Supreme Court of India
Aluru Kondayya And Ors vs Singaraju Rama Rao And Ors on 20 September, 1965
Equivalent citations: 1966 AIR 681, 1966 SCR (2) 92
Author: S C.
Bench: Shah, J.C.

PETITIONER:
ALURU KONDAYYA AND ORS.

Vs.

RESPONDENT:
SINGARAJU RAMA RAO AND ORS.

DATE OF JUDGMENT:
20/09/1965

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
SIKRI, S.M.

CITATION:
1966 AIR 681 1966 SCR (2) 92
CITATOR INFO :
R 1983 SC 608 (4)

ACT:
Madras Estates Land Act (1 of 1908), s. 3 (2) (d), Explanation 1, as amended by Act 18 of 1936 and Act (2 of 1945)-Estate-Grant of a named village-If can be presumed to be of a whole village.

HEADNOTE:
In the village of Challayapalam, there were six inams, namely, the Challayapalam Shrotriem and five minor inams but there was no information as to when the inams were created and by whom. In two suits, one filed by the shrotriemdars, against the tenants for a declaration that the tenants did not have occupancy rights in the lands in their occupation, and the other by the tenants for a declaration that they had occupancy rights, the question arose whether the shrotriem was an "estate" within the meaning of s. 3 (2) (d) of the Madras Estates Land Act, 1908, as amended by Act 18 of 1936. The trial court held, on a review of the evidence, that the grant was of the whole village within the meaning of the

section and that the tenants had occupancy rights. On appeal, the High Court held that the evidence on record was inconclusive, that the onus of proving that the ant was of an estate lay upon the tenants, and that, since the tenants had Failed to discharge the onus, the question should be decided against the tenants.

In the appeal to this Court by the tenants, the question was : if there was no evidence justifying an inference that the grant was of a whole village, whether explanation 1 to s. 3(2)(d) (added by Act 2 of 1945) gave rise to a presumption in favour either of the shrotriemdars or the tenants.

HELD : The suit of the shrotriemdars must fail, because, the Explanation raises a presumption, where a grant is expressed to be of a named village, that the area which formed the subject matter of the grant shall be deemed to be an estate. Raising of the presumption is not subject to any other condition. The legislature has, by the non obstante clause in the Explanation, affirmed that such presumption shall be raised even if it appears that in the grant are not included certain lands in the village, which have, before the grant of the named village been granted on service or other tenure or have been reserved for communal purposes. The party contending that the grant in question falls outside the definition in s. 3(2) (d), has to prove that case, either by showing that the minor inams not comprised in the grant were created, contemporaneously with or subsequent to the grant of the village, by the grantor. [857 D-E; 861 C-E]

By enacting the Explanation the intention of the legislature was to declare occupancy rights of tenants in inam villages. It would be attributing to the legislature gross ignorance of local conditions. if it was held that the legislature intended to place upon the tenant the onus of establishing affirmatively that the minor inams were granted before the grant of the named village and that if he fails to do so his claim is liable to fail. It is well-nigh impossible to discharge such a burden in normal cases. Nor was it intended that, when the evidence was inconclusive, the person who approached the Court for relief must fail, for, as in the present 842

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case, if the inamdar as well as the tenant sue for relief, the application of the rule would require the court to adopt the anomalous course of dismissing both the actions. In cases, which arose after the Amending Act of 1936, reference to the presumption in s. 23 of the Act would be wholly out of place, the applicable presumption being the one prescribed by Explanation 1. The presumption under s. 23 , that a grant in favour of an inamdar was of the melvaram only, applied only in cases which arose before the Amending Act of 1936. [857 G; 858 B; 860 B; 862 F-G]

District Board of Tanjore v. M. K. Noor Mohammad Rowther, A.I.R. 1953 S.C. 446 and Varada Bhavanarayana Rao v. State of Andhra Pradesh, [1964] 2 S.C.R. 501, explained.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 341 to 343 of 1961.

