Their Lordships will accordingly humbly advise His Majesty that the judgment and decrees of the High Court should be affirmed, and that this appeal should be dismissed. The appellant must pay the costs.

Solicitor for appellant: *H. S. L. Polak.*

Solicitors for respondents: *Douglas Grant and Dold.*

A.M.T.

APPELLATE CIVIL.

Before Mr. Justice Krishnan and Mr. Justice Venkatasubba Rao.

VEERABHADRAYYA (APPELLANT), FIRST DEFENDANT

v.

ZAMINDARS OF NORTH VALLUR AND FOUR OTHERS (RESPONDENTS), PLAINTIFFS NOS. 1 AND 2 AND DEFENDANTS NOS. 2 TO 5.*

1926, May 4.

Madras Estates Land Act (I of 1908), ss. 3 (10), (16), 6, 8 and 185—Conversion of ryoti lands into private lands by a zamindar before the Act—Lease of such lands after the Act for a period—No occupancy right—Sec. 8, not retrospective.

Before the Estates Land Act (Madras Act I of 1908), it was competent for a zamindar to convert what were once ryoti lands into private or *kamatam* lands and to hold them as such; and if after the Act a person is let into possession of such converted lands either as ijaradar (lessee for a period) or as the agent of the zamindar, he does not thereby acquire occupancy rights therein.

Section 8 of the Act is not retrospective.

APPEAL against the decree of the Court of the Subordinate Judge of Kistna at Ellore in Original Suit No. 35 of 1919.

* Appeal No. 164 of 1924.

VEERA-BHADRAYYA v. ZAMINDARS OF NORTH VALLUR.

The facts are given in the judgment of VENKATA-SUBBA RAO, J.

P. Venkataramana Rao for appellant.—The suit lands were always ryoti and were treated as such before and after 1877. They were never private lands, nor were they treated as such after 1877. It was not competent for a zamindar even before the Estates Land Act to convert ryoti lands into private lands. Even if they had been converted into private lands before the Act the effect of the Act as soon as it was passed was to make them ryoti lands except in the case mentioned in the proviso to section 185 of the Act. This is the effect of merger; see sections 8, clauses (1), (2), (3) and (4) and 185 of the Act. The Act is retrospective in this respect. The words "before or after the commencement of the Act" in section 8 (1) should be read as qualifying clause (3) also of that section. He referred to SESHAGIRI AYYAR, J.'s view in *Zamindar of Chellapalli* v. *Somaya*(1) and SADASIVA AYYAR, J.'s view in *Zamindar of Nuzvid* v. *Lakshminarayana*(2) and also to *Srimantha Raja Yarlagadda Mallikarjuna Prasada Naidu* v. *Subbiah*(3). Prior to the Act, occupancy right was as a rule enjoyed by every ryot in zamindaris; see *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*(4), *Cheekati Zamindar* v. *Ranasooru Dhora*(5). When the original character of the lands is known to be ryoti, section 185 impliedly forbids evidence to show that on the date of the Act it was private land. Similarly the section impliedly forbids evidence of dealing with the lands subsequent to the Act. The evidence in the case shows that the first defendant was let into possession only as ryot and not as agent or ijaradar. If so section 6 (1) gives him the occupancy right.

V. Ramadas (with *Krishna Arya*, *Viraraghavalu* and *P. Somasundaram*) for respondents.—The evidence in the case shows that since 1877 there has been a gradual conversion of ryoti lands into private lands and all of them were treated as such up to the time of the passing of the Estates Land Act and even after the Act up to the time of this suit. Section 8 (3) enacts that merger shall not convert ryoti lands into private lands; the section does not prohibit other methods of conversion even after the Act. The Act does not prohibit any such

(1) (1916) I.L.R., 39 Mad., 341. (2) (1922) I.L.R., 45 Mad., 39.
(3) (1920) 39 M.L.J., 277. (4) (1897) I.L.R., 20 Mad., 299.
(5) (1900) I.L.R., 23 Mad., 318.

