—an admission that involves the admission of the defendants' right to be in possession—the plaintiff must necessarily establish as to how he is entitled to possession; in other words, how the tenancy has come to an end."

After referring to the two decisions of the Board in *Seturatnam Aiyar* v. *Venkatachala Goundan* (supra) and *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) they stated as follows:

> "In my opinion, the decisions of the Judicial Committee do not indicate that their Lordships ever intended to depart from these elementary rules. In both the cases the plaintiff's title to the lands was conceded, and notices by which the defendants' tenancies were terminated were not disputed. In neither case had any grant been alleged, asserted, or admitted on behalf of the plaintiff, but inasmuch as the defendants had been in occupation on payment of rent, a tenancy from year to year terminable on notice was all that was conceded."

Before proceeding further, one more case—already referred to—remains to be discussed. In *Ayyanars* v. *Periakaruppa Thevan* (supra) the plaintiffs were grantees of ryotwari lands. That decision was passed in Letters Patent appeal by Wallace and Odgers JJ. reversing the decision of Phillips J. who held, as already pointed out—following his own decision—in *Zamindar of Parlakimedi* v. *Ramayya* (supra) that the words "tenant of land" in the principle stated in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) must mean tenant of lands belonging to his landlord. The latter decision does not seem to have been cited before them. The apparant conflict between the decisions in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (supra) and *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) is noted by the learned Judges but was ignored on the ground that the latest decision binds the court and that decision must be followed. The entire judgment is not before their Lordships, but from the extract given in the judgment of the High Court, the ground on which the decision was based seems to be fairly clear. Wallace J. who delivered the leading judgment, after stating that one who admits that he is a kudivaramdar admits also that he is a tenant of the melvaramdar, observed:

> "That being so, the defendants (tenants) by their admission that they pay melwaram to the plaintiffs admit that they are tenants of the plaintiffs. On that relationship the plaintiffs have a *prima facie* right to eject them, and as the Privy Council has laid down the onus therefore rests on the defendants to show that they possess such right of occupancy in their holdings as will prevail against the plaintiffs' *prima facie* right to eject."

This reasoning is open to two objections. In the first place, it ignores the true conception of the relationship between landlord and tenant in India in lands held under inamdars, zemindars, and such proprietors, well described by Subramania Ayyar J. in *Venkatanarasimha Naidu* v. *Dandamudi Kotayya* (supra) wherein, after pointing out that there is no substantial analogy between English tenants and Indian ryots and citing the following passage regarding the nature of the rights of the ryots in India in the Presidency of Madras already quoted by their Lordships (supra):

> "Whether rendered in service, in money or in kind and whether paid to rajas, jagirdars, zamindars, poligars, mutadars, shrotriyamdars, inamdars or to Government Officers, such as tahsildars, amildars,

amins or thanadars, the payments which have always been made are universally deemed the dues of Government ",

observed as follows:

" To treat such a payment by cultivators to zamindars as 'rent' in the strict sense of the term and to imply therefrom the relation of landlord and tenant so as to let in the presumption of law that a tenancy in general is one from year to year, would be to introduce a mischievous fiction destructive of the rights of great numbers of the cultivating classes in this province who have held possession of their lands from generation to generation."

Further comment on the above observation is needless. It may be mentioned that the passage quoted above which—as already stated—is from the proceedings of the Board of Revenue dated the 5th January, 1818, was referred to in *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi* (supra) with approval by their Lordships as correctly describing the position of cultivating ryots in the agricultural economy of southern India.

Secondly, it also ignores the principle laid down by the Board that when an inamdar comes to court alleging that he owns both the warams, no presumption can be drawn in his favour or against him, but that the whole case should be decided on its own merits without resorting to any presumption.

King J., after referring to the previous decisions, dissented from the view of *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) taken in *Zamindar of Parlakimedi* v. *Ramayya* (supra) and concluded saying that:

" Whether 47 Madras be held inconsistent with earlier Privy Council decisions or not "

he is satisfied that the structure of the judgment in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) leads to the conclusion that the proposition of law as regards the burden of proof stated therein is a general proposition. Their Lordships have already dealt with the previous decisions. They need only add, with respect to the learned judge, that the judgment of their Lordships in *Nainapillai Marakayar* v. *Ramanathan Chettiar* (supra) read *as a whole* does not in their view support the conclusion arrived at by him.

After a consideration of the decisions brought to their notice their Lordships hold that in the circumstances mentioned in the first point arising in this appeal, for the reasons mentioned above, the burden of making out a right to evict the defendants in the suit lies on the plaintiff.

Their Lordships will now proceed to consider whether, on the evidence in the case, the burden has been discharged.

The evidence given by the parties is somewhat scanty. Generally stated the plaintiff supported his case by his own testimony, the testimony of two witnesses very brief indeed, one lease deed R, dated 1908, other lease deeds, S series and T series, extracts from the inam fair registers and other registers, and notices sent to the defendants some of which had been refused by them. S series consist of lease deeds S to S-5, each of which had been executed for five years commencing from 1913, and S-6 to S-13, each of which was for ten years commencing from 1918. These were renewals of the time-expired five year leases. T series were each dated 1932.

