APPELLATE CIVIL.

Before Mr. Justice Venkataramana Rao.

1938, January 27.

A. LAKSHMANA REDDIAR (FIRST DEFENDANT), APPELLANT,

v.

THE ELLINGANAICKENPATTY KUMARA KOIL SRI SUBRAMANIA SWAMI, THROUGH ITS TRUSTEE AND MANAGER MEENAKSHISUNDARA BHATTAR, AND SIX OTHERS (PLAINTIFF AND DEFENDANTS 2 TO 7), RESPONDENTS.*

Inamdar—Ejectment suit by—Burden of proof—Non-existence of presumption that he is owner of both warams—Proof that he is owner of both warams—Insufficiency of, to entitle him to decree in such suit without proof that the tenant was let in under a terminable tenancy.

When an inamdar comes to Court alleging that he is the owner of both the warams, no presumption can be made that the grant was of both the warams and it is incumbent on him to prove the affirmative of the issue. Even assuming that he establishes that he is the owner of both the warams, in order to sustain an action in ejectment he must prove that the defendant was let in under a terminable tenancy which entitled him to eject him from the land.

Aiyanars v. *Periakaruppa Thevan*(1) not followed.

Subramania Aiyar v. *Onnappa Goundan*(2) and *Subbarayudu* v. *Narasimha Rao*(3) followed.

Case-law reviewed and discussed.

SECOND APPEAL against the decree of the Court of the Subordinate Judge of Ramnad at Madura in Appeal No. 105 of 1929 preferred against the decree of the Court of the District Munsif of Sattur in Original Suit No. 540 of 1926.

R. Desikan for appellant.

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* Second Appeal No. 1889 of 1931.

(1) (1929) 30 L.W. 583. (2) (1920) 39 M.L.J. 629.

(3) (1924) 47 M.L.J. 558.

K. Rajah Ayyar and *V. Ramaswami Ayyar* for first respondent.

Other respondents were unrepresented.

Cur. adv. vult.

ORDER.

This second appeal arises out of a suit in ejectment instituted by the trustee of Kumara Koil Sri Subramania Swami temple in Ellinga-naickenpatty village, Sattur Taluk. The case for the plaintiff is that the suit land forms part of an inam wherein the temple owns both the warams, that the second defendant was in occupation thereof as a tenant at will, that in execution of a decree obtained by the first defendant against the second defendant the first defendant purchased the said property and was in possession of the same. During the pendency of the execution proceedings a claim was preferred on behalf of the temple alleging that the second defendant had no saleable interest therein and the property belonged to the temple, but the claim was dismissed. Hence the present suit was filed for a declaration of the temple's right to the land and for delivery of possession thereof. The defence is that the temple owned only the melwaram right and the kudi-waram right had always been in the tenant of the inam lands and therefore was in the second defendant, and that in any event the plaintiff was not entitled to eject the second defendant, and therefore the suit would not lie.

The main questions in dispute between the parties therefore are whether the plaint temple is the owner of both the warams, and, even assuming it is, is the second defendant liable to be ejected therefrom ? The learned District Munsif dismissed

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the plaintiff's suit holding against the temple on both the questions, but the learned Subordinate Judge reversed his decision. In my opinion, the learned Subordinate Judge misdirected himself on questions of law bearing on the said issues in arriving at his conclusions and threw wrongly the onus on defendants 1 and 2. The learned Subordinate Judge in paragraph 6 of his judgment states thus :

> " When once it is conceded that a tenant is a kudiwaramdar paying rent or melwaram to the melwaramdar, the relationship of landlord and tenant is established between them and the burden of proving full occupancy rights will be upon the defendant."

Again in paragraph 7 of the judgment he remarks :

> " When once it is conceded that they are occupancy tenants, according to their view, the relationship of landlord and tenant is established and the burden of proof is heavily upon the second defendant, and after him, upon the first defendant, to prove such rights. Second defendant and his father, therefore, would have come into possession of the land only under a right derived from these trustees or their predecessors-in-title. They are only tenants at will liable to be ejected at any moment by the trustees."

The learned Subordinate Judge purported to follow the decision in *Aiyanars* v. *Periakaruppa Thevan*(1) which in a way supports him. It seems to me the view of law enunciated above is fundamentally opposed to the conception underlying the system of tenure which recognises kudiwaram and melwaram as distinct interests in land and is based on a misapprehension of some of the decisions of the Privy Council referred to by both the learned Subordinate Judge and the learned Judges in *Aiyanars* v. *Periakaruppa Thevan*(1). In *Venkatanarasimha Naidu* v. *Dandamudi*

(1) (1929) 30 L.W. 583.

