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merits) from claiming interest after the date of the deposit in Court.

The decree will be drawn up accordingly and must give credit for the sum of Rs. 865 with costs and interest referred to by ODGERS, J.

Defendants will have the costs of the appeal.

N.R.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Phillips, Mr. Justice Krishnan and Mr. Justice Ramesam.

1923, May 18.

SUBBARAYADU (DEFENDANT), PETITIONER,

v.

RAMASWAMI AND TWO OTHERS (PLAINTIFFS) RESPONDENTS.*

Sec. 8, exception to, of Madras Estates Land Act (I of 1908)—"Acquired," meaning of—.

The word "acquired" in exception to section 8 of the Madras Estates Land Act includes a case of "surrender" of his right by the occupancy ryot to the inamdar; hence after such surrender the land ceases to be part of the estate and a suit for rent thereof in a Civil Court is competent. The words "or otherwise" in section 8 (1) of the Act are not *ejusdem generis* with "transfer" and "succession."

Per Cur. A case of "abandonment" stands on the same footing as "surrender."

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act, praying the High Court to revise the decree of K. SUNDARAM CHETTI, Subordinate Judge of Guntūr, in A.S. No. 44 of

* Civil Revision Petition No. 771 of 1923.

1922 preferred against the decree of P. M. SRINIVASA AYYANGAR, District Munsif of Tenali, in O. S. No. 1229 of 1919.

The plaintiffs as permanent lessees, under an inamdar, sued in 1919 in the District Munsif's Court of Tenali, the defendant, the tenant under the inamdar for arrears of rent for faslis 1327 and 1328. The defendants pleaded *inter alia* that the land was part of an estate and that a suit for rent therefor was cognizable only by a Revenue Court. The plaintiffs answered that there was a surrender of the occupancy right to the landholder in 1888 and that hence the land ceased to be part of the estate owing to exception to section 8 of the Madras Estates Land Act. Both the fact of the surrender and its legal effect were denied by the defendant. Both the District Munsif and the Subordinate Judge on appeal upheld the above contentions of the plaintiffs and gave a decree to the plaintiffs.

The defendant preferred this Revision Petition.

This petition coming on for hearing the Court (WALLACE and MADHAVAN NAYAR, JJ.) made the following

ORDER OF REFERENCE TO A FULL BENCH :—

WALLACE, J.—The point for decision in this case is whether the exception to section 8 of the Madras Estates Land Act applies to the surrender of the *kudivaram* right by a tenant to his landlord, leading to the result that the land ceases to be part of the estate. The unhappy wording of sections 8 and 6 of the Act makes the question a very difficult one to settle, and Benches of this Court have in consequence taken varying views on the meaning of the exception.

The wording of the section as it stands barely makes sense. A captious critic might contend that " shall cease to be part of the estate " means "shall cease to be an inam or the inamdar's property at all " which is absurd. It also seems absurd to speak of the acquisition by an inamdar of the *kudivaram* interest " *before* . . . the commencement of this Act "

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resulting in the land ceasing to be part of the estate, when *ex hypothesi* the Act and therefore the definition of "estate" under it were non-existent at the time of the acquisition. And this anomaly applies to the land in this case since the surrender was in 1888. I presume the language is meant to imply in a case of this kind that the land does not form part of the estate and therefore never was, and never can be, within the operation of the Act.

The real point, however, is whether such a surrender falls within the term "acquired" in the exception. It is argued on one side that "acquired" is confined to the modes of passing of the *kudivaram* right from the ryot to the landholder mentioned in the section (section 8), to which the exception is appended, that is, "transfer, succession or otherwise." It is contended on the other side that the phrase "or otherwise" will include a case of "surrender," and that, even if it does not, the language used in section 6 (2) implies that such a surrender is a method by which the landholder acquires an occupancy right with such effect that he can pass it on to a ryot. To this it is answered that "or otherwise" can only import a species of passing of the *kudivaram* right *ejusdem generis* with transfer or succession, and that the position of the phrase "surrendered or abandoned" in section 6 (2), in juxtaposition to "comes into the possession of the landholder," seems to imply that by surrender or abandonment, the *kudivaram* right does not come into the possession of a landholder but remains suspended in the air, until another ryot is admitted to the land, and that therefore these terms cannot be methods of acquisition of that right by an inamdar.

