

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

VARADARAJA (PLAINTIFF), APPELLANT,

v.

DORASAMI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1892.
Nov. 2, 10.

*Landlord and tenant—Occupancy right—Undisturbed possession—Construction of
grant—Conduct of parties.*

In a suit for ejectment brought by the trustee of a temple, the defendants set up a right of occupancy as permanent tenants. It appeared that the defendants' ancestor had held the village from the Collector (then in charge of the temple properties) under a lease which expired in 1831, when he offered to hold it for two years more. The Collector made an order that if the tenant would not hold the land at the existing rate permanently he should be required to give security for two years' rent. Two "permanent" muchalkas were subsequently taken from the tenant successively, but they were returned as not being in proper form. No further document was executed, but the tenant and his descendants remained in undisturbed possession at the same rate of payment up to 1888. In that year the plaintiff sent a notice of ejectment to the then tenant, who, however, set the plaintiff at defiance and remained in possession till the present suit was brought in 1890 :

Held, that it should be inferred that the defendants were in possession under a permanent right of occupancy.

APPEAL against the decree of C. Venkobachariar, Subordinate Judge of Tanjore, in original suit No. 17 of 1890.

Suit for ejectment. The land in question was the property of the temple, of which the plaintiff was trustee. The case for the plaintiff was that in 1826, when the temple property was in the charge of the Collector, Vythilinga Mudali, the defendants' grandfather, was put into possession of the land for five years under an agreement executed in the name of his friend Gopala Ayyangar, and that, since that date, three persons, and afterwards Vythilinga Mudali's descendants, had been in possession. The plaintiff claimed that they were yearly tenants merely, and that he having given them notice to quit was entitled to eject them.

The defendants' case was that the land had been handed over to Vythilinga Mudali by the Collector in fasli 1241 on an irrevocable permanent settlement "under a contract to pay the "sirkar kist for the plaint lands and swamibhogam for the plaint

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"mentioned temple," and that the plaintiff had accordingly no right to eject them: they further denied the notice to quit. A question of limitation was also raised.

The second issue raised the question whether the defendants were permanent tenants. The determination of this issue turned on the construction of the following exhibits:—

Exhibit B.

"Muchalka in respect of cash security executed on 26th June 1826" to the Honorable the East India Company; by me, Vythilinga Mudali, Mirasidar of Tirupunthiruthi village in Kandiyur maganam, of Tiruvadi taluk, as follows:—Kandiyur Gopala Ayyangar has undertaken to obtain on proposal lease, nanja lands measuring 6 velis, 15 mahs and $37\frac{3}{4}$ gulies in Yekabogam Tirupunthiruthi village attached to the Miras of Sri Brahmasira Kandiswaraswami's temple at Kandiyur of the said taluk for five years from fasli 1236 to 1240, agreeing to pay as follows:—Rs. 1,809-12-9 $\frac{1}{2}$ for five years at Rs. 361-15-4 $\frac{1}{2}$ per year; and 81 $\frac{1}{2}$ kalams of paddy and cash Rs. 195 for five years at 163 kalams of paddy and cash Rs. 39 per year for swamibhogam of the temples.

"In respect thereof I do hereby bind myself agreeing to pay cash security as follows:—

"The said Gopala Ayyangar shall be paying regularly according to the instalments that may be fixed by the sircar, the kist money due to sircar as aforesaid for the nunja lands in the said village, with price current, as also the paddy and cash as specified above due to the temple. Should he fail to do so in any instalment without payment, I shall not only agree to pay at once the amount of arrears due by him, but also bind myself to be responsible for the lease amount accepted by him. Besides, if the said Gopala Ayyangar should abscond without putting his appearance, I do hereby bind myself to produce him at once.

"Thus I have executed this muchalka in respect of cash security with my free will."

(Signed) VYTHILINGA MUDALI,
Mirasidar.

Exhibit G.

"As it is due, orders should be issued that it should be sent accordingly.

