Bench of the Calcutta High Court in *The Secretary of State for India in Council* v. *Mrs. Mary Murray*(1) and the learned Judges stated that the widow was not bound to apply for Letters of Administration to recover the Provident Fund amount as the money belonged to her on account of the statute providing that it would vest in her. On this ground, we confirm the order sought to be revised, and dismiss this petition with costs.

A.S.V.

PRIVY COUNCIL.

POPURI RAMAYYA, APPELLANT,

v.

PUTCHA LAKSHMINARAYANA, RESPONDENT.
[AND CONNECTED APPEALS.]

J.C.* 1934, January 30.

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Madras Tenancy—Jurisdiction of Civil Court—"Estate"—Enfranchised Inam—Unproduced Grant—Presumption—Indian Evidence Act (I of 1872), sec. 114—Code of Civil Procedure (Act V of 1908), sec. 9; O. VII, r. 1 (f)—Madras Estates Land Act (I of 1908), sec. 3, sub-sec. 2 (d) and sec. 189.

The inamdar of an agraharam village sued to recover rents from tenants therein. The inam had been granted in 1810 and had been enfranchised. The plaintiff did not produce the grant; the defendants had not sought by discovery to ascertain its existence or whereabouts. There was no evidence as to its terms. The defendants contended that it was to be presumed as a fact that the grant was of the land-revenue alone, and

(1) (1929) 33 C.W.N. 1148.

* *Present*: Lord THANKERTON, Lord ALNESS, and Sir GEORGE LOWNDES.

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that, as it was not suggested that it was to a person who owned the kudivaram, the village was an "estate" within the Madras Estates Land Act, 1908, section 3, sub-section (2) (*d*), so that the jurisdiction of the Civil Court was excluded by section 189. They based that contention on the evidence as showing that the grant was of a revenue paying village in which there were cultivating tenants, and was made to Brahmans who resided elsewhere; also upon section 114 of the Indian Evidence Act

Held, that no presumption as to the terms of the grant arose on either ground, and that as the statements in the plaint sufficiently complied with Order VII, rule 1 (*f*), of the Code of Civil Procedure, the Civil Court, by section 9 of the Code, had jurisdiction in the absence of proof to the contrary.

Suryanarayana v. *Patanna*, (1918) I.L.R. 41 Mad. 1012 (P.C.); L.R. 45 I.A. 209, followed. *Seethayya* v. *Somayajulu*, (1929) I.L.R. 52 Mad. 453 (P.C.); L.R. 56 I.A. 146, distinguished.

Srimath Jagannatha Charyulu v. *Kutumbarayudu*, (1914) I.L.R. 39 Mad. 21, approved.

Judgment of the High Court affirmed.

CONSOLIDATED APPEAL (No. 66 of 1931) from thirteen orders of the High Court in Appeals against Orders Nos. 398, etc., of 1924 (October 11, 1927) setting aside thirteen orders of the District Munsif of Tenali (August 9, 1922).

The respondent instituted original and small cause suits in the Court of the District Munsif to recover rent or damages for use and occupation of agricultural lands in his *agraharam* village. The question arising upon the appeal was whether the *agraharam* was an "estate" within the definition in section 3, sub-section (2), of Madras Estates Land Act, 1908; if it was, the jurisdiction of the Civil Courts was excluded by section 189 of the Act.

The District Munsif dismissed the suits, holding that the village was an estate under section 3, sub-section (2) (*d*), of the Act.

The plaintiff appealed to the District Judge in twelve original suits ; he also applied to the High Court for revision in one small cause case. The High Court transferred the appeals to its own file, and heard them with the application for revision.

Upon the hearing the High Court made orders reversing the orders of the trial Judge and directing him to dispose of the cases.

WALLACE J. said that the onus of proving that the suit inam was not cognizable by the ordinary Civil Courts rested with the defendants, and therefore it was upon them to prove that the inam was an estate within the definition in section 3, sub-section (2), of the Madras Estates Land Act, 1908. They had contended that the inam was within clause (*d*) of that sub-section on the ground that upon the evidence the zamindar had only the *melvaram*. The evidence appeared to show that before the grant there were tenants on the land and that it was a permanently settled zamindari. But the defendants had to show that they were occupancy ryots. They had produced no evidence of that, but relied upon *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*(1) and *Cheekati Zamindar* v. *Ranasooru Dhora*(2), in which it was held that there was a legal presumption that zamindari tenants had occupancy rights. The learned Judge was of opinion that the above view had been overruled by *Suryanarayana* v. *Patanna*(3) and later decisions of the Privy Council. The effect of the Privy Council decisions was that there was no presumption either of fact or of law that the zamindar possessed the *melvaram* right only.

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(1) (1897) I.L.R. 20 Mad. 299. (2) (1899) I.L.R. 23 Mad. 318.
(3) (1918) I.L.R. 41 Mad. 1012 (P.C.); L.R. 45 I.A. 209.

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TIRUVENKATA ACHARIYAR J. delivered a judgment substantially to the same effect. He pointed that, having regard to the Code of Civil Procedure, 1908, section 9 and Order VII, rule 1, the onus was upon the defendants to show that the Civil Court had not jurisdiction.

