*Privy Council Appeal No. 55 of 1916.*

**Adusumilli Suryanarayana, since deceased, and Others** - - - - - - *Appellants*

*v.*

**Achuta Pothanna and Others** - - - *Respondents.*

FROM

**THE HIGH COURT OF JUDICATURE AT MADRAS.**

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**JUDGMENT** OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST JULY, 1918.

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*Present at the Hearing:*

LORD ATKINSON.
SIR JOHN EDGE.
SIR WALTER PHILLIMORE, Bart.

[*Delivered by* SIR JOHN EDGE.]

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This is a consolidated appeal from three decrees, dated the 9th October, 1913, of the High Court at Madras, which affirmed decrees dated the 4th March, 1912, of the District Judge of Kistna, by which decrees, dated the 18th April, 1911, of the Additional District Munsif of Masulipatam, were set aside and the plaintiffs' suits were dismissed.

The suits in which these appeals have arisen were brought on the 10th July, 1909, in the Court of the District Munsif of Gudivada, and were suits of ejectment from agricultural lands situate within the Agraharam village of Korraguntapalem, in the Northern Circars of the Presidency of Madras. The plaintiffs are inamdars of the village, holding under an *inam* grant of 1373 from a Reddi King of the district. The defendants are agricultural tenants who, or whose predecessors in title, at various times within very recent years and before July 1908 were respectively let into possession by the inamdars under agreements for terms, which expired in each case before the suits of ejectment were brought. By these documents of tenancy the defendants or their predecessors in title agreed with the inamdars to quit possession of their holdings on the determination of the term

for which the lands were let to them, and without claiming any Zeroyati right in the lands.

In their written statements the defendants alleged that the Agraharam village is an estate within the meaning of section 3 of Act I of 1908 (the Madras Estates Land Act, 1908), and in the alternative, and if the Agraharam is not an estate within the meaning of the Act, then the defendants alleged in their written statements that they or their predecessors in the holdings had been cultivating the lands long before the formation of the Agraharam, had acquired permanent rights of occupancy in the lands, and had enjoyed the lands with such rights to the present time.

In the written statements it was denied that the defendants held the lands for temporary terms as alleged in the plaints, and it was stated that if it were proved that agreements of tenancy had been executed by which the lands were to be held for terms and were to be quitted on the expiration of the terms it was not admitted that such documents were executed willingly by the defendants or their predecessors or with any knowledge of their provisions. If that statement mea t anything it must have meant that the inamdars had by fraud and the exercise of undue influence procured the execution by the defendants or their predecessors of the agreements of tenancy under which the defendants held the lands occupied by them. It may be mentioned at once that no evidence to suggest that there was any foundation of truth for that statement has been brought to the attention of their Lordships, and it may be dismissed from consideration as unfounded.

If the lands from which the inamdars are seeking to eject the defendants are part of an estate within the meaning of section 3, sub-section (2) (*d*), of "The Madras Estates Land Act, 1908" (Act I of 1908), as the defendants allege they are, the Civil Court had no jurisdiction to entertain the suits. The Munsif, who tried the suits, found on the evidence that the Agraharam village in question was not an estate within the meaning of the Act, and finding the other issues in favour of the plaintiffs made a decree of ejectment and for mesne profits in each suit. The District Judge on appeal decided that the Agraharam village was an estate within the meaning of section 3, sub-section (2) (*d*), of the Act, and dismissed the suits. The High Court on appeal directed that the plaint in each case should be returned to the plaintiff in order that it might be presented to the Court of Revenue. It is from these decrees of the High Court that this consolidated appeal has been brought.

As the decision of this appeal mainly depends on the question as to whether the Agraharam village is or is not an estate within the meaning of section 3, sub-section (2) (*d*), of the Act, it is necessary to see how an estate for the purpose of the Act is thereby defined. Clauses (*a*), (*b*), (*c*), and (*e*) of section 3, sub-section (2), do not apply in this case, and need not be referred

to. Section 3, so far as it is applicable here, is as follows:—

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

* * * * * *

(2.) "Estate" means—

* * * * * *

(*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 confirmed or recognised by the British Government, or any separated part of such village;

* * * * * *"

The term "Kudivaram" is not defined in the Act. It is a Tamil word, and literally signifies a cultivator's share in the produce of land held by him as distinguished from the landlord's share in the produce of the land received by him as rent. The landlord's share is sometimes designated "Melvaram." The "Kudivaram interest," an expression occurring in section 8 of the Act, is apparently understood by the High Court at Madras as meaning a right to occupy land permanently.

The grant of the village by the Reddi King to the predecessor in title of the plaintiffs has not been produced. It would be unreasonable to expect that at this long distance of time it is still in existence. But that grant has been recognised and confirmed by the British Government, and the question is, was it a grant of the revenue only of the village, or was it a grant of the proprietary right in the village, that is, of the soil of the village? If it was a grant merely of the revenue obtainable from the village, the village is an estate within the meaning of the Act. On the other hand, if the grant included the soil of the village, the village is not an estate within the meaning of the Act, and the decree of the Munsif was right and should not have been set aside.