It must be admitted that the loose language employed in these sections gives plausibility to either view, and one has to decide the case rather on the broad principles of the sections than on their actual wording. Section 8 as a whole is obviously intended to cover cases in which the occupancy right is transferred to or comes into the possession of the landholder, and to prevent him in such cases from using that merger to destroy the character of the land as ryoti land. That is, a landlord is forbidden to become his own occupancy tenant. It was evidently considered that in normal cases the landholder would be bound to admit, and would admit, another ryot to the land, and that ryot would by the very fact of admission step into the occupancy right left, which the landholder is forbidden to

hold as such. But, there are certain exceptions to the rule. One is set out in sub-section (4) by way of giving the landholder some compensation for value spent before the passing of the Act on acquiring the *kudivaram* right, and by way of giving some effect to cases of succession both before and after the Act. The exception to the Act was, I think, intended to exempt inamdars alone among landholders from the application of this principle that the landholder cannot be his own occupancy tenant, and to permit him to be so when the rights of third parties were not adversely affected. The effect of the exception, whatever its language is to take what was ryoti land, in which the inamdar had not, *ex hypothesi*, the *kudivaram* right, out of the operation of the Act altogether, when the occupancy right had passed to the inamdar so that it ceased to be ryoti land and the inamdar could henceforth deal with it unhampered by any of the provisions of the Act.

That being so, there seems no obvious distinction in principle between the passing of the occupancy right from the ryot to the inamdar by sale, gift or succession and its passing by a deed of surrender. The test is obviously not the passing of consideration, because in a case of succession there is no consideration. Nor is it a deed of transfer or a voluntary act, because in the case of succession there may be no deed and in the case of an intestacy there is no voluntary act; I would hold then *prima facie* that when a ryot has, by a voluntary act, transferred his right to the inamdar or when the passing of that right is the result of the legal right of inheritance, the inamdar has "acquired" that right within the meaning of the phrase used in this exception. To put it in a different form, the phrase "or otherwise" in section 8 (1) will include the case of a surrender.

The case of an abandonment is different and more difficult and fortunately we are not concerned with it here. In such a case it is open to argument whether the occupancy right automatically reverts to the landholder at all. That a right of occupancy can remain in suspense vested in no one, but ready to descend on the next comer is apparent from section 10 (2) and may also be deduced from a consideration of the conception of ordinary unoccupied ryotiwaste, the right of occupancy to which comes into being on the admission by the landholder of a ryot thereto. I would leave that question open here.

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Against the views thus derived from the general scope of section 8 that the term "acquired" includes all cases whereby the right passes by operation of a legal form of transfer from the ryot to the inamdar we are referred to the language of section 6 (2). It is argued that having regard to that language, cases falling within section 8 (4) and the exception to section 8 are species of methods whereby the right of occupancy "comes into the possession of the landholder" and are categorically distinguished from cases of surrender and abandonment. There is much to be said for the view that abandonment is not a method by which that right "comes into the possession of the landholder." But it is difficult to see why surrender, especially a surrender by deed as in this case, is not, and I must simply record my opinion that the language of section 6 (2) was not intended to convey the contrary. It is moreover doubtful if that language does draw the categorical distinction pleaded for, while the essence of the rule laid down in section 8 (4) is the method of transfer, the essence of the exception is not the method of transfer but the party in whose favour the transfer is made. One cannot reasonably contrast a mode of transfer with a transferee. Again as pointed out by Mr. Varadachari, it was unnecessary to include the exception to section 8 in section 6 (2), because by that exception the land is taken out of the operation of the Act altogether and therefore section 6 or any other section in the Act will not apply to it.

Again, if one gives section 8 (1) its full meaning and "otherwise" does not include "surrender," then any and every landholder acquiring by surrender by which certainly whatever right the occupancy ryot had is passed on to him can hold the land *as a ryot*. This is, I feel sure, contrary to the principles of the Act.