The defendants examined two witnesses, one of whom was the first defendant. They mainly relied on their immemorial cultivation of the suit lands, spoken to even by the plaintiff's witnesses. They also stated that they were illiterate, and the lease deeds were not read over to them.

Both sides also relied on general circumstances relating to the holding as throwing light on the nature of their respective rights in the land.

It was conceded by both parties in the courts in India that the extracts from the various registers filed by the plaintiff do not throw any light on the question whether the grant was of one waram only or of both

warams. In support of his claim the plaintiff mainly relied on certain stereotyped statements made by the defendants in the various lease deeds executed by them. No lease prior to the year 1908 has been filed. The terms of the lease deed R, are non-committal and are of such a nature as has been held not to contain any admission that the ryots have no rights to the kudivaram interests in the land. Terms appearing in S to S-5 deeds, such as " The land belongs to you and has been in your enjoyment with absolute rights ", " If I fail to deliver rent on due date, I shall pay the value of the paddy in arrears ", " At the expiry of the term in the khath I shall deliver up possession of the land " do not necessarily show that the landlord owns kudivaram rights ; nor are they necessarily inconsistent with the defendants' claim to possess occupancy rights. There is no statement in any one of them that the landlord is entitled to eject the executants, nor is there any evidence that anyone ever quitted the lands in his possession. Another statement that " you have delivered possession of the land to me " which would, if true, be valuable, is unfounded, as there is no evidence of any kind to show that the landlord at any time put the ryots in possession of the land. More important than the above, *if they can be acted upon,* are the statements in some of the renewed leases S-6, S-8, S-11, S-12, S-13, wherein the executants say that the landlord has " melvaram and kudivaram interests " in the land. These specific statements, absent in the previous leases, appear for the first time in the renewed leases. The ryots are admittedly illiterate ; there is force in the observation of Horwill, J. that " it is always difficult for poor and ignorant ryots to fight an Inamdar in a matter of this kind ". In estimating the value of the stipulations and admissions made by tenants in the written muchilikas executed by them, cautionary observations repeatedly made by learned judges should always be kept in mind. Dealing with registered leases executed by tenants ranging from 1903 to 1911, it was observed in *Peravalli Kottayya* v. *Ponnapalli Ramakrishnayya* [1937 (II) M.L.J. 573 at 587]:

> " It is a well-known fact that the Zamindars and Inamdars anticipating tenancy legislation had been trying by all possible means to deny occupancy rights to the tenants and to prevent acquisition of occupancy rights by the tenants and for that purpose have been taking muchilikas with recitals in and by which the tenants stipulate to surrender possession to the landlord at the end of the term. It has always been held that from such a stipulation it is unsafe to presume absence of occupancy rights in the tenant. The value of these leases will also be much discountenanced if it is proved that the tenants from whom these leases were taken were in occupation of the said lands on the dates of the said leases. . . ."

Admittedly the defendants were in possession of the land when they executed the leases in question. The practice resorted to by Zemindars of taking muchilikas from tenants negativing the existence of occupancy rights is thus referred to by Wallis C.J. (as he then was) in an earlier decision, *Zamindar of Chellapalli* v. *Rajalapati Somayya* (27 M.L.J. 718):

> " In this connection it is to be borne in mind that numerous instances have come before the court in which subsequent to the decision of the Chokalinga's case (1871) Zamindars succeeded in inserting in pattas and muchilikas terms negativing the existence of occupancy right . . . ."

In the above case the claim of the Zemindar to treat certain lands as his " private land " based on the admissions to that effect contained in the muchalikas executed by tenants was negatived.

Their Lordships cannot neglect the consideration that a ryot, so long as he is not evicted, might be prepared to sign anything, and that the evidential value of such a contract should be judged accordingly.

Their Lordships will only add that this attitude might be modified if such statements in the leases were supported by other circumstances which—as they will show presently—do not exist in this case. After careful consideration their Lordships think it is unsafe to act upon the statements and admissions contained in the S series lease deeds. In

considering the evidence as a whole, these have not sufficient weight to rebut the presumptions in favour of the defendants arising from the other circumstances in the case.

Coming to T series, (extracts from registered kaths) executed by the tenants, reliance is placed on T-1 to T-6 which refer to the full kudivaram and melvaram rights obtained by the plaintiff from the Inam Commissioners under inam title deeds. It is well known that it was not within the scope of the duties of the Inam Commissioners to define the relations between the landlords and their tenants. Reference may here be made to the Madras Act IV of 1869 (already quoted) which was specially enacted by the legislature to make it clear that nothing contained in any title deed issued to a land owner by Inam Commissioners "shall be deemed to define or limit or destroy the rights of any description of land holders or occupiers of land from which inam is derived. . . ." Further, it does not appear that all the defendants on record have executed lease deeds like the T series deeds. Their Lordships were informed in answer to a question that the deeds filed relate only to 6 defendants, one of whom the executant of T 5 is the father of 3 others who are minors, Whether the others have executed similar deeds is not known. However this may be, it follows from what has been already stated that these deeds are ineffective in supporting the claim of the plaintiff.

