Munsif proceeded on entirely different grounds. In that case the plaintiffs had a clear right to redeem the whole property at the time when they brought their suit, and the Court refused to allow that right to be defeated by the action of the defendants in purchasing a share in the equity of redemption *post litem motam*, but intimated that, if the defendants had acquired the share before suit, it would have been necessary to consider whether the ruling in *Mannu* v. *Kuttu*(1) should not have been followed. The District Judge also in the present case appears to have been under some misapprehension. He apparently thought that it was necessary for the first defendant to show that he had acquired the share of a mortgagor subsequent to the date of the mortgage. But that is not so. It is the possession of the twofold interest as mortgagee and mortgagor (prior to the plaintiffs' suit) that is of importance. First defendant had such twofold interest from the date of the mortgage, and the rule laid down by this Court in the case already quoted is clearly applicable.

We must, therefore, reverse the decrees of the Courts below and dismiss the plaintiffs' suit with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

VENKATANARASIMHA NAIDU (PLAINTIFF), APPELLANT,

v.

DANDAMUDI KOTAYYA (DEFENDANT), RESPONDENT.*

1897. July 22. August 20.

Landlord and tenant—Zamindar and raiyat—Relation between —.

A raiyat cultivating land in a permanently-settled estate is *primâ facie* not a mere tenant from year to year, but the owner of the kudivaram right in the land he cultivates.

SECOND APPEAL against the decree of G. T. Mackenzie, Acting District Judge of Gódávari, in Appeal Suit No. 253 of 1895, modifying the decree of S. Pereira, Acting District Munsif of Ellore, in Original Suit No. 100 of 1892.

The plaintiff was the Zamindar of Vallur, a permanently-settled estate, and the defendant cultivated land in that zamindary.

(1) I.L.R., 6 Mad., 61.

* Second Appeal No. 766 of 1896.

VENKATA-NARASIMHA NAIDU v. DANDAMUDI KOTAYYA.

On the 4th March 1891 the plaintiff served on the defendant a notice to quit. The defendant did not quit the land, and in 1892 the plaintiff brought this suit to reject him. The District Munsif passed a decree in favour of the plaintiff. On appeal the District Judge, holding that the plaintiff had failed to prove that the defendant's tenancy had commenced since the date of the Permanent Settlement, reversed the decree of the District Munsif. Plaintiff appealed.

Pattabhirama Ayyar for appellant.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—In this case the plaintiff, the holder of a permanently-settled estate, seeks, among other things, to eject the defendant from certain lands. Admittedly, the lands are situated within the plaintiff's estate and are subject to an annual assessment payable by the defendant to the plaintiff.

The decision of the case depends solely upon these facts, no other facts having been satisfactorily established by the evidence.

In this state of the case the lower appellate Court dismissed the suit in so far as the prayer for possession was concerned. On behalf of the plaintiff it was contended that the dismissal was erroneous, and that the error was caused by the lower appellate Court having wrongly thrown the *onus* of proof on the plaintiff. The argument in support of the contention was that upon the admitted facts, the finding must be that the defendant was a tenant from year to year; and as due notice to quit had been given, the tenancy had been determined before the date of the action and the defendant ought to have been ejected.

Section 106 of the Transfer of Property Act, to which reference was made on behalf of the plaintiff, does not apply to the case. If, however, there were a similarity between the relation of landlord and tenant in England and that subsisting here between the plaintiff and the defendant, the English rule embodied in that section, that a general occupation is an occupation from year to year would go far to support the contention for the plaintiff. But there is a very material difference between the relation of landlord and tenant in England and that of a zemindar and a ryot or cultivating proprietor, or, to speak more accurately, the person in whom, with reference to Government or its assignees, the right to occupy the soil for purposes of cultivation is to be taken as vested.

Now a tenant, of course, derives his right from the landlord; and in the case of a person thus acquiring his title, the rule referred to is unquestionably a most equitable rule. For the theory as to the relation of landlord and tenant in England led to the view that, in the absence of proof to the contrary, every tenancy was to be taken to be a tenancy at will. In fact, such was the rule until the Judges altered it and laid down that general tenancies should be presumed to be, not tenancies at will, but tenancies from year to year; as was explained in *Doe* v. *Porter*(1), where Lord Kenyon pointed out that a tenancy from year to year succeeded to the old tenancy at will, which was attended with many inconveniences, and, in order to obviate them, the Courts very early raised an implied contract for a year and added that a tenant could not be removed at the end of the year unless he had received six months' previous notice, see *Doe. d. Martin* v. *Watts*(2). But sound and reasonable as this rule would be, if applied to cases in which the right of a defendant in possession is derived in a manner similar to that of a tenant in England, it cannot, on principle, be extended to cases in which the defendant's right is not so derived. Now, there is absolutely no ground for laying down that the rights of ryots in zemindaries invariably or even generally had their origin in express or implied grants made by the zemindar. The view that, in the large majority of instances, it originated otherwise is the one most in accord with the history of agricultural land-holding in this country. For, in the first place, sovereigns, ancient or modern, did not here set up more than a right to a share of the produce raised by raiyats in lands cultivated by them, however much that share varied at different times. And, in the language of the Board of Revenue which long after the Permanent Settlement Regulations were passed, investigated and reported upon the nature of the rights of ryots in the various parts of the Presidency, "whether rendered in service, in money or in kind and whether "paid to rajas, jagirdars, zemindars, poligars, mutadars, shro- "triemdars, inamdars or to Government officers, such as tahsildars, "amildars, amins or thannadars, the payments which have always "been made are universally deemed the due of Government." (See the Proceedings of the Board of Revenue, dated 5th January 1818, quoted in the note at page 223 of Dewan Bahadur Srinivasa

(1) 3 T.R., 13. (2) 7 T.R., 83.