The rulings of this Court have not been uniform on the interpretation of this exception. In *Suryanarayana* v. *Patanna* (1), two learned Judges, SADASIVA AYYAR and SPENCER, JJ., differed as to whether "surrender" is included in the word "acquired." In *Ponnusamy Padayachi* v. *Karuppudayan*(2), a third Judge, MILLER, J., agreed with SPENCER, J., and agreed that "surrender" is so included. In *Venkata Sastrulu* v. *Sitaramudu*(3), SESHAGIRI AYYAR, J., agreed mainly with SADASIVA

(1) (1915) I.L.R., 38 Mad., 608. (2) (1915) I.L.R., 38 Mad., 843.
(3) (1915) I.L.R., 38 Mad., 891.

AYYAR, J., and in *Zamindar of Nuzvid* v. *Lakshminarayana*(1), NAPIER, J., expressed agreement in this view. That, however, was a case not of surrender but of abandonment, into which, in my view, different considerations will enter. In an unreported case, Second Appeal No. 1244 of 1919, OLDFIELD, J., adopted the view held by SPENCER, J. There is thus a clear conflict of authority; and that being so, I think it is necessary to refer to a Full Bench the question whether the word "acquired" in the exception to section 8 covers a case of "surrender."

MADHAVAN NAYAR, J.—The defendant is the petitioner. The question for decision in this case is whether the suit land is part of an "estate," within the purview of the Madras Estates Land Act and the suit is not triable in a Civil Court. The lower Courts have found that the suit village is an estate under section 3, sub-section (2), clause (*d*) of the Estates Land Act, and this finding has not been attacked before us. It has also been found that the *kudivaram* interest of the tenant has been surrendered by deed to the landlord in 1888. The learned vakil for the plaintiffs (respondents) argues that, though ordinarily the jurisdiction of the Civil Court should be held to have been ousted because the suit village is an estate under section 3, sub-section (2), clause (*d*), still the Civil Court has jurisdiction, because, by reason of the surrender, the *kudivaram* interest in the village has been acquired by the inamdar within the meaning of the exception to section 8 of the Act and the land has, therefore, ceased to be part of an estate. It is argued on behalf of the petitioner that surrender is not a mode of acquisition of the *kudivaram* interest within the meaning of the exception.

The short question for consideration is whether the inamdar in this case has acquired the *kudivaram* interest in the suit land within the meaning of the exception to section 8 of the Estates Land Act. If he did so acquire, the land has ceased to be part of an estate and the Civil Courts have jurisdiction to try the suit. The exception to section 8 runs as follows: "Notwithstanding anything contained in this section where, before or after the commencement of this Act, the *kudivaram* interest in any land comprised in an estate falling within clause (*d*) of sub-section (2) of section 3 has been or is acquired by the inamdar, such land shall cease to be part of the estate." Mr. Krishnaswami Ayyar argues that this provision being an exception to section 8, the word

(1) (1922) I.L.R., 45 Mad., 39 at 59.

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"acquired" referred to in it must obviously refer to one of the modes of the acquisition of *kudivaram* interest contemplated by sub-sections (1) to (4) of section 8 which do not refer to acquisition by surrender as a mode of acquiring the *kudivaram* interest. Reference has also been made to sub-section (2) of section 6 of the Act to support the above argument.

Section 8 of the Estates Land Act deals with the merger of occupancy right. Generally stated, sub-section (1) deals with the merger of the entire interests of the landholder and the occupancy right by transfer, succession or otherwise. Sub-section (2) deals with the transfer of the occupancy right in any land to a co-sharer. Sub-section (4) deals with the acquisition by the landholder of the *kudivaram* interest by transfer for valuable consideration or by inheritance. "Surrender" is not specifically mentioned as a mode of acquisition in the section. The *kudivaram* interest of the tenant acquired in any of the aforesaid ways does not give the landholder any private rights of ownership, unless the landholder happens to be an inamdar and acquires the *kudivaram* interest in the way indicated in the various sub-sections referred to above. This is the interpretation put upon the exception by the learned Vakil for petitioner. Sub-section (2) of section 6 of the Act relied on in support of this interpretation is in these terms: "where land held by a ryot with a permanent right of occupancy is *surrendered* or abandoned or, save in the cases falling within sub-section (4) of section 8, and the exception to section 8, comes into the possession of the landholder . . ." It is pointed out that in this sub-section acquisition by surrender is put in a different category from the acquisition under the exception to section 8.