conversion if it had taken place before the Act. The words whether "before or after the commencement of the Act" in section 8 (1) cannot be read as qualifying clause (3) of that section. The Act cannot be read so as to have a retrospective effect and to destroy rights vested long before the Act came into force; see WALLIS, C.J.'s view in *Zamindar of Chellapalli* v. *Somaya*(1), NAPIER, J.'s view in *Zamindar of Nuzvid* v. *Lakshminarayana*(2) and SPENCER, J. in Second Appeal No. 1765 of 1918. The Privy Council must be deemed to have upheld in *Yarlagadda Mallikarjuna Prasad Nayudu* v. *Somaya*(3) the view of SIR JOHN WALLIS. Section 185 does not preclude evidence to show whether the lands were dealt with as private lands after the Act; see *Lakshmayya* v. *Sri Raja Varadaraja Appa Row Bahadur*(4). Prior to the Act there was no presumption that lands in zamins were lands with occupancy rights; see *Suryanarayana* v. *Patanna*(5), *Venkatasastrulu* v. *Seetharamudu*(6), *Nainapillai Marakayar* v. *Ramanathan Chettiar*(7); and it was a matter of proof in each case. In this case it has not been proved that these lands were occupancy lands prior to the Act; but the contrary has been proved. Therefore section 8 has no application. The first defendant was let into possession in 1917 only as agent and not as a ryot. The document under which he got possession expressly stated that it was for a year only and that he must give up possession at the end of the fasli. Even if he had got in as an ijaradar that would not give him the status of a "ryot," so as to entitle him to occupancy right. Hence section 6 (1) cannot apply.

JUDGMENT.

KRISHNAN, J. KRISHNAN, J.—I have had the advantage of reading the judgment my learned brother has prepared in this case. The main question is whether at the time the defendant was put in possession of the lands they were ryoti lands or the private or kamatam lands of the zamindar. The first defendant's claim to permanent

(1) (1916) I.L.R., 39 Mad., 341. (2) (1922) I.L.R., 45 Mad., 39.
(3) (1919) I.L.R., 42 Mad., 400 (P.C.) (4) (1913) I.L.R., 36 Mad., 168.
(5) (1918) I.L.R., 41 Mad., 1012 (P.C.) (6) (1920) I.L.R., 43 Mad., 166 (P.C.)
(7) (1924) I.L.R., 47 Mad., 337 (P.C.).

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right of occupancy in them is based on clause (1), section 6 of the Estates Land Act and for that clause to apply the land must be a "ryoti land not being old waste." 'Private' land is excluded from 'ryoti' land by its definition in section 3, clause (16). It is argued that though these lands were, prior to 1877 or 1880, such as would have fallen within the definition of ryoti lands under the Act they had been effectively converted into kamatam lands before the Act was passed. My learned brother has dealt with this question exhaustively and as I agree with him, I do not propose to go over the same ground. In this connection it was argued by the learned vakil for the appellant that the effect of the passing of the Act was to reconvert into ryoti all lands which had been converted previously by the zamindar from ryoti into kamatam lands, except in the one case provided in the proviso to section 185; he relied upon sections 8 and 185 for this contention. Here again I agree generally with my learned brother in the view he has adopted of these sections and do not propose to discuss the question at length. We cannot give retrospective effect to the provisions of an Act, especially when to do so will destroy existing rights, unless it is made clear by express language that such effect was intended. I do not read section 8, clause (3) as necessarily retrospective in effect. I am of opinion that the zamindar was at liberty to convert his ryoti lands into kamatam lands before the passing of the Act and in the present case lands were kamatam lands both at the time of the passing of the Act and when the first defendant was given possession. On this view the appeal fails and must be dismissed with costs.

But as my learned brother has gone on to discuss the question as to the character in which the defendant

was put in possession of the plaint lands and has differed from the finding of the Subordinate Judge, I desire to say that I do not entirely agree with him in this part of the case. I think there is no sufficient reason to interfere with the learned Subordinate Judge's finding on the point that the first defendant was given possession of the lands to cultivate them not as a lessee or ryot but as an ijaradar or agent of the zamindar. Though the zamindar had let the lands on lease prior to giving it to Onta Lakshmana and had again offered them for lease by Exhibits F, F-1 and F-2, he expressly countermanded the giving on lease by auction at the time and we have Lakshmana's own admission in Exhibit A that he cultivated only as an agent. An agent may be remunerated by a share of the produce just as a lessee may be. The facts relied on by the learned Subordinate Judge, though perhaps not conclusive, strongly point to Lakshmana and the first defendant having cultivated as ijaradars and not as lessees. There is a body of oral evidence which supports the plaintiffs' case. I do not attach weight to what the first defendant did by subleasing the lands himself, as he had evidently conceived the idea of setting up a permanent tenancy. I am inclined to think that on the whole the finding of the Subordinate Judge on this point is correct. The question, however, is really of no importance in this case in the view I take. I have added what I have stated above lest I be understood to have agreed with my learned brother on that point.