Kotayya(1) SUBRAMANIA AYYAR J. points out that there is no substantial analogy between an English tenant and an Indian ryot and that the English rule embodied in section 106 of the Transfer of Property Act should not be applied, and, after citing the following passage from the proceedings of the Board of Revenue dated 5th January 1818 regarding the nature of the rights of the ryots in the various parts of the Presidency, viz.:

"Whether rendered in service, in money or in kind and whether paid to rajas, jagirdars, zamindars, poligars, mutadars, shrotriyamdars, inamdars or to Government Officers, such as tahsildars, amildars, amins or thanadars, the payments which have always been made are universally deemed the dues of Government",

observed thus :

"To treat such a payment by cultivators to zamindars as 'rent' in the strict sense of the term and to imply therefrom the relation of landlord and tenant so as to let in the presumption of law that a tenancy in general is one from year to year, would be to introduce a mischievous fiction destructive of the rights of great numbers of the cultivating classes in this province who have held possession of their lands from generation to generation."

Sivaprakasa Pandara Sannadhi v. *Veerama Reddi*(2) approved of this view and cited the above passage from the Board of Revenue Proceedings at page 602 as laying down correctly the place of the cultivating ryots in the agricultural economy of Southern India. Therefore the observations of WALLACE J. in *Aiyanars* v. *Periakaruppa Thevan*(3)

"that a kudiwaram holder is a co-owner with his landlord and is not a tenant is not one that has been advanced or approved by any decision of the Privy Council"

(1) (1897) I.L.R. 20 Mad. 299. (2) (1922) I.L.R. 45 Mad. 586 (P.C.).
(3) (1929) 30 L.W. 583.

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is not strictly accurate in view of the observations of the Judicial Committee in *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*(1). When an inamdar comes to Court alleging that he is the owner of both the warams, no presumption can be made that the grant was of both the warams and it is incumbent upon him to prove the affirmative of the issue. Even assuming that he establishes that he is the owner of both the warams, in order to sustain an action in ejectment he must prove that the defendant was let in under a terminable tenancy which entitled him to eject the tenant from the land. There is nothing in the decisions of the Privy Council laying down a different view. In *Aiyanars* v. *Periakaruppa Thevan*(2) WALLACE J., referring to *Nainapillai Marakayar* v. *Ramanathan Chettiar*(3) and *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*(1), observed thus:

> "It must be admitted that there is a difficulty in reconciling the two decisions which appear, if we may say so with respect, to speak also with diverse voices on the question whether occupancy right can be obtained by adverse possession and prescription. But *Nainapillai Marakayar* v. *Ramanathan Chettiar*(3) is the latest decision and is binding on us and we cannot refuse to follow where it leads."

With great respect to the learned Judge, *Nainapillai Marakayar* v. *Ramanathan Chettiar*(3) does not enunciate any rule which is opposed to the conception which underlies the relationship between a melwaramdar and a kudiwaramdar. In that case, it will be seen that the tenants were let into possession under muchilikas which entitled the landlord to eject the tenants (page 354). That the case proceeded upon this view is clear

(1) (1922) I.L.R. 45 Mad. 586 (P.C.). (2) (1929) 30 L.W. 583.
(3) (1923) I.L.R. 47 Mad. 337 (P.C.).

from the following passage in the judgment of Sir JOHN EDGE :

"In 1870 SCOTLAND C.J. held that when a tenancy in the Presidency of Madras commenced under a terminable contract there was nothing to prevent the landlord from ejecting the tenant at the end of the term from the lands which had been let to him." (Page 354.)

It was in relation to this conception of landlord and tenant that his Lordship made the following observation a little lower down :

"No tenant of lands in India can obtain any right to a permanent tenancy by prescription in them against his landlord from whom he holds the lands."

The observations to a similar effect on page 344 must be understood likewise, and in the earlier part of the judgment it was pointed out that it was not disputed that the defendants were tenants of the temple, the landlord, in that case. In *Zamindar of Parlakimedi* v. *Ramayya*(1) PHILLIPS and MADHAVAN NAIR JJ. examined the scope of the Privy Council decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar*(2) and understood the said decision as not laying down any rule which is inconsistent with that laid down in *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*(3). At page 514 PHILLIPS J. observed thus :

"I had to consider this point, sitting as a single Judge, in *Periakaruppa Thevan* v. *Aiyanars and Kaniyalaswamigal Kovil Devasthanam*(4) and there I came to the conclusion that the decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar*(2), by which the burden of proving occupancy right is thrown on the tenant, is only applicable in cases where the inamdar is proved or admitted to be the owner of the land itself. A closer scrutiny of the judgment in *Nainapillai Marakayar* v. *Ramanathan Chettiar*(2) confirms me in this view . . . The words 'tenant of lands' must mean 'tenant of lands belonging

(1) (1926) 51 M.L.J. 510.
(2) (1923) I.L.R. 47 Mad. 337 (P.C.).
(3) (1922) I.L.R. 45 Mad. 586 (P.C.).
(4) (1925) 49 M.L.J. 602.

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to his landlord', that is to say, that the landlord has a right not merely to the melwaram but to the land itself."