The question is not free from difficulty, but I am inclined to hold that the arguments of the learned vakil for the petitioner should not be accepted. The object of section 8 is to preclude the landholder, who acquires by transfer, succession or otherwise the occupancy right in a holding, from treating it as his private land and preventing the tenant from acquiring a right of occupancy in it. But an exception has been deliberately made by the legislature in the case of an inamdar whose village is an estate falling within clause (*d*) of sub-section (2) of section 3, when he acquires the *kudivaram* interest in any land comprised in the estate. When the intention of the legislature was to show this exceptional favour to inamdars departing from its general policy, I do not see any reason why giving effect to

this intention in all its fullness should be defeated by placing a narrow interpretation on the word "acquired" so as to exclude acquisition by surrender. No reason is suggested for thus excluding "acquisition by surrender" from the scope of the exception. No doubt, the clause appears as an exception to section 8; but in giving effect to the intention of the legislature to its fullest extent, it is not right to uphold the narrow construction suggested by the learned vakil for the petitioner. Even if the exception is to be confined in its operation to the modes of acquisition mentioned in section 8, it seems to me that the word "otherwise" in the expression "by transfer, succession or otherwise" would include within it, acquisition by "surrender." In interpreting the word "otherwise" it is difficult to apply the *ejusdem generis* principle, for the mere reason that there is no similarity in the two modes of acquisition mentioned, namely, transfer and succession, except that, in the result, the landholder obtains a *kudivaram* interest. The one method denotes a voluntary act and consideration; the other method is purely involuntary and has nothing to do with consideration. In such circumstances, it is difficult to apply the *ejusdem generis* principle of construction in finding out what is meant by "otherwise."

The contrast between the right obtained by the landlord through "surrender" and the right to *kudivaram* obtained under the exception to section 8 indicated in sub-section (2) of section 6 of the Act supports to some extent the argument advanced on behalf of the petitioner. Sub-section (2) of section 6 states that in land surrendered or abandoned by a ryot, a landlord cannot obtain rights of occupancy before the expiry of ten years. It may be, as pointed out by MILLER, J., that by referring to the exception to section 8 in sub-section (2) of section 6, the legislature intended that, in construing the sub-section (2) of section 6, we should exclude surrender and abandonment from the methods of acquisition by which a landholder may acquire indefeasibly an occupancy right. However that may be, I do not think that it is permissible to adopt a construction of the exception to section 8 which would, by restricting the meaning of the word "acquired," stultify the intention of the legislature in enacting that exception. The difficulty felt in construing section 6, sub-section (2) and the exception to section 8 together is due to the loose language employed in sub-section (2) of section 6. As pointed out by

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the respondents' learned vakil, reference to the exception to section 8 in sub-section (2) of section 6 is unnecessary because by that exception land ceases to be part of an estate and is thus taken out of the Act altogether and no section of the Act will, therefore, apply to such land.

The view advanced on behalf of the petitioner finds support in the opinion of SADASIVA AYYAR, J., in *Suryanarayana* v. *Patanna*(1) but SPENCER, J., in the same case dissented from this view. MILLER, J., in *Ponnusamy Padayachi* v. *Karuppudayan*(2) accepted the view of SPENCER, J., while in *Zamindar of Chellapalli* v. *Somaya*(3) SESHAGIRI AYYAR, J., was inclined to follow the views of SADASIVA AYYAR, J., in *Suryanarayana* v. *Patanna*(1). NAPIER, J., sitting with SADASIVA AYYAR, J., held that surrender is not a mode of acquiring *kudivaram* interest within the meaning of the exception. It may be pointed out that this decision deals with lands in a zamindari. In the latest decision in S.A. No. 1244 of 1919, OLDFIELD and SPENCER, JJ., upheld the view which found favour with SPENCER, J., in *Suryanarayana* v. *Patanna*(1). As the judicial opinion is thus divided, I agree with my learned brother that it is necessary to refer to a Full Bench the question whether the word "acquired" in the exception to section 8 covers a case of "surrender."

I may state that the question whether abandonment is a mode of acquiring *kudivaram* interest by the inamdar within the meaning of the exception to section 8 does not arise in this case though Mr. Varadachari for the respondent was willing to concede in the course of his arguments that acquisition by abandonment does not come within the scope of the exception.