The appeal is dismissed with costs.

The memorandum of objections is dismissed with costs.

VENKATASUBBA RAO, J.—The plaintiffs are the zamindars of North Vallur. They have filed the suit which gives rise to this appeal for a declaration that the

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suit lands are their private (kamatam) lands and that the first defendant has no occupancy rights in them. There is also a prayer that the first defendant should be directed to deliver up possession of the lands and to pay mesne profits. According to the plaintiffs, the first defendant was appointed an agent at the commencement of fasli 1327 (1917 A.D.) for the purpose of carrying on the zamindar's private cultivation on the lands. It is also alleged in the plaint that it was agreed that the first defendant's agency should terminate immediately after the harvest of that fasli. The plaintiffs allege that after the harvest, the then zamindar, the plaintiffs' father, took possession of the lands and prepared them for cultivation but died on the 6th June 1918, that the plaintiffs after their father's death carried on certain agricultural operations and that soon thereafter the first defendant trespassed upon the lands.

The suit is resisted on the ground that the lands are ryoti lands within the meaning of the Estates Land Act and that the first defendant was admitted as a ryot from the commencement of fasli 1327. He denies that he gave up possession at the end of that fasli and states that he continued to occupy the lands in the next fasli with the consent of the plaintiffs' father. In any event he denies that he was bound to quit the land at the end of 1327 and states that he acquired permanent rights of occupancy by virtue of the provisions of the Estates Land Act.

Two main questions arise in the suit :—

(1) Are the suit lands the private lands of the zamindar, or, are they ryoti lands in which the first defendant can acquire rights of occupancy ?

(2) If it be found that they are ryoti lands, was the first defendant admitted to possession as a ryot and

if he was not so admitted, in what character did he take possession of the lands ?

The learned Subordinate Judge has found that the lands are kamatam. He has also found that the first defendant took possession of them as the zamindar's agent. The plaintiffs having succeeded in the suit, the first defendant has filed the present appeal.

In regard to the original character of the lands there can be no doubt that they were ryoti. The documentary evidence clearly establishes this point. The estate owned two species of kamatam :—

(1) Immemorial kamatam ;

(2) lands relinquished by ryots and absorbed into zamindar's kamatam lands.

This distinction is kept in view in the records of the zamindari and document after document refers to this twofold character of the kamatam lands. It is also proved beyond doubt that the suit lands come under the second category, namely, lands originally ryoti but subsequently incorporated with the zamindar's private lands. The finding of the Subordinate Judge is, that the suit lands were at their inception ryoti but were subsequently converted into kamatam. This finding is correct and although the plaintiffs' learned vakil said at first that he would attack it, he subsequently gave up the point and had to concede that he could take no exception to the finding.

The lands having thus been proved originally to be ryoti lands, two questions arise :—

(1) Could there be a valid conversion before the Estates Land Act came into force, of ryoti land into kamatam land ?

(2) If it was capable of being so converted, has such conversion been in fact effected in regard to the suit lands ?

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I shall first deal with the question of law raised. For the plaintiffs it is contended that there was no legal bar before the Estates Land Act was passed, which would prevent a zamindar from converting ryoti land into kamatam land. Mr. Venkataramana Rao, the first defendant's learned vakil, strongly contests this proposition.

Section 185 of the Estates Land Act has been much commented on by the learned vakils on both the sides. It runs thus:—

"When in any suit or proceeding it becomes necessary to determine whether any land is the land-holder's private land, regard shall be had to local custom and to the question whether the land was before the first day of July 1898 specifically let as private land and to any other evidence that may be produced, but the land shall be presumed not to be private land until the contrary is shown. Provided that all land which is proved to have been cultivated as private land by the landholder himself, by his own servants or by hired labour with his own or hired stock for twelve years immediately before the commencement of this Act, shall be deemed to be the landholder's private land."