“It is stated thus:—For the matter in which order No. 24, VARADARAJA
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 No. 21, 23rd Vallam. “dated 7th September last, together with a
 “list, has been received, wherein it is asked
 “that a dharkast should be taken from the (purakkudis) tenants
 “of the villages, and sent up for the amount due according to
 “the list, which is sent along with the order, in respect of thir-
 “appu sarvamanyam (rent free) villages belonging cash, so taken
 “away, have been entirely spent away or something more still
 “remains.

“To the temples of this taluk, for which the assessment
 “(tharam) has not been settled.

“On communicating the aforesaid matter to the (purakkudis)
 “tenants of the villages mentioned in the list, Vithilinga
 “Mudali, the (purakkudi) tenant of the Thirappu villages of
 “Tirupunthiruthi and Ukkadai came and presented himself
 “before me and executed dharkast, stating therein that he would
 “pay for two years from fasli 41 at the rate of 196 kalams and 4
 “marcals of paddy, and Rs. 39 in ready cash per year to the
 “temple, and in respect of the kalee (vacant) nanja of the said
 “village measuring 19 mahs and 19¼ kulies, he would pay
 “Rs. 383-2-9 according to the assessment of sircar jamabundi,
 “and I have herewith sent the same. The amount of the said
 “dharkast (coincides) is exactly correct according to the amount
 “in the list. Up to date no one else has offered dharkast for
 “a higher amount than that. The said Vythilinga Mudali
 “is a purakkudi (tenant), who used to cultivate the said village.
 “Therefore, I shall conduct myself according to the order that
 “may be received in respect of the decision to be made about the
 “lease for the said village in the name of the said person.

“The details for the accounts sent to the Huzoor Cutcherry
 No. 22, 30th Trivady. “in Peranjee is as follows:—I have pre-
 “pared and sent, along with the index, the
 “accounts for two items of kadappu and karpaddy, which have
 “been harvested and realized in the Amani villages of the temple
 “up to the 25th September.

“It is as follows:—For the matter in which order has been
 No. 23, 31st Trivady. “received bearing No. 37 and made on the
 “3rd instant asking a report to be sub-
 “mitted about the following particulars:—Out of the kaduppu,
 “kar, samba and pishanum paddy of fasli 40 of the sarvamanyam

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“(rent free) village of Pulimangalam situate in the taluk of
 “Valangeman and belonging to the temple of the God Sri
 “Panchanatheeswarar of Kasba Trivady, the Musharp and others
 “of the said temple have sold 462 kalams, 3 marcals and 4
 “measures of paddy and have taken away in ready cash 150
 “pons and $2\frac{7}{8}$ fanams and in the shape of paddy 407 kalams
 “and 3 marcals, and it was so understood (as was said above)
 “from the report of that Tahsildar; whether the said Musharp
 “and others have so taken them away out of their own accord or
 “they have taken away under the orders of the late Tahsildar
 “and whether the paddy and money in ready. In respect of the
 “aforesaid matter, Musharp Sethu Rau.”

Exhibit III.

No. 49.

Takeed sent to Narasappayan, Tahsildar, Tiruvadi taluk.

“Your arzi No. 21, dated 23rd October, together with the
 “proposal tendered by purakkudi (ryot) Vythilinga Mudali, of
 “Tirupunthiruthi consenting to pay for the first two instalments
 “of the current fasli sirkar jamabandi at the faisal (final) rate
 “mentioned for Thirappu Tirupunthiruthi Ulkadai village in
 “the list sent for the settlement of rate temple villages, and also
 “swamibhogam to the temple at the rate of 166 kalams of paddy
 “and Rs. 39 in ready money has been received.

“Regarding the above, if nobody accepts for a higher sum,
 “and, if that Purakkudi Vythilinga Mudali himself does not
 “accept the same amount permanently, then you are to forward
 “from him security muchalka, &c., for two instalments in accord-
 “ance with the dharkasts.”

(Signed) N. W. KINDERSLEY.

(Signed) VYTHINADHAIYAN.

CAMP, NEGAPATAN,
 16th November 1831.