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Raghava Ayyangar's 'Progress in the Madras Presidency'; See also paragraphs 75 to 78 of the exhaustive observations of the Board as to the relative rights of zamindars and raiyats in the Board's Proceedings of the 2nd December 1864 appended to the second report of the Select Committee on the Rent Recovery Bill, 1864, V, Madras Revenue Register at p. 153.) Therefore to treat such a payment by cultivators to zemindars 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 for generations and generations. In support of the view that there is no substantial analogy between an English tenant and an Indian ryot it is enough to cite the high authority of Sir Thomas Munro. Writing in 1824, he observes: "the raiyat is certainly not like the landlord of England, but neither is he like the English tenant" (Arbuthnot's 'Selections from the Minutes of Sir T. Munro,' Vol. I, p. 234). And why is this so? It is for the simple reason that the rights of raiyats came into existence mostly, not under any letting by the Government of the day or its assignees, the zemindars, &c., but independently of them. According to the best Native authorities, such rights were generally acquired by cultivators entering upon land, improving it, and making it productive. As observed by Turner, C.J., and Muttusami Ayyar, J., in *Siva Subramanya* v. *The Secretary of State for India*(1), "Menu and other Hindu writers have rested "private property on occupation as owner." And in *Secretary of State* v. *Vira Rayan*(2) the same earned Judges pointed out "according to what may be 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." Hence the well-known division in these parts of the great interests in land under two main heads of the *melvaram* interest and the *kudivaram* interest. Hence also the view that the holder of the *kudivaram* right, far from being a tenant of the holder of the *melvaram* right, is a co-owner with him. Sir T. Munro puts this very clearly. He says: "A raiyat divides with Government all the rights of the "land. Whatever is not reserved by Government belongs to him.

(1) I.L.R., 9 Mad., 285. (2) I.L.R., 9 Mad., 175.

"He is not a tenant at will, or for a term of years. He is not "removable, because another offers more" (Arbuthnot's 'Selections from the Minutes of Sir T. Munro,' Vol. I, p. 234; see also *Ibid*, p. 253). No doubt, the view of the majority of the Judges (Morgan, C.J., and Holloway, J., Innes, J., dissenting) in *Fakir Muhammad* v. *Tirumala Chariar*(1) was different. But in *Secretary of State for India* v. *Nunja*(2), Turner, C.J., and Muttusami Ayyar, J., stated that they saw strong reason to doubt whether the view of the majority in that case was right.

It thus seems unquestionable that *primâ facie* a zamindar and a raiyat are holders of the *melvaram* and *kudivaram* rights, respectively. When, therefore, the former sues to eject the latter, it is difficult to see why the defendant in such a case should be treated otherwise than defendants in possession are generally treated, by being called upon, in the first instance, to prove that they have a right to continue in possession. One can see no other reason for making such a difference than that certain legislative enactments, especially those passed at the beginning of the century, refer to raiyats as tenants and to the payments made by them as rents. But considering that those enactments were intended for particular purposes and considering that Regulation IV of 1822 expressly declares that the actual rights of any of the land-holding classes were not intended to be affected by the earlier regulations, the phraseology of those enactments should not be taken to operate to the prejudice of persons between whom and zamindars the *primâ facie* relation is only that between the holder of the *kudivaram* right and the holder of the *melvaram* right in a given piece of land as shown above. Consequently it is obvious that, in a suit like the present, the zamindar should start the case by evidence of his title to eject. In other words, he has to prove that the *kudivaram* right in the disputed land had been vested in him or his predecessors and that the land subsequently passed to the defendant or some person through whom he claims under circumstances which give the plaintiff a right to eject. This is clear from *Srinivasa Chetty* v. *Nanjunda Chetti*(3). See also *Appa Rau* v. *Subbanna*(4), and *Venkatacharlu* v. *Kandappa*(5). In the first mentioned case Muttusami Aiyar and Tarrant, JJ., said: "But

(1) I.L.R., 1 Mad., 205.
(2) I.L.R., 5 Mad., 163.
(3) I.L.R., 4 Mad., 174.
(4) I.L.R., 13 Mad., 60.
(5) I.L.R., 15 Mad., 95.

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"Viraman's (the then defendant's) tenancy has been found to be "that of an ordinary pattadar, and we apprehend that such a "tenancy, when there is no evidence of a contract as to its origin "and duration, or that the *kudiaram* right vested in the mittadar "(the then plaintiff) at any time, entitles the tenant to the right of "occupancy for the purpose of cultivation determinable on the "conditions prescribed by (Madras) Act VIII of 1865." The contention that the raiyat was merely a tenant from year to year was distinctly raised in the above case, but was virtually, if not expressly, overruled. We must likewise decline to accept the similar contention urged here on behalf of the plaintiff. It may, perhaps, be asked what is the nature of the holding of persons in the position of the defendant in the lands they hold, if they are not tenants from year to year. There can be no hesitation in replying to this question that in essence there is no difference between a raiyat holding lands in a zamindary village and one holding lands in a Government village (Arbuthnot's 'Selections from the Minutes of Sir T. Munro,' Vol. I, p. 254), and like the latter raiyat the former raiyat, in the absence of proof of contract or of special or local usage to the contrary, is entitled to occupy his lands so long as he pays what is due, and if he should commit any default in this or other respect, until he is evicted by the processes provided by law.

The decree of the lower appellate Court is right; the second appeal fails and is dismissed with costs.

The memorandum of objections is also dismissed with costs.