The section, it must be first noted, deals only with the method of proof and does not enact any rule of substantive law. When the question arises, whether a particular plot of land is landholder's private land or not, how is the Court to approach the evidence? The section says that the land shall be presumed not to be private land until the contrary is shown. It refers to specific classes of evidence which may be adduced to show that the land is the landholder's private land. Is the land private land or not at the time of the suit or proceeding referred to in the section? The section does not profess to deal with the nature of the land in the past. Its intention obviously is to provide some tests for helping the Court to decide the nature of the land at the time of the suit or proceeding in which the question is raised. The section does not deal with the

point, whether land which was once ryoti could or could not have been converted by the date of the suit into private land. It has been strongly urged for the defence that the section implies that when the origin of the land is known to be ryoti, it is not open to a party to show that on the date of the suit it was private land. I am unable to impute any such intention to this section. To accept this construction would be to unduly enlarge the scope of the section, which, as I have said, merely lays down a rule of evidence and does not profess to enact any rule of substantive law. Now, turning to the proviso, the effect of it is to create an irrebuttable presumption that a certain kind of land shall be private land. If land had been for 12 years immediately before the commencement of the Act, directly cultivated by the landholder (that is, cultivated by his own servants or by hired labour) that land shall be absolutely presumed to be the landholder's private land. Here again, it must be noticed that this clause is enacted by way of a proviso and not as an exception; so that, it does not follow that land not answering the description in the proviso, shall be treated as other than private land.

If there is thus nothing in section 185 to justify the contention that ryoti land could not before the date of the Act be converted into private land, is there any other section in the Act that forbids such conversion? It has been contended for the defence that section 8 (1) produces such a result. It enacts that whenever before or after the commencement of the Act the entire interests of the landholder and the occupancy ryot have become united in the same person, such person shall have no right to hold the land as a ryot, but shall hold it as a landholder. If the ryot's interest therefore passes to the landholder, the latter shall still hold the land as a

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landholder only; but there is nothing to prevent private land being held by a landholder. If we turn to the definition of 'private' land in section 3, clause 10, we find that "private land" is described as the home farm land of a landholder. There is thus nothing incompatible with the spirit of the Act in a landholder holding private land. In my opinion, section 8 (1) does not support the contention of the defendant.

Mr. Venkataramana Rao next contends that section 8 (3) supports his view. It says that merger of the occupancy right under sub-sections 1 and 2 shall not have the effect of converting ryoti land into private land. Both sides have argued the case on the footing that as a combined result of several provisions of the Act, ryoti land cannot, subsequent to the Act, be converted into private land. My remarks therefore must be understood as referring only to conversion previous to the Act. Under section 8 (3) the merger by itself cannot convert ryoti into private land. It does not preclude conversion by acts subsequent to the merger, in other words, while section 8 (3) says that the merger shall not have a certain effect, it does not in addition say that no act subsequent to the merger shall have the effect of converting ryoti into private land. Next, whatever be the interpretation of section 8 (3), does it have a retrospective effect? Was it intended that land converted into private land in remote antiquity and dealt with as such for centuries, should, the moment the Act was passed resume its original character and once again become ryoti land? One would be disinclined to impute this intention to the legislature in the absence of clear and unambiguous language. It is urged that the words in section 8 (3) "merger of the occupancy right under sub-section 1" necessarily import into this clause, every qualification mentioned in clause 1. It is on this basis

contended, that the words "before or after the commencement of this Act" in clause 1 should be read as part and parcel of clause 3. In my opinion, the words in question in clause 3 can be given full effect by interpreting "merger" in that clause as meaning merger resulting from a union by transfer, succession or otherwise as mentioned in clause 1. I am unwilling to strain the language of this sub-section with a view to render it retrospective.

