APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Napier.

SRIMATH KADAMBI JAGANNATHA CHARYULU AYYAVARLU (PLAINTIFF), APPELLANT,

1914. July 22 and 29.

v.

PIDIKITI KUTUMBARAYUDU AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Civil Courts—Jurisdiction, ouster of—Onus—Inam, grant of—Kudivaram right, ownership of.

A party seeking to oust the jurisdiction of ordinary Civil Courts must establish his right to do so.

Indety China Nagadu v. *Potu Konchi Venkatasubbayya* (1910) 1 M.W.N., 639 and *Virabhadrayya* v. *Sonti Venkanna* (1913) 24 M.L.J., 659, followed.

There is no presumption that an inamdar to whom an inam was granted was not owner of the kudivaram right at the date of the grant.

Venkata Sastrulu v. *Divi Sitaramudu* (1914) 26 M.L.J., 585 and *Ponnusamy Padayachi* v. *Karuppudayan* (1914) 26 M.L.J., 285, referred to.

Ref. 35 I.C. 121

APPEAL against the order of G. KODANDARAMANJULU, the temporary Subordinate Judge of Masulipatam, in Appeal No. 172 of 1912, preferred against the decree of S. NILAKANTAM, the Additional District Munsif of Masulipatam, in Original Suit No. 479 of 1910.

The plaintiff sued for ejectment of defendants from the suit-land and for recovery of profits, past and future ; the defendants set up rights of occupancy and pleaded that Civil Courts had no jurisdiction. The District Munsif found that the plaintiff was an agraharamdar and had both melvaram and kudivaram rights in the land and passed a decree as prayed for. The lower Appellate Court held that the "agraharam" fell under sub-clause (*d*) of section 3 of Estates Land Act and that the plaintiff's suit for ejectment or rent did not lie in a Civil Court and ordered the return of the plaint with the necessary endorsement for presentation to the proper Court. The plaintiff preferred this Civil Miscellaneous Appeal against the said order.

P. Nagabhushanam for the appellants.

P. Somasundaram for the respondents.

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* Appeal against Order No. 294 of 1913.

SRIMATH JAGANNATHA CHARYULU v. KUTUMBA-RAYUDU.

OLDFIELD AND NAPIER, JJ.

JUDGMENT.—The learned Subordinate Judge has held that the plaintiff, an agraharamdar, should have sued to eject his tenant the defendants, in a Revenue Court, not before the District Munsif, on the ground that the suit village is an estate. The appeal has been argued on the grounds that (1) the burden of proof regarding the character of the suit village was imposed on the plaintiff wrongly, (2) there was, in any case, a failure to consider material evidence.

The plaintiff does not rely on section 8, Estates Land Act; and the question therefore is only whether his village is an estate within the meaning of section 3 (2) (*d*); that is whether (1) the land revenue alone has been granted in inam, (2) the grantee was a person not owning the kudivaram. Now, if the nature of his tenure were under consideration with direct reference only to his right to sue in ejectment, there is no doubt that the authorities cited by the lower Court would have been in point and its conclusion correct. But the dispute at present is as to jurisdiction and as to it the first rule is that the party seeking to oust the jurisdiction of the ordinary Civil Courts must establish his right to do so. This is recognised in *Indety China Nagadu* v. *Potu Konchi Venkatasubbayya*(1) a case closely resembling the present and *Virabhadrayya* v. *Sonti Venkanna*(2). This rule is founded on clear and general considerations, and distinct reason must be required to justify departure from it. Of course, as observed in the second decision referred to, "an anomaly seems apparently to exist in the *onus* being placed on different parties in the same suit for the purpose of deciding the question of jurisdiction and for deciding the question of the landlord's right to eject." And this led one of the learned Judges in *Suryanarayana* v. *Potanna*(3) to describe this distribution as "a little too fine and far-fetched," whilst the other thought it necessary to explain it. In doing so he first, as I understand him, accepted the validity of the general rule, as above stated; but he then referred to the presumption "which Courts have recognised about grants from the Crown being grants of the revenue only" as sufficient to turn the scale in the defendant's favour in the absence of other ground for an affirmative

(1) (1910) 1 M.W.N., 639. (2) (1913) 24 M.L.J., 659.
(3) (1914) 26 M.L.J., 99.

