# APPELLATE CIVIL.

*Before Mr. Justice Miller and Mr. Justice Spencer.*

PONNUSAMY PADAYACHI AND ANOTHER (DEFENDANTS NOS. 2 AND 3), APPELLANTS,

1914. January 9, 16 and 27.

*v.*

KARUPPUDAYAN AND ANOTHER (PLAINTIFF AND FIRST DEFENDANT), RESPONDENTS.*

*Madras Estates Land Act (I of 1908), sec. 8, excep.; sec. 153, proviso; ss. 157 and 163—Shrotriemdar—Right to kudivaram, presumption as to—Acquisition of kudivaram right—Surrender or abandonment, effect of—Suit in ejectment—Jurisdiction of Civil or Revenue Courts—Tenant for a term—Tenant in possession after expiry of term—No subsequent recognition by landholder as tenant, effect of—Trespasser.*

The plaintiff, who was the shrotriemdar of a certain village brought a suit in the Civil Court to eject the defendant who was a tenant of some lands forming old waste under a lease for a period of three years which had expired before the Madras Estates Land Act came into force. It was found that the defendant had no occupancy right in the holding, and that he was not recognised as a tenant by the landholder after the expiry of the period of the lease. The defendant contended that the Civil Court had no jurisdiction to entertain the suit.

*Held*, that the Civil Court had jurisdiction to entertain the suit.

*Per* MILLER, J.—Surrender or abandonment by the tenant is one of the modes in which the landholder can acquire the kudivaram right so as to attract the provisions of the exception to section 8 of the Estates Land Act.

When it is found that a tenant has no occupancy right in his holding and that the land is not private land, the presumption is that the occupancy right is in the landholder either by the original grant or by prior or subsequent acquisition.

*Per* SPENCER, J.—The provisions of section 153 of the Estates Land Act are not exhaustive of all possible cases of eviction; cases of eviction of tenants under leases for terms not exceeding five years are taken out of the Act by the proviso to section 153 and consequently out of the jurisdiction of the Revenue Courts.

A tenant in possession after the expiry of his term, who has not been recognised by the landholder as a tenant subsequent thereto, is a trespasser within the meaning of section 163 of the Act, and consequently a suit in ejectment can be instituted against him in a Civil Court.

SECOND APPEAL against the decree of F. H. HAMNETT, the District Judge of South Arcot, in Appeal No. 64 of 1912, preferred

* Second Appeal No. 366 of 1913.

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against the decree of S. RAGHAVA AYYANGAR, the District Munsif of Vridhachalam, in Original Suit No. 1840 of 1910.

The facts of the case appear from the judgment of SPENCER, J.

The Honourable Mr. *L. A. Govindaraghava Ayyar* for the appellants.

*C. V. Anantakrishna Ayyar* for the first respondent.

MILLER, J.

MILLER, J.—Mr. C. V. Anantakrishna Ayyar, vakil for the first respondent, does not support the view of the case taken by the District Judge, but argues that the land in question is not part of an estate within the meaning of the Madras Estates Land Act, and contends also conceding that the position of the second defendant is that of a ryot of old waste, that by virtue of the proviso to section 153 of the Madras Estates Land Act the jurisdiction of the Civil Courts is nevertheless not ousted. Mr. L. A. Govindaraghava Ayyar, vakil for the appellants, accepting as the position of his clients that of a non-occupancy ryot, being a ryot of old waste, argues on the strength of *Atchaparaju* v. *Krishnayachendralu*(1) that section 157 nullifies the effect of the proviso to section 153 which otherwise would, he concedes, be applicable to the facts of the case and so would save the jurisdiction of the Civil Ccourt. The District Judge has not decided the question whether the land is or is not part of an estate and the District Munsif has decided that it is part of an estate. I am of opinion that on the fact found and not now contested, that the second defendant has no occupancy right, the presumption arises that the occupancy right was either granted to or acquired by the inamdar. That presumption was the basis of the finding of the Subordinate Judge of Tanjore in *Rajaram Rao* v. *Sundaram Aiyar*(2), and was, as I understand, the judgment of SANKARAN NAIR, J., in that case accepted in this Court as sufficient to attract to the case the exception to section 8 of the Madras Estates Land Act.