Exhibit III-A.

No. 61.

Takeed sent to Narasappayan, Tahsildar, Tiruvadi taluk.

“As the muchalka sent with your arzi No. 28, dated 29th
 “November, stating that you have sent a permanent muchalka

“ from purakkudi (ryot) for the land in Tirupunthiruthi Ulkadai
 “ belonging to Sri Brahmasirakhandiswaraswami of Kandiyur in
 “ the above taluk, is not my proper form, the same has been
 “ returned. You are, therefore, to get another muchalka, includ-
 “ ing both ayan (rent proper) and swamibhogam in accordance
 “ with the form herewith sent; and to send it together with an
 “ account, clearly giving what the amount of ayan and swami-
 “ bhogam are, to the Huzoor. Besides you are to give him the
 “ possession of the village and to make collections properly
 “ according to the kist.

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“ Further, also respect of the temple villages hereafter to be
 “ settled, you are to get muchalkas as per above form and to send
 “ them, with detailed accounts, to the Huzoor. In addition to
 “ this, you are to take and send from the ryots intricate securities
 “ binding one another. You are at once to get and send
 “ intricate (binding one another) securities for the above Tiru-
 “ punthiruthi Ulkadai lands.”

(Signed) N. W. KINDERSLEY.

(Signed) GULAM MOIDEEN.

CAMP, NEGAPATAM,
 14th December 1831.

Exhibit III-B.

No. 80.

[17th January.

Takeed sent to Narasappayan, Tahsildar, Tiruwadi taluk.

“ Your arzi No. 43, dated 27th December, stating that you
 “ have taken and sent fresh muchalkas from purakkudis (ryots)
 “ in proper form for the Ulkadai lands in Tirupunthiruthi village
 “ belonging to Sri Brahmasirakhandiswaraswami of Kandiyur, in
 “ the above taluk has been received.

“ Regarding it, on referring to the muchalka, it appears that
 “ the total amount, including ayan and swamibhogam, arrived at
 “ by adding the jamabundi amount for the above land with the
 “ amount of money for total swamibhoga lands, calculated at the
 “ price fixed for the Maghanam, to which the village belongs, is
 “ not therein stated, but only the jamabundi amount and the
 “ quantity of swamibhoga paddy separately. As it is not correct
 “ according to the form, the above muchalka is again returned
 “ herewith. You are, therefore, to take and look into the form

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“above sent carefully and get and send fresh muchalkas in accordance therewith, mentioning the above particulars. Besides, you must prepare and send detailed accounts, giving the total jamabundi with its jamabundi amount and swamibhoga paddy with its amount.”

(Signed) N. W. KINDERSLEY.

(Signed) VYTHINADHAIYAN.

CAMP, NEGAPATAM,
16th January 1832.

The Subordinate Judge decreed the above issue in favor of the defendants and dismissed the suit.

The plaintiff preferred this second appeal.

Sadagopachariar for appellants.

Subramanya Ayyar for respondents.

JUDGMENT.—The sole question in the appeal is whether the defendants have occupancy right in their holding or whether they hold as tenants of the temple from year to year. It is clear from exhibit B that in 1826 defendants' ancestor held the village on a five years' lease which expired in 1831. Exhibit G shows that in 1831 the same Vythilinga Mudali made an offer to hold the village for two years longer at a certain rate, and that the Tahsildar reported that no better offer was forthcoming. Exhibit III, dated 16th November 1831, is the Collector's reply to this arzi. In it the Tahsildar is informed that if Vythilinga Mudali does not accept for the same amount permanently, security for the two years' rent is to be demanded. From exhibit III-A it is clear that a permanent muchalka was obtained from Vythilinga Mudali and was returned, not being in proper form, the Tahsildar being directed to take another, and the same direction was repeated in exhibit III-B, the second muchalka being also incorrect in form. The muchalka itself is not produced, and the book said to have contained it is missing from the Collector's office. From the fact, however, that no further muchalkas have been taken since 1832, and that the former system of leases for terms of years has not been reverted to, but the same rent has been uniformly paid since 1832, it is a fair inference that defendants and their ancestors have continued to hold in accordance with the muchalka given in 1832.

