the date of the sale and that the suit was barred by limitation. I reverse the decree of the Subordinate Judge and direct him to restore the case to his file and dispose of it according to law Costs to abide the result.

SUBBAROYA v. RAJAGOPALA.

SESHAGIRI AYYAR, J.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Seshagiri Ayyar.

UPADRASTA VENKATA SASTRULU (PLAINTIFF), APPELLANT IN ALL,

v.

DIVI SITARAMUDU AND EIGHTEEN OTHERS (DEFENDANTS), RESPONDENTS.*

1912. September 23 and 27 and 1914. March 18.

Madras Estates Land Act (I of 1908), sec. 3, cl. (2) (d); sec. 8, excep.—Grant of village as inam—Village composed of cultivated lands and waste lands—Grant of melvaram—Tenant of waste lands, without occupancy right—Village, an estate—Surrender by tenant—No acquisition of kudivaram by Inamdar—Suit in ejectment—Jurisdiction of Civil Courts.

A village, granted as an inam in A.D. 1748, was comprised at the time of the grant partly of lands under cultivation and party lof waste lands. The waste lands were subsequently given by the inamdar for cultivation from time to time to different sets of tenants without occupancy right. The inamdar brought the present suit in the Civil Court to eject the tenant whose period of tenancy had expired prior to the suit. The defendant contended that the Civil Court had no jurisdiction to entertain the suit.

Held, that the village as a whole must be considered to be an 'estate' within the definition of section 3, clause (2) (*d*) of the Estates Land Act.

Surrender by a tenant is not one of the modes in which the kudivaram right can be acquired by an inamdar within the terms of the exception to section 8 of the Estates Land Act.

An inamdar cannot acquire the kudivaram right by surrender from a tenant who had himself no occupancy right in the holding.

Held, consequently, that the Civil Court had no jurisdiction to entertain the suit.

APPEALS against the orders of F. A. COLERIDGE, the Acting District Judge of Kistna, in Appeals Nos. 293 to 392 and 432 of 1910,

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* Appeals Against Orders Nos. 186 to 196 of 1911.

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respectively, preferred against the decree of A. VENKATARAMAYYA, the District Munsif of Gudivada, in Original Suits Nos. 453 to 460, 462, 463 and 461 of 1908, respectively.

The facts of the case appear from the judgment of SADASIVA AYYAR, J.

M. O. Parthasarathi Ayyangar for the Honourable Mr. *P. S. Sivaswami Ayyar*, *V. Ramesam* and *P. Nagabhushanam* for the appellant.

S. Srinivasa Ayyangar and *V. Ramadoss* for the respondents.

These appeals came on for hearing before SUNDARA AYYAR and SADASIVA AYYAR, JJ., who passed the following.

SUNDARA AYYAR AND SADASIVA AYYAR, JJ.

ORDER—Before disposing of these appeals we consider it desirable to have findings on the following points :—

(1) Whether the land in question in each of these suits was waste land or cultivated land at the time of the grant of the inam, and

(2) whether at the time of the letting to the defendant in each suit the kudivaram over the land in the suit had been acquired by the inamdars.

Both parties may adduce fresh evidence. The findings should be submitted within three months from the date of receipt of this order in the Court below and the parties will be at liberty to file memoranda of objections to the said findings within seven days after notice of return of the same shall have been posted up in this Court.

In compliance with the above order the District Judge of Kistna submitted the following findings : viz., on the first issue, that the lands were waste, as claimed by plaintiff, at the time of the grant and on the second issue, that the kudivaram over the land in the suit had not been acquired by the inamdars at the time of the letting to the defendant in each suit.