MADHAVAN NAIR J. at pages 523 and 524 observes thus:

"The dictum of the Privy Council as regards the burden of proof is based upon two decisions referred to by their Lordships . . . The facts of these cases and the observations show that in both of them, as pointed out by my learned brother, it was either admitted or found as a fact that the tenants had been let into possession by the landlord who was the absolute owner and that consequently when the tenant claimed to possess occupancy right it was incumbent on him to prove it. When similar circumstances arose in *Nainapillai Marakayar* v. *Ramanathan Chettiar*(1) their Lordships affirmed the same principle. When the landlord owns both the melwaram and the kudiwaram interests in the land and the tenant sets up occupancy rights in such land, the burden of proving that he has such rights is on him. If the dictum referred to in *Nainapillai Marakayar* v. *Ramanathan Chettiar*(1) is thus understood, it is not inconsistent with the decision in *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*(2)."

The learned Judges in *Aiyanars* v. *Periakaruppa Thevan*(3) do not notice this decision at all. In *Basiruddin Sarkar* v. *Sahebulla Pramanik*(4) MUKERJI and MALLIK JJ. observed thus:

"In an action in ejectment one of the things that the plaintiff must prove is his title to immediate possession. This is a proposition as old as the hills. In a case where the defendants' tenancy is admitted—an admission that involves the admission of the defendants' right to be in possession—the plaintiff must necessarily establish as to how he is entitled to possession; in other words, how the tenancy has come to an end."

After referring to the Privy Council decision in *Seturatnam Aiyar* v. *Venktachela Goundan*(5)

(1) (1923) I.L.R. 47 Mad. 337 (P.C.). (2) (1922) I.L.R. 45 Mad. 586 (P.C.).
(3) (1929) 30 L.W. 583. (4) (1927) 32 C.W.N. 160.
(5) (1919) I.L.R. 43 Mad. 567 (P.C.).

and to *Nainapillai Marakayar* v. *Ramanathan Chettiar*(1) they remarked thus :

"In my opinion, the decisions of the Judicial Committee do not indicate that their Lordships ever intended to depart from these elementary rules. In both the cases the plaintiff's title to the lands was conceded, and notices by which the defendants' tenancies were terminated were not disputed. In neither case had any grant been alleged, asserted, or admitted on behalf of the plaintiff, but inasmuch as the defendants had been in occupation on payment of rent, a tenancy from year to year terminable on notice was all that was conceded."

In *Subbarayudu* v. *Narasimha Rao*(2) SPENCER and KUMARASWAMI SASTRI JJ., after referring to the Privy Council decision in *Nainapillai Marakayar* v. *Ramanathan Chettiar*(1), laid down the law thus :

"When a plaintiff seeks to eject a defendant from possession on the ground that the latter is his tenant whose tenancy has been terminated, he must prove not only that the defendant is his tenant as alleged, if that is denied, but also his right to eject. In order to prove a right to eject, he must necessarily show that the tenancy is a terminable one and has been validly terminated. This onus is unaffected by any defence of permanent rights of occupancy that the defendant may set up but fails to prove."

The same view was enunciated by SPENCER J. in *Subramania Aiyar* v. *Onnappa Goundan*(3) when he stated that the principle of the decision in *Venkatacharlu* v. *Kandappa*(4) is unaffected by any decision of the Privy Council. The learned Judges in *Aiyanars* v. *Periakaruppa Thevan*(5) do not advert to either of the above cases. I respectfully agree with the views expressed in these decisions in regard to the inamdar's right to eject and that of PHILLIPS and MADHAVAN NAIR JJ.

(1) (1923) I.L.R. 47 Mad. 337 (P.C.).
(2) (1924) 47 M.L.J. 558.
(3) (1920) 39 M.L.J. 629, 638.
(4) (1891) I.L.R. 15 Mad. 95.
(5) (1929) 30 L.W. 583.

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in regard to the scope of the Privy Council decision, in *Zamindar of Parlakimedi* v. *Ramayya*(1) and prefer to follow them.

The judgment of the learned Subordinate Judge is therefore considerably vitiated by his wrong approach of the questions which he had to decide. I have to set aside his findings and call for revised findings in the light of the remarks made in my judgment. The learned Subordinate Judge is therefore directed to submit his revised findings on the evidence on record on the following questions :

1. Whether the plaintiff is the owner of both the warams ?

2. Whether the second defendant has occupancy rights in the suit property ?

3. Whether the plaintiff is entitled to eject the second defendant from the land ?

[In pursuance of the directions contained in the above order the Subordinate Judge of Ramnad submitted his findings in favour of the second defendant.

The second appeal coming on for final hearing after the return of the said findings, his Lordship accepted the findings, set aside the decree of the learned Subordinate Judge and restored that of the District Munsif with costs throughout.]

G.R.

(1) (1926) 51 M.L.J. 510.