The oral testimony of the plaintiff's witnesses and the other documents do not advance the plaintiff's case.

Circumstances of a general nature relating to the holding relied on as throwing light on the nature of the plaintiff's rights in the land are not many, and the inferences deducible therefrom are not sufficiently convincing.

In the course of his discussion of the question whether the tenants have made out that they have any occupancy rights in the land, Krishnaswami Ayyangar J. refers to circumstances which in his view are destructive of the tenant's rights. Their Lordships think that these circumstances might in another setting be taken in the plaintiff's favour but in the present instance they do not, in their Lordships' view, support his claim. The learned judge says:

> "Considering the nature of the khaths executed by the tenants the provision contained in them for the payment by the Inamdar of charges for the repairs of the ridges, the fact that the rents have been raised from time to time and the fact that there is no proof of dealings by the tenants by sales, mortgages or otherwise, it seems to me that the only reasonable inference is that the tenants have failed to make out that they have any occupancy right in the land."

The provision contained in the kaths for the payment of charges by the Inamdar stands on the same footing as the other provisions in the kaths which their Lordships have already considered. In addition, it may be pointed out there is no reliable evidence that the landlord has paid for any repairs. (See para. 22 of the Subordinate Judge's judgment). As regards the payment of increased rent, Horwill J. observes "The learned Subordinate Judge has held that the rent paid by the tenants has always been the same and that although in muchilikas from 1913 onwards the tenants agreed to pay increased rent, yet they never in fact paid it. Although this can be spelt out of the oral evidence and may be true, this is not at all clear from the documentary evidence". Krishnaswami Ayyangar J. apparently accepted the payment of increased rent as proved. Accepting the evidence that increased rent has been paid by some tenants its importance has to be considered along with the other circumstances of the case; when such payments are made by cultivators whose families have been in possession of land from time immemorial they may well be attributed to a desire on their part to cling to the land of their ancestors at all costs. Illiterates as they are, they may not have realised that such payments may be used against them to force them out of the land at some future date. There is no evidence that rents have been increased in the case of all the tenants or that the increased amounts

were paid by more than a few. What is important is that no tenant has been at any time ejected from his land. In such circumstances the payment of increased rents loses much of its force as a factor for consideration. Dealing with property by the tenants by sales or mortgages, if proved, will be indicative of the existence of Kudivaram interest in them. If the tenants had no need to raise money, by mortgaging or selling the property, proofs will not exist of such dealings with the property ; but what is *important for the present purpose* is that from the absence of such dealings, no inference can be drawn in support of the plaintiff's claim.

The circumstances in favour of the defendants in considering the evidence as a whole are (1) the grant was to a non-resident Brahmin ; (2) none but the members of the two families who constitute the entire body of the cultivating tenants has been in possession of such lands ; and (3) various partitions and consequent divisions of the property that have taken place have been recognised by the Inamdar.

Although there is no longer any presumption that a grant to a non-resident Brahmin is of the melvaram only, their Lordships say in *Seethayya* v. *Somayajulu* (1928-29 L.R. 56 I.A.146 ; 52 Madras 453):

> " The Brahmins represented by the grantee were learned Brahmins apparently not resident in the village granted, but resident about two miles away. This circumstance by itself is by no means conclusive. At the same time, it appears to their Lordships to make it more probable that the grant was *in the nature of an endowment of revenue rather than of land for the purposes of cultivation.*" (the italics are by their Lordships).

The learned judge Horwill J. applies the above observation of their Lordships to the present case by making the following significant remarks:

> " It might be possible for a person resident only two miles away to attend to cultivation ; but it would have been quite impracticable for anyone living in Dantaloor in Guntur district in 1677 to have done so."

Their Lordships agree with the above view.

As observed in the course of this judgment, the suit land has been in the possession of the families of the defendants for a long time ; and there is no evidence that they derived possession from the Inamdar. Partitions of the property have been made by the families of the defendants without objection from the plaintiff or his predecessors which would show that they were allowed to treat the property as their own. There is reference in the Subordinate Judge's judgment to one Chintayya who " gifted his share to his son-in-law M. Ramayya " and this Ramayya executed a kath S-13 in favour of a member of the Tangirala family (plaintiff's predecessor). This would show that there was even a transfer to an outsider, though a relation, recognised by the Inamdar. The *neutralising effect* of all these factors has not been given any weight in the consideration of the evidence by Krishnaswami Ayyangar J.

On the evidence that has been placed before them, which is not conclusive, their Lordships are not satisfied that the plaintiff on whom the burden lies to prove that he has a title to evict the defendants, has discharged his burden.

For the above reasons, their Lordships will humbly advise His Majesty that this appeal should be allowed, the decree of the High Court set aside with costs, the decree of the Subordinate Judge of Masulipatam restored and the plaintiff's suit dismissed. The respondents must pay the costs of this appeal.

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v.

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