These appeals coming on for final hearing after the return of the findings of the Lower Appellate Court, the Courts delivered the following judgments :—

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—Plaintiff is the appellant. He is an inamdar of a village called Billapadu, the inam grant having been made so long ago as 1748. That village was then a Mouje village, that is, a village in which there were peasant proprietors owning cultivable lands even then. The suit relates to 60 acres out of the 300 acres in that village. For the purposes of this

case, it must be taken that these 60 acres were lying as immemorial waste at the time of the inam grant to plaintiff's ancestors. It is further found by the lower Appellate Court that these lands were afterwards given by the inamdar for cultivation from time to time to different sets of tenants without occupancy right. Paragraph 7 of the plaint says : " In fasli 1317 the plaintiff changed the tenant who was in possession prior to that time and leased the schedule-mentioned lands to the defendants for only a year." Treating the one year's tenancy as having expired on the 1st of April 1908, the suit was brought to eject the defendants in the District Munsif's Court of Gudivada.

The preliminary contention raised by the defendants was that, as the plaintiff's inam was an estate falling under section 3, clause (2) (*d*) of the Madras Estates Land Act, the Civil Court had no jurisdiction to entertain a suit for the ejectment of defendants from the plaint lands which are ryoti lands in the inam estate. The plaintiff's reply to this contention of the defendants seems to be that the inam itself is not an " estate " under the Estates Land Act, and even if the inam is an estate, these 60 acres either never formed part of the estate or had ceased to form part of the estate and hence the jurisdiction of the Civil Courts had not been taken away.

It has been held in numerous cases that, when a whole village is granted to a non-resident Brahman as inam, the presumption is that the grant is only the grant of the melvaram right. The grant of the melvaram right means that the grantee is to receive the melvaram revenue from the peasant proprietors who are already in the enjoyment of the cultivated lands in the village and that, as regards the waste lands in the village, he is entitled to create further melvaram revenue for himself by letting them to cultivating tenants. The District Munsif gave a decree for the plaintiffs in this case, but the District Judge on appeal held that the Civil Court's jurisdiction was ousted as the plaint lands were part of an " estate " and that the lands have continued to be ryoti lands in the estate, the plaintiff's ancestor (the grantee) not having been a holder of the kudivaram at the time of the grant of the melvaram to him. I think that the learned District Judge was right in his conclusions, and that his order directing the plaint to be presented to the Revenue Court is correct.

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The appellant's learned advocate relied upon the observations found in *Lakshmi Narasimha Row* v. *Sitaramaswami*(1) and some similar observations in later cases. I don't think these cases go beyond this point, namely, that if it is proved that at the time of the grant of a whole village in inam all the lands in that village were lying waste or if it is proved that at the time of the grant of certain defined extent of lands in a village (such a grant being called a minor inam grant), that extent of land so granted as minor inam was lying waste, the grant might be deemed in either case to be not of the melwaram alone in such waste lands but of the kudivaram also. In such a case, of course, even the whole village so granted will not fall under the definition of "estate" in section 3, clause (2) (*d*), because that section relates to cases where the grant was of the melvaram *alone*. Were the entire lands themselves in the village, as they were lying waste, were granted in inam, it cannot, of course, be said to be a grant of the melvaram alone. But the present case is not such a case. Here the only thing admitted by the defendants is that about 20 per cent of the lands lay waste when the whole village was granted in inam. I do not think that in such a case, the mere fact that there were some immemorial waste lands situated in the village granted as inam, could remove the village itself from the definition of "estate" or that it can be held that the waste lands never formed part of the estate and were granted on a different footing from the grant of the remaining lands. Just as the private home-farm lands of an inamdar continue to be part of the estate, though no tenants have got any kudivaram right in them, so the immemorial waste in an estate does form part of the estate, provided that the grant of the village was intended to be only the grant of the melvaram right in the village lands. Where the Government or a Zamindar grants a whole village, some lands in which are lying waste but most of the lands in which are under cultivation, I think that the usual presumption prevails that the grant of the village in general terms means only the grant of the melvaram in the whole village lands including the waste lands. The inamdar, so far as the waste lands are concerned, cannot be considered to have the kudivaram right in them though he could create kudivaram