conclusion. If this means only that proof or an admission of the inam character of the village will raise a presumption that the first requirement of section 3 (2) (*d*) has been complied with, i.e., that the grant was of the land revenue alone, it may be accepted. And it is probable that this interpretation is correct, since such a presumption was a sufficient ground of decision in the case then under disposal, one in which plaintiff relied only on pleas that his grant included both *melvaram* and *kudivaram* or in the alternative that he had subsequently acquired the latter. These alternatives alone were considered in *Venkata Sastrulu* v. *Sitaramudu*(1), and only the second of them in *Ponnusamy Padayachi* v. *Karuppudayan*(2), the judgment of MILLER, J., stating expressly that the first of them as well as the alternative relied on in the present case, and the plaintiff's ownership of the kudivaram prior to the grant, were negatived by the circumstances. All these cases in fact differed from the present because the question in them was only of the extent of the grant or the plaintiff's subsequent acquisition of the *kudivaram* not of its ownership at the date of the grant, regarding which plaintiff here admits nothing, arguing that it is for the defendant to prove that it was not his.

The reply attempted to this argument is that he point is covered by a presumption which must be drawn in the defendant's favour. But it has not been shown how such a presumption can be justified on its merits or supported by authority. On the merits it is not clear that there is any necessary or probable connection between the grant of an agraharam and the grantee's possession prior to it of any right in the land; and if it is contended that the reasons against presuming a grant of the *kudivaram* to non-resident Brahmans are valid also against a presumption that they did not own the kudivaram at its date, the answer is that in the present case the non-residence of the plaintiff's ancestor, the grantee, has yet to be proved and that, when the defendants have proved it, it will no doubt afford a ground of decision. As regards authority no recognition of the presumption proposed is to be found or is to be expected in the majority of the cases already referred to, since it was unnecessary for their decision. On the other hand the learned Judges

(1) (1914) 26 M.L.J., 585. (2) (1914) 26 M.L.J., 285.

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responsible for *Virabhadrayya* v. *Sonti Venkanna*(1) said : "It is not easy to hold that such a presumption is justifiable." And its legitimacy was negatived directly in *Indety China Nagadu* v. *Potu Konchi Venkatasubbayya*(2). Adequate reason for dissent from these two decisions has not been shown. The conclusion entailed is in accordance with *Indety China Nagadu* v. *Potu Konchi Venkatasubbayya*(2) that the lower Court erred in imposing the burden of proof on the plaintiff in respect of the second question arising under section 3 (2) (*d*), that relating to the ownerships of the kudivaram at the date of the grant of the inam.

The lower Court's decision must therefore be set a side. It must readmit the appeal and dispose of it in the light of the foregoing observations. Provision for costs in this Court will be made in its final decree in accordance with the result. In these circumstances it is unnecessary to deal with the other ground argued in this Court, that material evidence was not considered.

S.V.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Officiating Chief Justice, Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

1912. September 16, 17 and 26. 1913. April 4 and 1914. September 23 and 24 and October 6.

S. VEERARAGHAVA AYYAR (DEFENDANT), APPELLANT,

v.

J. D. MUGA SAIT (PLAINTIFF), RESPONDENT.*

Foreign decree, execution of, in British India—Competency of British Indian Courts to question the jurisdiction—Appearance to save property from seizure—Denial of jurisdiction and claim—Jurisdiction, submission to, whether voluntary.

It is competent to the executing Court to refuse execution of a foreign decree sought to be executed in British India under section 44 of the Code of Civil Procedure on the ground that such decree was passed without jurisdiction.

Submission is not voluntary if the appearance is made only to save property which is in the hands of a foreign tribunal.

Voinet v. *Barrett* (1885) 55 L.J.,Q.B.D., 39, *Guiard* v. *De Oleremont and Donner* (1914) 30 T.L.R., 511 and *Boissiere and Co.* v. *Brockner and Co.* (1889) 6 T.L.R., 85, followed.

Parry & Co. v. *Appasami Pillai* (1880) I.L.R., 2 Mad., 407, doubted.

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(1) (1913) 24 M.L.J., 659. (2) (1910) 1 M.W.N., 639.

* Letters Patent Appeal No. 71 of 1913.