ON THIS REFERENCE

A. Krishnaswami Ayyar (with *Ch. Raghava Rao*) for petitioner.—This land has not ceased to be an estate; hence Civil Court has no jurisdiction. Section 6 of the Estates Land Act generally confers occupancy right upon tenants in all estates, except in certain cases specifically mentioned in the Act. Exception to section 8 says that the effect of "acquisition" of occupancy right by an inamdar is to destroy occupancy right; the question now is whether "surrender" by the tenant is a mode of acquisition; and though this exception is put as an exception only to section 8 (1), it must be read with section 6

(1) (1915) I.L.R., 38 Mad., 608. (2) (1915) I.L.R., 38 Mad., 843.
(3) (1916) I.L.R., 39 Mad., 341.

(2) which specifically deals with the effect of surrender or abandonment. Section 6 (2) by its language puts cases of surrender in antithesis to and except cases coming under exception to section 8; hence acquisition of occupancy right by an inamdar which is dealt with in exception to section 8 does not include acquisition by surrender. Otherwise the language of section 6 (2) must begin with the clause "save in the cases falling within 8 (4) and exception to section 8." Moreover the exception to section 8, which is an exception to clause (1) of section 8, uses language "by transfer, succession or otherwise." The words "or otherwise" are *ejusdem generis* with transfer, and succession which are positive ways of acquisition by landholder while surrender or abandonment are not so but only indicate a negative act of the tenant and an extinction of his right. See Justice SADASIVA AYYAR'S view in *Suryanarayana* v. *Patanna*(1) and similar language in section 22 (1) by the Bengal Tenancy Act which has been construed in favour of my contention in *Badan Chandra Das* v. *Rajeswari Debya*(2), *Muktakeshi Dasi* v. *Pulin Behary Singh*(3).

S. Varadachari (with *V. Govindarajachari*) for respondent.—The exception to section 8 is really an exception to section 2 (*d*) by which the legislature sought to favour the inamdars specially and to take such surrendered lands out of the Estates Land Act altogether. The previous case law in this Presidency shows this. Even otherwise, the exception to section 8 is an exception only to section 8 (1) and it cannot be controlled by section 6 (2). The word "acquired" in the exception is wide enough to include cases of acquisition by surrender. "Acquire" in the exception means only "comes into possession" which are the words used in section 6 (2). See also Murray's Dictionary for the meaning of the word "acquire." The words "or otherwise" in section 8 (1) are not *ejusdem generis* with transfer or succession. There is no common method acquisition between "transfer" and "succession." The words "save in cases falling within section 8 (4) and in exception to section 8" occurring in section 6 (2) are put in *ex majore cautela*.

Ch. Raghava Rao in reply.—When the meaning of the word "acquire" in the exception to section 8 is not clear we may legitimately refer to section 6 (2).

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(1) (1915) I.L.R., 38 Mad., 608. (2) (1905) 2 C.L.J., 570.
(3) (1908) 8 C.L.J., 324, 328.

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OPINION.

PHILLIPS, J.—The question that has been referred for our opinion is whether the word "acquired" in the exception to section 8 of the Madras Estates Land Act covers a case of "surrender." That exception reads as follows:—

> "Notwithstanding anything contained in this section where, before or after the commencement of this Act, the kudivaram interest in any land comprised in an estate falling within clause (*d*) of sub-section (2) of section 3 has been or is acquired by the inamdar, such land shall cease to be part of the estate."

It is not seriously disputed that the word "acquired" in its ordinary sense is wide enough to cover a case of acquisition by surrender or abandonment as well as any other form of acquisition. It is, however, contended that in this exception the word must be construed in a limited sense so as to exclude surrender and abandonment, and two grounds are put forward in support of this contention. The first is that, inasmuch as the exception is an exception to section 8, the modes of acquisition must be limited to those mentioned in section 8, clause (1), namely, "transfer, succession or otherwise," and it is argued that these words specifically exclude "surrender" and "abandonment." This was the view taken by SADASIVA AYYAR, J., in *Suryanarayana* v. *Patanna*(1) but SPENCER, J., did not agree with him. Since then there has been a conflict of opinion in this Court. SADASIVA AYYAR, J., relied on the decisions of the Calcutta High Court in *Badan Chandra Das* v. *Rajeswari Debya*(2) and *Muktakeshi Dasi* v. *Pulin Behari Singh*(3). The latter purports to follow the decision in the former and contains the remark—

(1) (1915) I.L.R., 38 Mad., 608. (2) (1905) 2 C.L.J., 570.
(3) (1908) 8 C.L.J., 324.