(1) (1913) 24 M.L.J., 288 at p. 290.

interest in a waste land by letting it to a cultivator and could have (before the Estates Land Act) *converted* it into a private land by cultivating it through his home-farm servants and thus got the kudivaram right vested in himself. Till he does either of these things, the lands would lie waste, *owned* by the inamdar, no doubt, in a certain sense (which is not at all an unreal sense) but he cannot be said to have the kudivaram right in it, kudivaram implying direct contact by cultivation with the soil. I do not feel myself much impressed with the argument based on logic that the kudivaram in a waste land must belong to somebody and, as regards immemorial waste, it must be with the landlord. This argument if pressed to its logical limit, would lead to the conclusion that when a ryoti-land is abandoned by the tenant, it becomes at once private or home-farm land as the kudivaram right till then existing in the tenant became joined in the landlord with the melvaram right and he became the owner of it to the same extent as he is of the private home-farm land in which land both such rights admittedly combine. The kudivaram might even be admitted to be vested in a sense in the landholder in ryoti lands abandoned by the former tenant if it is necessary to admit that proposition in order to support his right to grant the kudivaram right to any person he likes after the abandonment by the former tenant of the said lands but that does not vest absolutely in him according to the common law governing the rights of zamindars and tenants (and now according to the Madras Estates Land Act), in such a way that what was ryoti land became converted into the landholder's private land. Whether this state of things is logical or not, it has been accepted by the Legislature and I think Courts of Justice are under a duty to advance the views of the Legislature as clearly expressed in the Estates Land Act, namely, that the kudivaram interest in ryoti lands should, if possible, be prevented from so permanently vesting in the landlord as to convert them into his private or home-farm lands.

I think it must be admitted that the judgment of MILLER, J., in *Ponnusami Padayachi* v. *Karuppudayan*(1), goes to the length of holding that a land which is not the private or home-farm land of the inamdar ceases to be part of the estate if no

(1) (1914) 1 M.L.W., 218 ; s.c., 26 M.L.J., 285.

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tenant holds permanent occupancy right therein. With the greatest respect, it seems to me that if even private or home-farm land continues to be part of the estate (though the kudivaram right in it admittedly belongs to the inamdar), the mere fact that no tenant is able to prove that he has a permanent occupancy right in a ryoti land cannot make it cease to be part of the estate. SPENCER, J., in that same case expressed a different view at page 225 and he did not accept the contention that all lands in which no tenant proves a permanent occupancy right in an estate falling under section 3, clause 2 (*d*) cease to form part of the estate (see the penultimate paragraph of the judgment of SPENCER, J.). I think *Ponnusami Padayachi* v. *Karuppudayan*(1), is binding authority only for the proposition that a suit for the ejectment of a tenant of old waste who has no occupancy right and who holds under an unexpired lease granted before the Estates Land Act can be brought *in a Civil Court* provided the suit is not based on one of the grounds mentioned in section 153, clauses (*a*) to (*e*) of the Estates Land Act.

While the Legislature was not at all anxious to see that home-farm lands are not converted into ryoti lands but was rather anxious the other way (see the proviso to section 81 of the Estates Land Act), the Legislature has taken great care in section 185 to restrict the claim of the landlord to treat lands in an estate as private lands; it has raised a strong presumption in favour of lands being ryoti lands (section 23) and it has expressly enacted that the merger of the occupancy right in the landholder even by transfer or succession shall not convert ryoti land into private land (section 8, clause 3). If even a merger by transfer or succession cannot convert ryoti into private land, merger by abandonment or surrender (supposing such a merger can take place) cannot *a fortiori*, so convert it (see also section 6, clause 2). I have held in *Suryanarayana* v. *Potannah*(2) following *Badan Chandra Das* v. *Rajeswari Debya*(3), and *Muktakeshi Dasi* v. *Pulin Behary Singh*(4) that acquisition by the landholder of the kudivaram by surrender or abandonment of the land by the tenant cannot remove the tenant's lands from the definition of an "estate" even when the "estate" was one