Mr. Venkataramana Rao has next drawn our attention to clauses 2 and 4 of section 8 and contended that they indicate a clear intention to place the ryot in a very advantageous position. That may be so, but it does not follow that the particular advantage now contended for, has been conferred upon him. The obscure wording of this section of the Act, as in the case of many other sections, has led to a great conflict of opinion, but on the whole I have come to the conclusion that the Act does not retrospectively forbid conversion of ryoti into private land. My view receives support from the judgments of Sir JOHN WALLIS, C.J., in *Zamindar of Chellapalli* v. *Somaya*(1), NAPIER, J., in *Zamindar of Nuzvid* v. *Lakshminarayana*(2), and SPENCER, J., in S.A. No. 1765 of 1918. A contrary view was taken by SESHAGIRI AYYAR, J., who differed from the learned CHIEF JUSTICE in *Zamindar of Chellapalli* v. *Somaya*(1), and SADASIVA AYYAR, J., who differed from NAPIER, J., in *Zamindar of Nuzvid* v. *Lakshminarayana*(2), and also by ABDUR RAHIM and BURN, JJ., in *Sreemantha Raja Yarlagada Mallikarjuna Prasada Naidu* v. *Subbiah*(3).

Before concluding this part of my judgment, I must notice one contention raised by Mr. Ramadas, the

(1) (1916) I.L.R., 39 Mad., 341. (2) (1922) I.L.R., 45 Mad., 39.
(3) (1920) 39 M.L.J., 277.

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learned Vakil for the plaintiffs. He argues that before the passing of the Estates Land Act there was no presumption that a tenant had occupancy rights in land in a Zamindari, that in the present case it has not been proved that tenants had any such rights in the suit land, that it therefore follows that section 8 which refers to the union of the kudivaram and melvaram interests has no application and that therefore the landholder was competent to treat the land as private land before the date of the Act. He relies for the position that there is no presumption that tenants in Zamindari lands have occupancy rights, upon the Privy Council Rulings in *Suryanarayana* v. *Patanna*(1), *Venkata Sastrulu* v. *Seetharamudu*(2), and *Nainapillai Marakayar* v. *Ramanathan Chettiar*(3), which deal only with inams; but the learned Vakil contends that the judgments in them contain observations wide enough to apply also to ryots under Zamindars. Mr. Venkataramana Rao's answer is twofold. He says that in the first place the decisions referred to cannot be treated as ovrruling the view which was expressed in *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*(4), and *Cheekati Zamindar* v. *Ranasooru Dhora*(5), and which has long prevailed, namely, that there is such a presumption in favour of occupancy rights in Zamindari tracts. Secondly, he urges that even granting that in the lands in question the tenants did not have occupancy rights, the plaintiffs' position is not thereby improved as the Act forbids conversion of any ryoti land into private land. These contentions raise important questions of law, which in the view I have taken of the other points, I do not find it necessary to discuss.

(1) (1918) I.L.R., 41 Mad., 1012.
(2) (1920) I.L.R., 43 Mad., 166.
(3) (1924) I.L.R., 47 Mad., 337.
(4) (1897) I.L.R., 20 Mad., 299.
(5) (1900) I.L.R., 23 Mad., 318.

As ryoti land could in law be converted, before the Estates Land Act came into force, into kamatam land, the next point to be decided is, were the suit lands actually so converted? Sir JOHN WALLIS, C.J., in *Zamindar of Chellapalli* v. *Somaya*(1) at page 341 citing *Budley* v. *Bukhtoo*(2) observes that the test laid down in that case may be accepted, namely, the private land is that which a "zamindar has cultivated himself and intends to retain as resumable for cultivation by himself even if from time to time he demises it for a season." This test has been approved by the Privy Council in *Yerlagadda Mallikarjuna Prasad Nayudu* v. *Somaya*(3). Now applying that test, I shall proceed to deal with the question, whether the lands were actually converted into kamatam lands.

[His Lordship then dealt with the documentary evidence and proceeded as follows:—]

This chart shows that during the period between 1878 and 1895 the suit lands were mostly under the direct cultivation of the zamindar. We find that in 1887–88 there was a break, the zamindar cultivating over half of the kamatam lands personally and leasing the rest. The entire lands were resumed by the zamindar in the next three faslis. Again in 1892–93 and the two succeeding faslis we find that portions were cultivated by the estate directly and portions were leased out.

[After dealing with some documentary evidence on the point his Lordship proceeded as follows:—]

I have so far confined myself to the evidence relating to dealings with the lands previous to 1898, for the last lease to which I have referred, is the lease given by the receiver in 1896. Section 185 of the Estates Land Act says that when it becomes

(1) (1916) I.L.R., 39 Mad., 341. (2) (1871) N.W.P. H.C.R., 203.
(3) (1919) I.L.R., 42 Mad., 400.