"In construing words like 'or otherwise' it has always been held that the matters reserved must be '*ejusdem generis*' and that is very clearly brought out in the case of *Badan Chandra Das* v. *Rajeswari Debya*(1)."

From a perusal of the judgment in *Badan Chandra Das* v. *Rajeswari Debya*(1) it would appear that the head note, which runs "the terms 'transfer, succession or otherwise' in section 22" (equivalent to section 8 (1), Estates Land Act) "do not mean and include a 'surrender'; the expression 'or otherwise' as used in the section means 'or in a similar way'" is worded in a considerably wider manner than the language of the judgment. As however one of the Judges in *Muktakeshi Dasi* v. *Pulin Behari Singh*(2) was a party to the prior decision, we must take it that that was the meaning of the latter judgment, but it must be observed that the judgment does not expressly lay down the proposition, which can only be inferred from its general tenor, and there is no argument in the judgment to support such a proposition; similarly the judgment in the *Muktakeshi Dasi* v. *Pulin Behari Singh*(2), which purports to follow the former decision, does not contain any argument. One difficulty in the way of construing "or otherwise" as limited to matters *ejusdem generis* is that it is very difficult to imagine what other means of acquisition can be referred to which are of the same nature as "transfer" and "succession," terms which in themselves are extremely wide. Even supposing that the exception to the section must be governed by the first clause thereof, it does not appear that the word "acquired" must be interpreted in a limited sense, so as to exclude surrender and abandonment. However this may be, I am of opinion that the exception, so called, is in effect a substantive provision

(1) (1905) 2 C.L.J., 570. (2) (1908) 8 C.L.J., 324.

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and there is no necessity to qualify its meaning by the preceding clauses.

The second argument put forward is that the language of section 6, clause (2) shows that the legislature intended to exclude "surrender" or "abandonment" from the provisions of the exception to clause 8. That runs as follows :—

> "Where land held by ryot with a permanent right of occupancy is surrendered or abandoned or save in the cases falling within sub-section (4) of section 8, and the exception to section 8 comes into the possession of the landholder. . . "

This would seem to draw a distinction between cases of the surrender and abandonment and other cases in which the right of occupancy comes into the possession of the landholder. The whole of this provision seems somewhat unnecessary in view of section 6, clause (1) which in effect deals with the same subject, but it has possibly been provided *ex-abundanti cautela*. Whatever the reason for the provision, the language of the succeeding section, when it is clear in its terms, must be read as it stands, and should not be interpreted in a strained manner merely in order to bring it into consonance with a previous section. There is no ambiguity in the language of the exception to clause (8) and there is therefore no reason why in interpreting it reference should be made to section 6 (2). The word "acquired" has a very general meaning and would ordinarily include acquisition by surrender, and the only argument that has been advanced against this proposition is that when a tenancy is surrendered the tenants' rights under the lease are not acquired by the landlord, but they merely cease to exist. Here, however, it is not a question of acquiring the tenancy right, but it is a question of acquiring the kudivaram interest, and that, I take it, means the right of occupancy in the land and not merely rights under a particular lease. If this

argument is rejected, as it must be, we have the word "acquired" in its ordinary sense and that is wide enough to include acquisition by surrender. In this reference, acquisition by abandonment has not been dealt with, but, so far as the case has been argued before us, it would appear that the two modes of obtaining the kudivaram right, namely, by surrender or abandonment, stand on the same footing. PHILLIPS, J.

The question referred must therefore be answered in the affirmative and the civil revision petition will be remitted to the Division Bench for disposal accordingly.