(1) (1914) 1 M.L.W., 218; s.c. 26 M.L.J., 285.
(2) (1914) 26 M.L.J., 99.
(3) (1905) 2 C.L.J., 570.
(4) (1908) 8 C.L.J., 324.

falling under section 3, clause 2(*d*). As regards all other kinds of estates, the intention of the Legislature is quite clear and the exception to section 8 should therefore be strictly confined to the narrowest limits. The lower Appellate Court's conclusion, therefore, that so far as the plaint village, that is, the village, as a whole, is concerned, the land revenue alone was granted in inam to a person not owning the kudivaram thereof is correct. The village is an estate under section 3, clause 1 (*d*) of the Estates Land Act, and the 60 acres in dispute is part of the estate. Even immemorial waste lands in an estate are ryoti lands unless they are proved to come under the peculiar definition of "old waste" or unless they are proved to be private lands (section 23 of the Estates Land Act). In *Ramchandra* v. *Venkatrao*(1) and *Rajya* v. *Balkrishna Gangadhar*(2), it was held that an inamdar could not be held to have the same rights in the soil of immemorial waste lands as a kudivaramdar has in the soil of his holding, though the inamdar had the right to convert any portion of the immemorial waste into home-farm lands, that is, has the right to get kudivaram and occupancy rights by actual cultivation. I would, therefore, hold that the plaint lands were ryoti lands and not the private lands of the inamdar-landholder at the time of and immediately after the inam grant.

When the inamdar afterwards granted the lands for cultivation without giving the cultivators permanent occupancy rights (but only the rights to occupancy for one year or from year to year or a specified number of years) and when he changed the cultivators from time to time, it cannot be said that thereby the inamdar himself got any permanent occupancy or kudivaram right in the land as there is no evidence to prove that he let them expressly as his private or home-farm lands. The occupancy right (that is, the right to occupy and cultivate) was enjoyed by the cultivating tenants from time to time though they did not get a permanent occupancy right thereby. The contention that by the surrender of the land by the predecessor of the defendants to the inamdars, the inamdar got permanent occupancy or kudivaram rights under the exception to section 8 of the Estates Land Act is untenable both for the reasons

(1) (1882) I.L.R., 6 Bom., 598 at p. 603.
(2) (1905) I.L.R., 29 Bom., 415 at p. 420.

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mentioned in my judgment in *Suryanarayana* v. *Potannah*(1), and also for the reason stated by the learned District Judge on the facts of this case, namely, that even if the surrender by the tenant be equivalent to a transfer of the tenant's right to the landlord, the tenant who surrendered had himself no permanent occupancy or kudivaram right to transfer to the landlord. The judgment of my brother TYABJI, J., in the recent cases, *Buchi Saravagarudu Garu* v. *Venkata Raju*(2) and *Ardajeri Rama Reddi* v. *Karpi Sivaga*(3) have decided that so far as ryoti lands are concerned a suit for ejectment of a tenant by a landholder on any ground could be brought only in the Revenue Court. In the result, I would therefore dismiss these Civil Miscellaneous Appeals without costs.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—The question for decision in these cases is whether the Civil Courts have jurisdiction to entertain the suits. My conclusions are based on the pleadings in the case and on the admission of the parties; any pronouncement made regarding the rights of the plaintiff and the defendants on this preliminary issue will not conclude parties at the further hearing of the case by the proper tribunal. The facts of the case in so far as they are material for the determination of this point are these. The village in question consists of 300 acres. It was granted to the ancestors of the plaintiffs in 1748. Of these, 60 acres were uncultivated and were lying waste. The remaining 240 acres must be taken for purposes of this case to have been under the occupation of tenants who had permanent rights. The present litigation relates to the 60 acres which were waste at the time of the grant. If the village is an *estate* then the Civil Courts have no jurisdiction to entertain this suit; otherwise this suit was rightly instituted. This is an inam village and as such it comes under section 3, clause 2 (*d*) of the Estates Land Act. There is no doubt that the entire land revenue of the village was granted to the plaintiff at the time of the grant. But there was a portion on which no land revenue was due because it was waste land. I do not think that should make any difference. It is true that the language of the definition seems to suggest that nothing but land revenue should