It is argued here on the strength of certain cases in Bombay that if we presume, as we must in this case presume, the original grant to have been the grant of the revenue only, the fact that the occupant has no occupancy right is not sufficient to show that the inamdar has acquired that right. These cases do not

(1) (1913) 24 M.L.J., 402. (2) (1910) M.W.N., 566.

support that contention. In *Ramchandra* v. *Venkatrao*(1), it is said that the *saranjamdar* may deal with unoccupied lands and cultivate it by himself or through tenants not as grantee of the soil but for purposes of revenue, and that observation is explained in *Ganpatrav Trimbak Patwardhan* v. *Ganesh Baji Bhat*(2), as equivalent to a decision that the *saranjamdar* may acquire occupancy rights which would be unaffected by the resumption of the grant. Far from supporting the appellants this latter case supports the view taken by the Subordinate Judge in *Rajaram Rao* v. *Sundaram Aiyar*(3). The other case is *Rajya* v. *Balkrishna Gangadhar*(4), where it is pointed out at page 420 that lands unoccupied at the time of the grant would be *sheri*, that is, as I understand it private land [vide *Garpatrav Trimbak Patwardhan* v. *Ganesh Baji Bhat*(2)], and if that is so, the case does not help the appellants. It seems to me that these cases support the view that when it is found that a tenant has no occupancy right in his holding, and the land is not private land, the presumption is that the occupancy right is in the landholder either by the original grant or by prior or subsequent acquisition. It is argued that under the exception to section 8 of the Madras Estates Land Act, the landholder must be shown to have acquired the occupancy right in some particular way, but I cannot accede to that argument: I agree with the view taken upon that point by SPENCER, J., in *Suryanarayana* v. *Patamna*(5). It is, I think, an unsafe method of construing the statute to restrict the meaning of the word 'acquire' in the exception to section 8, merely on the ground that in section 6 (2) and for the purposes of that section, the Legislature does not permit the landholder before the lapse of ten years indefeasibly to acquire the occupancy right in land abandoned or surrendered. The exception to section 8 is referred to in section 6 (2) and the effect of that may be that in construing section 6 (2) we shall have to exclude surrender and abandonment from the methods of acquisition by which a landholder may at once acquire indefeasibly an occupancy right, but that does not appear to me to afford a reason for restricting

(1) (1882) I.L.R., 6 Bom., 598 at p. 608.
(2) (1886) I.L.R., 10 Bom., 112 at p. 117. (3) (1910) M.W.N., 566.
(4) (1905) I.L.R., 29 Bom., 415. (5) (1915) I.L.R., 38 Mad., 608.

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the meaning of the word 'acquire' when the context does not compel us to do so. In the present case, we have to take it that the inam is one to which section 3 (2) (*d*) applies and consequently that there is a kudivaram right in the land. That kudivaram right must be in some one, and it is not shown to be in any third party: it is, *ex concessis*, not in the second defendant, it must, therefore, so far as I can see, be in the landholder: that is, for our purpose in the plaintiff and if we cannot, in the circumstances, hold that it was granted to him along with the melvaram or that he had it before the grant (in either of those cases the second defendant is out of Court), it follows to my mind that he has acquired it since the grant. The land is therefore not part of an estate and it is not contended that on the merits the second defendant has any claim to remain in possession. On this ground, and without deciding the other questions, I would dismiss the Second Appeal with costs.

SPENCER, J.

SPENCER, J.—The first appellant is a tenant of old waste in a shrotriem village within one of the meanings of clause 7 of section 3 of the Madras Estates Land Act, that is, he occupies ryoti land in respect of which before the passing of the Act the landholder had obtained a final decree of a competent Civil Court establishing that the ryot had no occupancy right. I take the words "final decree" to mean what the Full Bench in *Gorakala Kanakayya* v. *Janardana Padhi*(1) decided they meant, viz., a decree which has ceased to be liable to be modified on appeal, and I refer to the judgments filed as G series K and L.

In fact first appellant's pleader does not now contend that his client possesses any occupancy right.