Was then that muchalka of a permanent character? It is urged for the plaintiff that the word 'permanent' in exhibit III series is used with reference to the commutation rate, and not with reference to the duration of the tenancy, and it is argued that the terms would be similar to those in exhibit J in *Krishnasami v. Varadaraja*(1), which were held not to denote a lease of a permanent character, but only that the rent should be permanent during the continuance of the lease. In the present case, however, the words 'saswata' and 'saswatamai' are used in conjunction with 'muchalka' and the verb 'oppukollamal,' so that the language used would appear to have reference to the duration of the lease. That the parties understood them in this sense may be gathered from their conduct. Not till 1878 did plaintiff endeavour to disturb defendants in their holding. He then sent a notice (exhibit F), dated 30th June (the last day of the fasli) stating that he had 'herewith' removed him from the occupation and possession of the lands. That such a notice would be utterly invalid as a legal notice to quit addressed to a tenant who had been 46 years in possession it is needless to state. But the first defendant replied on 21st August 1878 (exhibit E) asserting his rights of permanent occupancy in the most unqualified and indignant terms, and setting the plaintiff's pretensions altogether at defiance. It does not appear that any reply was sent to this letter, but the plaintiff continued for ten years longer to accept rent on the same terms from the man whom he professed to have ejected and who had defied the plaintiff to eject him. Then, on 29th January 1888, the plaintiff sent another notice to quit at the end of the current fasli (exhibit F 1) to which first defendant replied on 19th March 1888 (exhibit E 1) reiterating his former defiance. Not till 30th June 1890—within a few days of the expiry of 12 years from the date of exhibit E—was the present suit brought.

We are of opinion, therefore, that there is evidence from which it can be legally inferred that the lease of 1832 was a permanent lease, and, that being so, the plaintiff's suit must fail.

The decisions in *Krishnasami v. Varadaraja*(1), and *Thiagaraja v. Giyana Sambandha Pandara Sannadhi*(2) were referred to in the argument. In the former case the suit was brought by this very same plaintiff as trustee of another temple at Kandiyur on a similar

(1) I.L.R., 6 Mad., 345.

(2) I.L.R., 11 Mad., 77.

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cause of action. It was held in that case by a majority of the Court that though the defendants had not been able to prove that the engagements of 1833 were of a permanent character, yet by customary law the tenants were entitled to occupancy rights. It was further held that an occupation for upwards of 70 years at the same rent was sufficient, under the circumstances of the case, to throw upon those who sought to disturb it the burden of showing that the tenancy was not accompanied with a right of occupancy. We may point out that Mr. Justice Kindersley, while agreeing with his colleagues upon this point, was further of opinion that the muchalka J did evidence a permanent tenure. The present case is much stronger, for not only are the terms of exhibit III less ambiguous, but the inference deducible from 60 years' possession at a uniform rate, nearly 12 of which were in open defiance of the landlord's claim to eject, still further strengthens defendants' claim. In *Thiagaraja v. Giyana Sambandha Pandara Sannadhi*(1) [also from Tanjore] the muchalka was produced, and it was held that the terms thereof did not lead to the conclusion that the cultivators were more than tenants from year to year. No subsequent grant of occupancy right was alleged to have been made, nor were there circumstances proved from which such a grant or right of occupancy could be presumed.

The case before us is distinguishable, therefore, from both of those we have considered. We must confirm the decree of the Subordinate Judge and dismiss this appeal with costs.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Wilkinson.*

PURAKEN AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

PARVATHI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act—Act XV of 1877, sched. II, arts. 91, 120—Suit for declaration.

The reversionary heirs to a stanom in Malabar sued in 1889 for a declaration that a kanom executed in 1881 by the first defendant, the present holder of the

(1) I.L.R., 11 Mad., 77.

* Second Appeal No. 1396 of 1891.