(1) (1914) 26 M L.J., 99. (2) (1913) 21 I.C., 913.
(3) (1913) 21 I.C., 916.

have been granted if the village is to be regarded as an estate. The fact that upon a portion of the village no land revenue was due is not enough to conclude that the grant of the inam was not an estate. In coming to this conclusion I have not lost sight of the suggestion made by the learned counsel who appeared for the appellant that the grant of rights in the waste land must include the kudivaram rights as well. I think there is a great deal of force in that argument.

It was argued by Mr. Srinivasa Ayyangar that where a grant is of unoccupied waste land, all that the grantee acquires is a right to annex it to his home-farm land by doing certain acts indicative of his intention to do so, and that till then he acquires no higher rights in it than what he has in the lands occupied by permanent tenants. *Primâ facie* the grant of the soil comprises all there is in it. The potentiality of a tenant acquiring occupancy rights may be there, but that will not derogate from the grantee having full rights in the soil at the time of the grant. The history of legislation in this country, of which we are bound to take judicial notice, shows that the right in the soil vests in the paramount power. It may be open to argument when a particular legislation comes to be tested before a court of law whether such an assumption is well-founded. Till the Legislature makes a departure, Courts are bound to proceed on the assumption that the right in the soil is in the Government. This is based on the theory that the ancient sovereigns of this country had similar rights. In that view, I must hold that the grant of the village in 1748 included the right to such revenue or rent as the grantor had in the village, plus the full rights in those unoccupied portions of the village in which the tenants had no permanent rights of occupancy. My conclusion therefore is that in 1748 the grantee acquired both the kudivaram and melvaram rights in the 60 acres, and the rights of the melvaramdar alone in the remaining 240 acres. Even in this view, I must hold that the village that was granted in 1748 was an estate under the Estates Land Act. The use of the word *alone* in the section in qualifying *land revenue* is somewhat misleading. What the Legislature meant to lay down was that no kudivaram rights should have been granted in the lands which were under the occupancy of tenants; any other construction would lead to difficulties. Supposing the boundaries of a grant included, as it always does, a few

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stray acres of waste land and some poramboke ; in all such cases, if Mr. Parthasarathi Ayyangar's contention were upheld, there will be no grant of an estate. In order to bring a case within section 3, clause 2 (*d*) all that need be proved is (1) that the entire land revenue or rent which the grantor was entitled to in the village was transferred, (2) and that the grantee had not the kudivaram of the village as a whole. In the present case both these conditions are found. I have therefore come to the conclusion that the village is an estate. The jurisdiction of the Civil Courts would be taken away unless the plaintiff can show that he is entitled to the exception to section 8 of the Estates Land Act.

We have heard very full arguments upon the construction of this exception both from Mr. Srinivasa Ayyangar for the defendant and from Mr. Ramesam for the plaintiff. The plaintiff must show in order to claim the exception that he had acquired the kudivaram right since the grant. The fact that the right was given to him by the grant will not be enough because he has to show the right inhered in him at the time of the suit. The question is whether by surrender at the end of fasli 1316 by the then tenants the plaintiff acquired the kudivaram right. It is found by the District Judge in paragraph 4 of his finding that the tenants had no occupancy rights at the time of the surrender. Therefore any surrender by them could not enlarge the rights of the plaintiff. Secondly it is doubtful whether the exception contemplates the acquisition of kudivaram rights by surrender. Clause 1 of that section speaks of the union of the rights of the landlord and tenant by transfer, succession or *otherwise*. Unless the word "otherwise" includes cases of surrender, the exception will not avail the plaintiff. In considering a similar clause in the Bengal Tenancy Act, it was held in *Badan Chandra Das* v. *Rajeswari Debya*(1) and *Muktakeshi Dasi* v. *Pulin Behary Singh*(2) that surrender is not *ejusdem generis* with transfer and succession. The same view was taken by Mr. Justice SADASIVA AYYAR in *Suryanarayana* v. *Potannah*(3). In *Ponnusami Padayachi* v. *Karuppudayan*(4), Mr. Justice MILLER has taken a different view. In this state of authorities I