Exhibit $C_2$ is the counterpart of a lease for three years executed by second defendant to the landholder on May 15th, 1905. It expired on May 15th, 1908, but on its expiry the tenant held over. The Madras Estates Land Act came into force on July 1st, 1908. No right of occupancy accrued to him as being in possession at the date of the introduction of the Act by virtue of section 6, because that section especially excepts old waste.

The question is whether the first appellant is liable to be evicted, and if so, whether the first respondent can obtain his remedy in a Civil Court. I take it that the first respondent

(1) (1910) M.W.N., 841.

(plaintiff) who purchased this land under Exhibit A, a sale-deed of August 2nd, 1908, from second respondent, had no power of evicting tenants which the second respondent did not himself possess previously. Certain powers are given to landholders under section 153 of the Act of evicting non-occupancy ryots and No. 19, part A of Schedule to the Madras Estates Land Act, shows that suits to enforce those powers must be brought in a Revenue Court. The present case does not fall under any of the grounds detailed in the body of that section. The District Munsif held, I think rightly, that the proviso to section 153 has the effect of taking the case of non-occupancy ryots holding under an expired lease granted before the Act out of the jurisdiction of the Collector's Court. This proviso runs thus:—

"Nothing in this section shall affect the liability of any "person who is a non-occupancy ryot according to the provi- "sions of this Act to be ejected on the ground of expiry of the "term of a lease granted before the commencement of this Act."

It is plain that the provisions of section 153 are not exhaustive of all possible cases of eviction. Clause *(e)*, for instance, provides for tenants under leases for more than 5 years holding over. There is no provision for tenants under shorter leases holding over. It is absurd to suppose that the legislature intended to favour persons on short tenure more than those on long tenure and to protect the former class from eviction under any circumstances. For such persons there exist the general provisions of law, among which one is that on the determination of a lease the lessee is bound to put the lessor into possession of the property. Section 19 of the Act shows that its provisions were not intended to be exhaustive of all the relations of landlord and tenant.

When the Bill was being passed into law there was a discussion whether the Revenue Courts were not usurping too many of the powers of the ordinary Civil Courts of ejecting trespassers, among whom were included persons occupying ryoti land otherwise than by inheritance or legal transfer and without being admitted as ryots. (See pages 500—507, *Fort St. George Gazette* of March 17, 1908.) The introducer of the Amendment Bill explained the necessity for meeting the case of tenants under a lease for a term not exceeding five years holding over after its expiry. Such cases were therefore by the proviso

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taken out of the Act, and consequently out of the jurisdiction of Revenue Courts also. (See pages 4-5 of the Proceedings of the Council of Fort St. George, 1909, Vol. 37.)

SPENCER, J.

I proceed to consider whether the appellant can claim the benefit of any other sections of the Act which were relied on. Section 9 is a general section. It simply declares that no landholder shall, as such, be entitled to eject a ryot from his holding or any part thereof otherwise than in accordance with the provisions of this Act. For instance, a ryot cannot under this Act be ejected for non-payment of rent as he might be under the Repealed Act VIII of 1865. This section cannot be construed as overriding section 163 and the proviso to section 153. Section 151 deals with ejectment for damaging the holding which is not the case here.

Section 157 is designed to prevent tenants of old waste from contracting themselves out of their right to remain in possession so long as they have not given cause under other provisions of the Act to their landholder to eject them. Such was the case dealt with in *Atchaparaju* v. *Krishnayachendralu*(1). The decision first states the effect of the proviso "to section 153 was of course to entitle a landholder to eject a non-occupancy ryot on the ground of the expiry of a lease granted before the passing of this Act." It proceeds to state that section 153 does not make the expiry of the lease a ground of ejectment. A perusal of clause (*e*) of section 153 will show this observation to be incorrect. I do not feel sure that the learned Judges meant that the effect of section 157 was completely to nullify the proviso to section 153. If they intended to declare that independently of any contract a ryot of old waste whose term has expired cannot by any means or in any circumstances be ejected, then I must respectfully dissent. If it were true that section 157 nullifies the proviso to section 153, then the Amending Act (Madras Act IV of 1909) would have partly failed in its aim. I consider that it does not nullify it. It only prohibits a tenant of old waste being ejected 'as such,' even if he has signed an agreement to quit. Section 157 makes an exception of the grounds mentioned in section 153; and the proviso to section

(1) (1913) 24 M.L.J., 402.