Parikh for appellant.—The inam village was an "estate" within the definition in section 3, sub-section(2) (*d*), of the Madras Estates Land Act, 1908, and the jurisdiction of the Civil Court was therefore excluded by section 189. Having regard to the judgments of the Board in *Suryanarayana* v. *Patanna*(1) and *Chidambara Sivaprakasa* v. *Veeranna Reddi*(2) it is not contended that apart from the evidence there is a presumption of law that the grant was of the land-revenue only. That however is to be inferred from the evidence which shows that the grant was of a revenue paying village in which there were cultivating tenants, and was made to Brahmans residing elsewhere. The facts are the same as in *Seethayya* v. *Somayajulu*(3) in which the Board held that the grant was of the land-revenue only. The evidence corresponds also to *Chidambara Sivaprakasa* v. *Veeranna Reddi*(2), where it was held to establish a prescriptive right of occupancy. Further, as the plaintiffs failed to produce, or account for the original grant, a presumption arises under the Indian Evidence Act, 1872, section 114, illustration (*g*), that its terms were unfavourable to their case, and showed that the grant was of the *melvaram* only.

De Gruyther K.C. and *Narasimham* for respondent were not called upon.

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The JUDGMENT of their Lordships was delivered by Lord THANKERTON—This is a consolidated appeal against a judgment and thirteen orders dated the 11th October 1927 of the High Court of Judicature at Madras, which set aside a judgment and thirteen orders dated the 9th August 1922 of the Court of the District Munsif of Tenali.

(1) (1918) I.L.R. 41 Mad. 1012 (P.C.); L.R. 45 I.A. 209.
(2) (1922) I.L.R. 45 Mad. 586 (P.C.); L.R. 49 I.A. 286.
(3) (1929) I.L.R. 52 Mad. 453 (P.C.); L. R. 56 I.A. 146.

The appellants are the respective defendants in thirteen suits brought by the respondent to recover rent or damages for use and occupation of agricultural holdings in the respondent's enfranchised inam village of Siripuram, and the only question in the appeal is whether the jurisdiction of the ordinary Civil Courts is excluded by virtue of section 189 of the Madras Estates Land Act (Madras Act I of 1908). It is clear that, in the present case, the determination of that question will depend on whether the respondent's village is an "estate" as defined in section 3 (2) of the Act. The District Munsif held that the village is an estate under the Act, and that he had no jurisdiction to try the suits. The High Court held a contrary view and remanded the suits to be tried by the District Munsif.

The suit village was originally within the ancient zamindari of Chilakalurpeta, which was held by the Manuru family under an imperial grant of 1707 from the Mogul Emperor Aurangzeb. In fasli 1219, i.e., the year 1810, the Raja of Chilakalurpeta granted the village of Siripuram in perpetuity as an agraharam to one Vedala Rangacharlu, a Brahman resident of another village called Peddavaram, on a shrotriyam of 80 pagodas (Rs. 320). In the lower Courts the respondent alleged two earlier grants of 1784 and 1799—prior to the permanent settlement of 1802—but these were rejected, and it may now be taken that the grant was in 1810.

In 1846 the zamindari of Chilakalurpeta was sold for arrears of revenue and was purchased by the Government. In 1861 the agraharam of Siripuram village was confirmed and enfranchised on a combined quit-rent of Rs. 361 by the Inam

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Commissioner. The interest of the inamdar was subsequently purchased by Putcha Sitaramayya, the adoptive father of the respondent, and he created a trust in favour of the Sri Kasi Visweswara Annapurna Choultry at Bezwada in respect of a large portion of the lands in Siripuram Agraharam, constituting himself as the dharmakarta of the charity and providing for the hereditary dharmakartaship in the family. After the death of Sitaramayya, in 1908, his widow adopted the plaintiff as a son to her husband, and the respondent succeeded as dharmakarta of the choultry. The respondent became a major in October 1918 and he instituted the present suits in 1920 and 1921, as dharmakarta of the choultry.

The definition of "Estate" for the purposes of the Madras Estates Land Act (I of 1908) is to be found in section 3 of the Act, which, so far as material, provides as follows :—

"3. In this Act, unless there is something repugnant in the subject or context :—

(2) 'Estate' means—

(*a*) any permanently settled estate or temporarily settled zamindari;

(*b*) any portion of such permanently settled estate or temporarily settled zamindari which is separately registered in the office of the Collector;

(*d*) any village of which the land-revenue alone has been granted in inam to a person not owning the *kudivaram* thereof provided that the grant has been made, confirmed or recognized by the British Government, or any separated part of such village;

(*e*) any portion consisting of one or more villages of any of the estates specified above in clauses (*a*), (*b*) and (*c*) which is held on a permanent under-tenure."

It is common ground that, if the village of Siripuram is an estate within the meaning of the statutory definition, the present suits lie within the jurisdiction of the Revenue Court under section 189 of the Act, and that the original jurisdiction of the Civil Courts is thereby excluded.

