APPELLATE CIVIL.

Before Mr. Justice Krishnan and Mr. Justice Odgers.

1926, November 17.

F. G. NATESA AYYAR AND OTHERS (3RD, 4TH AND 5TH CLAIMANTS), APPELLANTS,

v.

KAJA MARUF SAHIB (1ST CLAIMANT), RESPONDENT.*

Land Acquisition Act (I of 1894), ss. 18, 19 and 30—Sale by landlord of his kudivaram interest for cash and certain money rent payable every year—Land acquired under Land Acquisition Act—Compensation—Apportionment of—Dispute between landlord and purchasers of kudivaram—Right of landlord, whether merely to capitalized value of rent—Interest of landlord after sale of kudivaram.

Where a landlord sold his kudivaram interest in the land to certain individuals under a sale deed whereby the vendees, besides paying a certain amount in cash, were to pay also rupees four every year to the landlord and subsequently the land, comprising both the melvaram and kudivaram interests, was acquired by the Government under the Land Acquisition Act, and disputes arose as to the apportionment of the compensation amount between the landlord and the vendees of kudivaram.

Held, that the landlord, after the sale of the kudivaram, has not merely a right to receive the rent from the vendees, but has several other rights, such as, the right to get back the land on forfeiture of the permanent tenancy, and other rights in the land;

that it would be quite unfair and inequitable to value the melvaramdar's interest at a capitalized value at 20 years' purchase of the rent reserved in his favour;

and that the apportionment of one-third of the compensation amount to the landlord was not improper.

APPEAL against the decree of C. S. MAHADEVA AYYAR, Subordinate Judge of Trichinopoly, in Original Petition

*Appeal No. 352 of 1925.

No. 7 of 1924 (in Original Petition No. 163 of 1922 on the file of District Court of Trichinopoly).

The material facts appear from the judgment.

T. V. Muthukrishna Ayyar for appellants.

K. Aravamudu Ayyangar for respondent.

JUDGMENT.

KRISHNAN, J. KRISHNAN, J.—This is an appeal in a land acquisition matter as between the landlord and the persons who claimed the land under him under a permanent lease. The actual appellant is said to be a purchaser from a purchaser of the permanent lease. The case has come before the courts because the parties did not agree to the apportionment between them of the compensation awarded which came to about Rs. 1,400 odd. Out of this the Subordinate Judge has granted about two-thirds to the permanent tenants and about a third to the landlord. Now it is very strongly contended before us by Mr. Muthukrishna Ayyar for the permanent tenants that the landlord is only entitled to have a capitalized value of the Rs. 4 rent payable by the permanent tenant to the landlord for the land and therefore the amount given to him should be reduced to Rs. 80 taking the capitalization at 20 years' purchase the balance should be given to the permanent tenants. The rights of the parties really depend upon the document executed by the landlord under which he parted with his rights in this land to the permanent tenant. That document is Exhibit A. It is a sale of the landlord's kudivaram interest in the land to certain individuals. The value put upon over 8 acres of this land under Exhibit A is Rs. 150. Besides paying the Rs. 150 the permanent tenants were to pay also Rs. 4 every year to the landlord. The document speaks of itself not as a sale of the land itself but as sale of the kudivaram interest. Now it is contended

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that all the interest that the landlord has reserved to himself at the time of the acquisition of this land is the right to receive Rs. 4 from the tenants and that he has only a right to be compensated for that sum of money; in other words, if we give him a capitalized sum which would bring him Rs. 4 at a reasonable rate of interest, say 5 per cent that will be the only compensation that he is entitled to. This argument overlooks the fact that the landlord does not part with all his interest in the land by this sale. He has only sold the kudivaram interest. The melvaram interest is with him. It is difficult to say exactly what these two interests are. Kudivaram interest, one understands, is the interest the man in occupation of the land gets in the land for cultivating the land or utilizing the land for any purpose for which it has been given. He gets possession of the land and he has also the user of the land. The melvaramdar has the rest of the interest in the land in himself. It is not merely a right to receive rent; he has got several other rights. For example, he could recover the land itself from the tenant, i.e., if the tenant denies his title there might be a forfeiture of the permanent tenancy. In that case the landlord would get back the land. There are other rights which the melvaramdar has in the land. To value the melvaramdar's interest merely at 20 years' purchase of the rent that is reserved in his favour would, it seems to me, be quite unfair so far as he is concerned. It is not an easy thing in any case to apportion the value of land between two persons who have got somewhat indefinite rights in the land such as the melvaramdar and the kudivaramdar. The Subordinate Judge has divided the compensation as between the landlord and the tenant at one-third and two-thirds. I am not satisfied that it is really erroneous. The suggestion made by the learned vakil for the appellant seems to

me on the face of it inequitable. When the land was leased out under Exhibit A, it was apparently a waste land fit only for pasturage of cattle and consequently valued at a very low figure. Now that the Railway Company has come forward and acquired the land the compensation has been given for it apparently on the footing of a building site. This enhanced value is not due to the exertion either of the landlord or the tenant. It is a sort of windfall which has come to both the parties. There is no reason why one alone should have the whole of it and not the other. If we give the landlord only Rs. 80, we will be ignoring altogether the general rights as melwaramdar which is in him. It seems to me therefore that this is not a fit case for interference in appeal. I would therefore dismiss the appeal with costs.

KRISHNAN, J.

ODGERS, J.—I agree. What we have to do is to see what the interests of the respective parties are under Exhibit A in the lands which have been acquired compulsorily under the Land Acquisition Act and as far as possible to value those interests equitably between the parties. Now the difficulty in this case is largely caused by the expression used in Exhibit A, "Kudivaram" and "Melwaram," because it is only faintly suggested that this is a settled estate such as would fall under the Act of 1908. There was no question that it is not so. The landlord reserved a ceratin interest in this property. I think it is incorrect to say that Exhibit A is an out and out sale subject to the reservation of a quit-rent in favour of the landlord. In fact, it, in terms, purports to be only an absolute sale of the kudivaram right. It may be that other rights are inherent in the landlord who is styled the melwaramdar in this document. In any case, the land in 1909 was practically waste land. It has now increased enormously in value owing to its proximity to the new railway works of the South Indian Railway

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now being erected near Trichinopoly. As my learned brother has said, it is not owing to any exertions or expenditure on the part of either the landlord or the tenure holder that this increase in value has come about. It is a pure piece of good fortune. Had Exhibit A been an absolute sale of the land, of course, there would have been no question, but that the whole of the money paid by Government would go to the purchaser. But that is not so and it seems to me it would be eminently unfair to say under the circumstances that all that the melwaramdar is entitled to is the capitalized value of Rs. 4 a year. The case, *Dinendra Narain Roy* v. *Tituram Mukerjee*(1), was pressed upon, but as pointed out in *Sri Rajah Bammadevara Venkata Narasimha Nayudu Bahadur* v. *Subbarayudu*(2), it is not clear exactly what was the tenure and its terms which existed between the parties in the Calcutta case. Here, I think, it is quite clear from Exhibit A that something more than a mere quit-rent of Rs. 4 a year was intended to be reserved to the landlord. I am not satisfied that the Subordinate Judge was wrong in law and I consider it would be unfair to disturb his decision unless one was really satisfied that it was wrong in law and could not be sustained. I therefore agree that the appeal fails and should be dismissed with costs.

K.R.

(1) (1903) I.L.R., 30 Calc., 801. (2) (1913) I.L.R., 36 Mad., 395.