KRISHNAN, J.—The question raised in this reference is whether exception to section 8 of the Madras Estates Land Act covers a case of "surrender" or not. It has been answered in the affirmative by MILLER, OLDFIELD and SPENCER, JJ., in *Ponnusamy Padayachi* v. *Karuppudayan*(1), *Suryanarayana* v. *Patanna*(2), and S.A. No. 1244 of 1919, respectively, but in the negative by SADASIVA AYYAR, SESHAGIRI AYYAR and NAPIER, JJ., in *Suryanarayana* v. *Patanna*(2), *Venkata Sastrulu* v. *Sitaramudu*(3), and *Zamindar of Nuzvid* v. *Lakshminarayana*(4), respectively. It is on account of this direct conflict of opinion that the matter is referred to the Full Bench and we have to decide it on the section of the Act. KRISHNAN, J.

The word "acquired" in the exception, which is the word to be construed, it cannot be denied, is of wide enough import to include all cases of acquisition, by surrender, abandonment or otherwise. The word is defined in Murray's Oxford Dictionary as meaning "to gain, to obtain, to get as one's own, to gain the ownership of, to come into possession of." Is there any reason then why it should be restricted or cut down in its meaning in the exception? The object of the exception is

(1) (1915) I.L.R., 38 Mad., 848.
(2) (1915) I.L.R., 38 Mad., 608.
(3) (1915) I.L.R., 38 Mad., 891.
(4) (1922) I.L.R., 45 Mad., 39.

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clearly to exempt inamdars as distinguished from zamindars from the applicability of clauses (1) and (3) of section 8. There is nothing in the policy of the Act so far as I can see, nor in the language of the exception to restrict the exemption to cases other than those of surrender and abandonment.

It is, however, contended that there are words in section 8 (1) and in section 6 (2) which necessitate that we should construe the word "acquired" in the exception as not including cases of surrender and abandonment. It is first argued that the word "otherwise" in clause (1) of section 8 must be read "*ejusdem generis*" with the preceding words "transfer or succession" and that so read it will not include cases of surrender or abandonment. It is then argued that as the exception in section 8 is an exception to clause (1) it should also be read as not including such cases when the clause itself does not include them. The whole of this argument turns upon reading "otherwise" as governed by the rule of "*ejusdem generis.*" The word is wide enough to include all cases of the interest of the landholder and of the occupancy ryot becoming united in the same person. To read it as "*ejusdem generis*" with transfer and succession *thus* excluding cases of surrender and abandonment will lead to the result that the prohibition in it against a landholder holding the land as a ryot will not be applicable to cases where he obtains the ryoti interest by surrender or abandonment even when the landholder is a zamindar. This is clearly incorrect, for clause (4) shows in what case alone an exception is allowed in the case of zamindars.

As my learned brother PHILLIPS, J., observes in his judgment, which I have had the advantage of reading, if the word "otherwise" is limited to matters "*ejusdem generis*" with transfer and succession, it is difficult to

see to what case it can possibly refer. The learned vakil for the appellant suggested that it might refer to cases of acquisition of title by prescription, but they are no more *ejusdem generis* with transfer and succession than surrender can be said to be. I think the argument based on the language of section 8 (1) is erroneous.

The more difficult point is the one raised on the language of section (6), clause (2). That language, it is argued, suggests that the exception to section 8 does not apply to cases of surrender or abandonment but only to cases where the landholder comes into possession of the land in some other manner as the saving clause which refers to the exception is not applied to cases of surrender or abandonment in the clause. If we read the exception to apply to cases of surrender or abandonment as well, it is argued that there will be a conflict between it and clause (2). On the other hand if we are to restrict the exception as contended for we will have to read into it the words "otherwise than by surrender or abandonment" after the word "acquired"; there is no warrant for doing this. The words "and the exception to section 8" in clause 2 seem to be quite superfluous as by the exception to section 8 itself such cases are taken entirely out of the Act. It seems to me that 6 (2) is not intended in any way to govern the exception to section 8 or to control its general language and that if there is any conflict, the exception which refers to inamdars only must be taken to override the general provision in section 6, clause (2) which refers to landholders generally and not *vice versa*.

In the view I take, I see no difference between cases of surrender and of abandonment. I agree that our answer to the reference should be that the case of "surrender" is within the exception to section 8.

RAMESAM, J.—I agree.

N.R.