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necessary to determine whether any land is landholder's private land, regard shall be had *inter alia* to the question whether the land was before the 1st of July 1898 specifically let as private land. Legislation which culminated in the Estates Land Act was for some time in contemplation and it was believed that to forestall it, landholders were anxious to make self-serving statements in documents executed during the years that immediately preceded that Act. Although the section merely says that regard shall be had to the manner of letting the land before 1st July 1898, it seems to follow from this, that evidence of subsequent dealings is by implication excluded. This is the construction I am disposed to place upon the section. If the question is whether a plot of land is ryoti land or private land, the landholder to make out his contention that they are private, cannot rely upon leases made subsequent to July 1898. But, in my opinion, such leases can be put in evidence for the purpose of showing not the character of the land (ryoti or kamatam) but for showing that if the lands had been treated as private lands till 1898, they were not treated differently subsequent to that date. The question may arise in this way. It may be said that the lands were till 1898 kamatam but lost that character subsequent to that date. To rebut such a case, it is certainly open to a landholder to rely upon his subsequent dealings with the land and show that he did not change the character of the land from private into ryoti. This is, I think, the right construction of the section and my view receives support from the observations of SUNDARA AYYAR, J., in *Lakshmayya* v. *Sri Raja Varadaraja Appa Row Bahadur*(1).

I shall therefore examine the documents subsequent to 1898 with a view to find out whether the lands which

(1) (1913) I.L.R., 36 Mad., 168 at p. 175.

were kamatam on that date, preserved that character afterwards or again became converted into ryoti.

[His Lordship then dealt with the documentary evidence on this point and proceeded as follows :—]

But for the present it is sufficient to point out that the dealing with the land by the zamindar has not been such as to convert what was at the commencement of 1912 kamatam land into ryoti land. My conclusion therefore on this part of the case is, that when the first defendant obtained this land in 1917 the land was the private land of the zamindar in which the first defendant could acquire under law no occupancy rights.

On the point whether the zamindar directly cultivated the land, a great deal of oral evidence has been adduced. It has been very fully analysed by both the learned vakils and discloses many contradictions and discrepancies. As a matter of fact, the plaintiffs' oral evidence on this point runs counter in some places to the documentary evidence which I have discussed. I may say that in general the witnesses speak to there being direct cultivation, so far corroborating the documentary evidence on the point, but in regard to details their evidence is worthless. The point, however, has mainly to be decided with reference to the documents filed and I have already said that they clearly establish the plaintiffs' case.

I have held that ryoti land could, before the Estates Land Act came into force, be converted into private land. I have further held that the plaintiffs have made out that the suit lands which were originally ryoti had been so converted. I have also pointed out that the suit lands which had become private lands before the Act was passed, continued to be so treated till 1917 when the first defendant was admitted to possession. These findings are sufficient to lead to a dismissal of the

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appeal as the first defendant's case that he acquired occupancy rights thus entirely fails.

The plaintiff has urged that even granting that the land was ryoti, the first defendant was not admitted to possession as a ryot but only as an agent. On a very careful consideration of the evidence, I have come to the conclusion that this part of the plaintiffs' case has not been made out. The learned Subordinate Judge who has come to a different conclusion, has, it seems to me, been influenced by the quantity rather than the quality of the evidence.

[His Lordship then dealt with the oral and documentary evidence on the point and proceeded as follows :—]

The reasons given by the learned Subordinate Judge for holding that the first defendant was an agent, are, in my opinion, utterly unsound, and I have come to the conclusion that he was admitted to possession as a lessee. As I have, however, said this finding is of little avail to him. The lands being the private lands of the zamindar, it signifies little whether the first defendant entered upon them as agent or as lessee, as in neither case could he acquire occupancy rights.

I have now dealt with all the principal points raised. As I have held that in 1917 when the first defendant was admitted into possession, the lands were the private lands of the zamindar, the question is of no importance, namely, whether he trespassed in 1918 or he held over after his term expired at the end of 1917.

In regard to the mesne profits claimed, it has not been shown that the amount awarded is excessive. In the result, the appeal is dismissed with costs.

The memorandum of objections is dismissed with costs.

N.R.