153, though enacted later, must be taken to be an integral part of the section.

Section 163 allows a landholder to treat any person who occupies ryoti land in an estate otherwise than by inheritance or legal transfer as a trespasser and to eject him by suit in the Civil Court, provided that he has not been admitted as a ryot by the landholder. The first appellant in the present case maintains that he does not come under the description of one who 'has not been admitted as a ryot by the landholder,' seeing that he once cultivated cultivable land other than private land under a lease from second respondent.

The meaning of admitting a person to the possession of ryoti land appears from the explanation to section 6 of the Act to mean the acceptance by the landholder of any portion of the rent fixed for such land. A similar significance is attached by section 116 of the Transfer of Property Act to the Act accepting rent from a lessee. If sections 163, 45 and the explanation to section 6 of Madras Act I of 1908 be read together, it is obvious that a *quondam* tenant is not entitled to better treatment than a trespasser on the strength of payments made under leases that expired before the Act came into operation. For the position of tenants holding over after the expiry of their term reference may be made to *Vadapalli Narasimham* v. *Dronamraju Seetharamamurthy*(1). Any claim founded on such relationship of landlord and tenant in this case is open to the objection that there has been a break in its continuity. No proof has been offered that either the first or second respondent accepted any payments of rent from the first appellant after his lease expired. The District Munsif finds that he was not accepted as a tenant by the landlord. He observes, "It "is not pretended that first defendant accepted second defendant "as his tenant or in any way acquiesced in second defendant "holding the land." Therefore it appears that under section 163 also the present suit for eviction can be maintained in a Civil Court.

The District Judge held that under Exhibit A the second respondent only transferred the *kudivaram* right in the suit land. It is doubtful if this is the right construction to be placed on the

(1) (1908) I.L.R., 31 Mad., 163.

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document. But in the view now taken of section 163 and of the proviso to section 153 it is unnecessary to determine this point.

The first respondent's pleader has attempted to support the finding of the lower Courts on the ground that this is not an "estate" within the meaning of the Act but he has not succeeded in establishing this contention to my satisfaction. The question does not require discussion as the Second Appeal fails on other grounds. It should, in my opinion, be dismissed with costs.

K.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.*

1914. January 5, 6 and 28.

SUNDARAMBAL AMMAL AND ANOTHER (APPELLANTS IN SECOND APPEAL No. 1333 OF 1912 ON THE FILE OF THIS HIGH COURT), PETITIONERS,

*v.*

YOGAVANAGURUKKAL (RESPONDENT IN SECOND APPEAL No. 1333 OF 1912 ON THE FILE OF THIS HIGH COURT), RESPONDENT.*

*Civil Procedure Code (Act V of 1908), O. XXIII, r. 3—Lawful compromise—Hindu Law—Office of Archaka, alienation of—Custom, validity of—Disqualification of females to perform duties of—Right of females to inherit—Performance of duties by proxy—Public policy—Undue influence—Low price, effect of—Contract Act (IX of 1872), sec. 16, cl. 2.*

Where the parties to a suit instituted in respect of a half share in the *Archaka* miras in a Saivite temple, entered into a compromise during the pendency of a Second Appeal in the case, by which one of the parties alienated for a pecuniary benefit a portion of his right to the office in favour of the other party (who was a female), and the latter applied by a petition to the High Court to pass a decree in accordance with the compromise,

*Held*, that the compromise was not lawful and that no decree could be passed in accordance therewith under Order XXIII, rule 3, of the Civil Procedure Code.

*Per* SADASIVA AYYAR, J.—An alienation of a religious office by which the alienor gets a pecuniary benefit cannot be upheld, even if a custom is set up sanctioning such an alienation.

It is the settled custom that females by reason of their sex are permanently disqualified from performing the duties of an *Archaka* in a Saivite temple.

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* Civil Miscellaneous Petition No. 924 of 1913.