While the appellants had submitted in the Courts below contentions based on the other clauses above quoted, the argument before this Board was confined to clause (*d*) of section 3 (2), and the decision of this question mainly depends on whether the respondent is owner of the *kudivaram* right as well as of the *melvaram* right. It is not suggested that the respondent or his predecessors have acquired the *kudivaram* since the date of the grant of 1810, or that they already owned the *kudivaram* at the time of that grant, and it is therefore necessary to ascertain, if possible, whether the grant of 1810 conveyed both varams. The grant of 1810 has not been produced, and the extracts from the inam register of 1861 afford the only documentary evidence as to the nature of the grant. The appellants no longer maintain, as they did in the lower Courts, that the description of the village as *seri* in the inam enquiry involves an inference that the tenants were then recognized as possessing *jirayati* rights. These extracts are not of assistance in determining whether the grant of 1810 conveyed the *kudivaram* right.

As regards the other evidence, the learned Munsif found as follows :—

"The grant of the agraharam was to a non-resident Brahman in fasli 1219 (1810), and it was a grant by a zamindar

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of a village within his permanently settled zamindari. There were cultivating tenants in the village at the time of the grant, and it was even then a *seri* village. The agraharamdars were only receiving rents as stated in exhibits A and AA, and they had no personal cultivation. The defendants in the cases already stated have been in possession of their respective lands for considerable periods of time. The leases obtained from some tenants, changes in tenantry with regard to some lands in the village and variations in rent have been taking place only since 1904. At about 1902 the tenants, or some of them, set up their rights to the soil and the agraharamdars left no stone unturned to resist what perhaps they believed to be an unjustifiable claim."

This somewhat meagre result of the evidence may be completed by a passage from the judgment of TIRUVENKATA ACHARIYAR J. in the High Court, as follows :—

"The defendants say that they have been in uninterrupted enjoyment of their respective holdings, even from before the date of the grant, and that they have been partitioning their lands and also disposing of them by sales and mortgages, but they have not produced a single document either of partition or sale or mortgage. Those allegations rest only on their own bare statements, which are entitled to little weight."

This fact, while it is hardly evidence of the terms of the grant, is distinctly unfavourable to the appellants' case.

Their Lordships are clearly of opinion that these findings of fact, apart from a presumption of fact which the appellants maintained to be applicable, as hereafter referred to, do not establish whether the grant of 1810 conveyed the *kudivaram* right or not.

But the appellants contended that the fact of there having been cultivating tenants in the village prior to the grant of 1810 raised a presumption of fact that the zamindar had not the *kudivaram* right, and that accordingly the grant

did not include that right. But, in their Lordships' opinion, the existence of such a presumption was expressly negatived, and certain decisions of the High Court at Madras and the High Court at Bombay, which had given effect to such a presumption, were over-ruled by the decision of this Board in *Suryanarayana* v. *Patanna*(1). The appellants sought to rely on the subsequent decision of this Board in *Seethayya* v. *Somayajulu*(2), but that case was decided on construction of the terms of the particular grant which were before the Board, and not on any presumption of fact. Indeed, it is expressly stated in the judgment that there is no presumption either way as to the inclusion or non-inclusion of the *kudivaram* right. It should be added that the appellants maintained that, in the absence of production of the grant of 1810 by the respondent, the Court should presume that the terms of the grant would negative the respondent's case, in view of section 114 of the Evidence Act, illustration (*g*), but it is sufficient to say that there is no evidence that the grant could be produced. The respondent's natural father stated in evidence that neither he nor the respondent had it, and he was not cross-examined on this point. Nor did the appellants seek to ascertain by discovery the existence or whereabouts of the grant.

The evidence being inconclusive as to whether the grant of 1810 conveyed the *kudivaram* right or not, it is necessary to consider upon which of the parties the burden of proof lies in regard to the question of jurisdiction. In their Lordships'

(1) (1918) I.L.R. 41 Mad. 1012 (P.C.); L.R. 45 I.A. 209.
(2) (1929) I.L.R. 52 Mad. 457 (P.C.); L.R. 56 I.A. 146.

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opinion, the statements in the plaint sufficiently comply with the provisions of Order VII, rule 1, sub-clause (*f*), and, that being so, their Lordships are clearly of opinion that the terms of section 9 of the Civil Procedure Code lay down a general rule in favour of the jurisdiction of the Civil Court, and that the burden of proof is on the party who maintains an exception to the general rule. This is in conformity with the decision of the High Court at Madras in *Srimath Jagannatha Charyulu* v. *Kutumbarayudu*(1).

Accordingly, their Lordships are of opinion that the appellants, on whom lay the burden of proof, have failed to prove that the grant of 1810 was of the *melvaram* only, and therefore have failed to prove that the inam is an "estate" within the definition of the Madras Estates Land Act, so as to oust the jurisdiction of the Civil Court.

Their Lordships will humbly advise His Majesty that the consolidated appeal should be dismissed with costs, and that the judgment and thirteen orders of the High Court, dated the 11th October 1927, should be affirmed.

Solicitors for appellant: *Hy. S. L. Polak & Co.*

Solicitors for respondent: *Douglas Grant & Dold.*

A.M.T.

(1) (1914) I.L.R. 39 Mad. 21.