It has been contended on behalf of the respondents that in the times when the Reddi Kings ruled in this district the ownership of the soil of land in India was not in the Sovereign or Ruler, and that the right of the Ruler was confined to a right to receive as revenue a share in the produce of the soil from the cultivator. Upon that assumption it was contended that the inam grant of 1373 could have been only a grant of the King's share in the produce of the soil, that is, that the grant was a grant of land revenue alone and did not include the Kudivaram. That is an assumption which no Court is entitled to make, and in support of which there is, so far as their Lordships are aware, no reliable evidence. The fact that Rulers in India generally collected their land revenues by taking a share of the produce of the land is not by itself evidence that the soil of lands in India was not owned by them and could not be granted by them; indeed, that fact would support the contrary assumption, that the soil was vested in the Rulers who drew

their land revenue from the soil, generally in the shape of a share in the produce of the soil, which was not a fixed and invariable share, but depended on the will of the Rulers. The assumption contended for on behalf of the respondents was not recognised in Regulation XXXI of 1802. The opening words of that Regulation are instructive, it is there recited :—

"Whereas the ruling power of the provinces now subject to the Government of Fort St. George has, in conformity to the ancient usages of the country, reserved to itself and has exercised the actual proprietary right of lands of every description; and whereas, consistently with that principle, all alienations of land, except by the consent and authority of the ruling power, are violations of that right; but whereas considerable portions of land have been alienated by the unauthorised encroachments of the present possessors, by the clandestine collusion of local officers, or by other fraudulent means; and whereas the permanent settlement of the land-tax has been made exclusive of alienated lands of every description; it is expedient that rules should be enacted for the better ascertainment of the titles of persons holding, or claiming to hold, lands exempted from the payment of revenue to Government under grants not being badshahie or royal, and for fixing an assessment on such lands of that description as may become liable to pay revenue to Government; wherefore the following rules are enacted for that purpose."

By that regulation all grants for holding lands exempt from the payment of revenue made previously to the 26th February, 1768, in the Northern Circars shall be deemed to be valid,

"provided that such lands may not have escheated to the State, or may not have been resumed and assessed for the public revenue since the period of those dates respectively; and provided also that the present incumbents or their ancestors did obtain and hold actual possession of the said lands previously to the dates hereinbefore specified."

The date thereinbefore specified, so far as the Northern Circars were concerned, was the 26th February, 1768.

By Section 15 of Regulation XXXI of 1802 it was enacted that a register should be kept in each zillah of the lands held exempt from the payment of revenue previously, in the case of the Northern Circars to the 26th February, 1768, and that the registers should specify the denomination of each grant or sanad, the names of the original grantors or grantees, and the names of the present possessors, with other particulars. The earliest of such registers from which an extract was put in evidence in these suits was Mr. Oakes' Inam Register. It appears from Mr. Oakes' Inam Register that the whole of the Agraharam village of Korraguntapalem was granted by Sri Madana Vema Reddi to Ivaturi Naganaradhyulu, and had been enjoyed by his successors in title for 429 years. That entry in Mr. Oakes' Inam Register affords, in their Lordships' opinion, conclusive evidence that the grant of the Agraharam village by the Reddi King was a grant not only of the revenue but of the soil of the village, and that conclusion is supported by the dumbalas which have been put in evidence in these

suits, and it is also supported by the reliable evidence in these suits showing how the inamdars dealt with the lands of the village. It is not proved, nor is there any evidence to suggest, that at the date of the grant there were any tenants in the village holding lands with any rights of occupancy by custom or otherwise.

By Act VIII of 1865 (Madras) it was enacted that inamdars and other landholders should enter into written agreements with their tenants, the engagements of the landowners being termed puttah and those of the tenants being termed muchilka. The puttah should contain, amongst other things, "all other special terms by which it is intended the parties shall be bound." The muchilka should, at the option of the landholders, be a counterpart of the puttah, or a simple engagement to hold according to the terms of the puttah. By the muchilkas which were executed by the defendants respectively or their predecessors in title the term for which the lands were let to them was specified; it was admitted that they held no zeroyati rights, and they agreed to quit the lands at the end of their term. All these muchilkas were made before the coming into force of Act I of 1908, and it has not been proved that when these tenancy agreements were entered into and the defendants or their predecessors in title were let into possession under them, any of the lands were, or had been, held by a ryot with a permanent right of occupancy.

The District Judge, in setting aside the decrees of the Munsif and dismissing the suits, and the learned Judges of the High Court in the decrees which they made, acted upon what they conceived to be a presumption of law, deduced by them from some decisions of the High Court at Madras and of the High Court at Bombay, to the effect that in the case of an inamdar it should be presumed, in the absence of the inam grant under which he held, that the grant was of the royal share of the revenue only, and they cited the decisions upon which they relied as authorities. Some of those decisions to which they referred do not, upon an examination of them, support the opinions of those Judges as to the presumption which they applied in these suits. In their Lordships' opinion there is no such presumption of law. But a grant of a village by or on behalf of the Crown under the British rule is in law to be presumed to be subject to such rights of occupancy, if any, as the cultivators at the time of the grant may have had.

Their Lordships will humbly advise His Majesty that this consolidated appeal should be allowed with costs; that the decrees of the District Judge and of the High Court should be set aside with costs; and that the decrees of the Munsif should be restored and affirmed.

# In the Privy Council.

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**ADUSUMILLI SURYANARAYANA AND OTHERS**

*v.*

**ACHUTA POTHANNA AND OTHERS.**

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DELIVERED BY SIR JOHN EDGE.

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1918.