(1) (1905) 2 C.L.J., 570. (2) (1908) 8 C.L.J., 324.
(3) (1914) 26 M.L.J., 99. (4) (1914) M.L.W., 218; s.c., 26 M.L.J., 285.

have to find out whether surrender is analogous to transfer or succession. In Blackstone's Abridgment it is stated that in order that a surrender may clothe the surrenderee with all the rights of the surrenderor there should be acceptance by the former. In *Oastler* v. *Henderson*(1) the plaintiff had let a house to defendant for seven years from 1868. In December of that year the defendant surrendered the keys to the plaintiff. The plaintiff employed agents to advertise the house for letting, but it was not until 1872 that he was able to get a new tenant. In 1870, for a short time, some workmen of the plaintiff occupied two rooms in the house for the purposes of plaintiff's business. The plaintiff sued the defendant for rent from December 1868 to 1872. The defence was that there was a valid surrender and that the acts of the plaintiff amounted to an unequivocal acceptance of the remaining term and consequently defendant was not liable to pay rent. The Lords Justices refused to uphold this contention. COCKBURN, C.J., says that the plaintiff had not taken possession of the premises; "and in order to estop the lessors, so as to constitute a surrender by operation of law, there must be a taking of possession. The plaintiffs (the landlords) took the keys because they could not help themselves, the defendant being gone. Then they try to let the house. The landlords did nothing but what they might reasonably be expected to do under the circumstances for the benefit of all parties." He concludes by saying that the occupation for short periods by plaintiffs' tenants did not manifest an intention not to hold the defendant to his lease. Lord Justice BRETT says: "If after the agreement the landlord actually takes possession or does what virtually amounts to it, if he not only attempts to let but actually does let, then there is a palpable act done with regard to the premises raising an estoppel within the rule laid down in *Nicholls* v. *Altherstone*(2) following *Lyon* v. *Reed*(3). It seems to me that there was no act done amounting to an estoppel prior to March 1872." The view taken is that the mere delivering up does not take away the liabilities of the one nor add to the rights of the other, some overt act calculated to show that the surrenderee has exercised dominion over the property, and has added it on to his

(1) (1877) 2 Q.B.D., 575, at pp. 579 and 580.

(2) (1847) 16 L.J. (Q.B.), 371. (3) (1844) 13 M. & W., 285.

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estate is necessary. Some act has also to be done by way of putting an end to the tenancy. This conclusion derives support from the decision in *Cheekati Zamindar* v. *Ranasooru Dhora*(1), where Mr. Justice SUBRAHMANYA AYYAR says: "For in the case of lands which have been relinquished by the former occupants or which have been lying waste from time immemorial, they too, when taken up by a raiyat, are treated exactly on the same footing as land into the possession of which it is not shown that the raiyat was let in by a Zamindar, and the raiyat holds possession of them for an indefinite period."

In my opinion surrender *ipso facto* is not a mode of acquisition and has not the same effect in conferring rights as transfer or succession. Consequently the word *otherwise* will not include a surrender, because that will be obnoxious to the principle of construing words *ejusdem generis*.

My conclusion is that the plaintiff is not entitled to the benefit of the exception to section 8, and the village is an *estate*, and as such the Civil Courts have no jurisdiction to entertain the present suits. I would make no order as to costs.

(1) (1900) I.L.R., 23 Mad., 318 at p. 324.

K.R.