Appeals from the judgment and decree dated September 2, 1955 of the Andhra Pradesh High Court in Appeals Suits Nos. 342 of 1949, 789 of 1950 and 551 of 1951 respectively. A. V. V. Nair and P. Ram Reddy, for the appellants. A. V. Viswanatha Sastri, Alladi Kuppaswamy and M. S. Narasimhan, for the respondents Nos. 1 and 2 (in C.A. No. 341 of 1961) respondents Nos. 1 to 3 (in C.A. No. 342 of 1961) and respondent Nos. 1 to 4 and 6 (in C. A. No. 343 of 1961).

The Judgment of the Court was delivered by Shah, J. In these appeals a common question--whether a shrotriem grant of lands known as "Challayapalem shrotriem" formed an estate within the meaning of S. 3 (2) (d) of the Madras Estates Land Act, 1908-arises. The Court of first instance on a review of the evidence was of the opinion that the grant was of the whole Chellayapalem village within the meaning of s. 3 (2) (d) of the Madras Estates Land Act, 1908, in force at the relevant time, and that the tenants held rights of occupancy in the lands held by them. The High Court of Madras disagreed with that view and held that on the evidence it was not proved that the original grant was of a "whole village" or even of a "named village" within the meaning of s. 3 (2) (d) of the Madras Estates Land Act, 1908, and the first Explanation thereto, and that the onus to prove that the grant was of a whole or of a named village being upon the tenants in occupation of the lands in dispute, the claim of the shrotriemdars must succeed. With certificates granted by the High Court, these three appeals have been preferred.

Suit No. 42 of 1942 was filed by certain tenants of lands in the village Challayapalem, District Nellore, for a declaration that they hold occupancy rights in lands in their occupation and for an injunction restraining the shrotriemdars of the village from "inter-

fering with their possession". The tenants claimed that "they and their ancestors" were in possession and enjoyment of the lands for many years and had been paying rent to the shrotriemdars, and were dealing with the lands as owners, that all transactions in the Challayapalem shrotriem were being on the footing that the village was an "estate" under the Madras Estates Land Act, 1908, and that in any event the tenants held permanent rights of occupancy in the lands acquired in virtue of the provisions of the Madras Estates Land (Amendment) Act, 1936. This Suit was later numbered 37 of 1947.

The shrotriemdars filed suit No. 2 of 1946 against fifteen named defendants for a declaration that the tenants in occupation of the lands in the village did not hold permanent occupancy rights. Later, permission under O. 1 r. 8 Code of Civil Procedure to sue the named defendants as representatives of all the tenants in the lands of the shrotriem grant was obtained. In this suit the shrotriem- dars did not claim any relief for possession : they merely sought to reserve liberty to institute separate proceedings in that behalf -nd claimed that they were entitled in enforcement of notices served upon ten out of the named defendants to call upon them to deliver possession of lands occupied by them.

There was one more suit, No. 93 of 1947, which raised a dis- pute as to the right of occupancy in a small area of land admeasuring 1-90 acres. The plaintiff in the suit claimed that he had acquired the right of occupancy by purchase the original tenant of the land. The fourth defendant in the suit whowas the principal contesting party claimed that he was a. granteeoccupancy rights from the shrotriemdar. The three suits were tried together. The tenants claimed in the principal suit No. 2 of 1946 occupancy rights in the lands hold by them, on three grounds :

> (1)that the tenants of agricultural lands were, by immemorial custom of the locality in the Nellore District, occupancy tenants; (2)that the tenants had acquired by prescription or by the doctrine of lost grant the rights of permanent occupancy; and (3)that the grant was of an estate within the meaning of s. 3 (2) (d) of the Madras Estates Land Act, 1908, and the tenants of ,he lands in the estate were by virtue of s. 6 of the Act permanent occupancy tenants.
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> The trial Court, relying upon the statement made in Boswell's Manual of the Nellore District, that the "tenants..... of Chellayapalem like their brothers in other villages of this District had right to occupy the land from generation to generation on payment of rent prescribed by custom", held that the tenants' plea on the first head must be sustained. The High Court declined to raise such a presumption in favour of the tenants of the District including tenants of the village Challayapalem, and correctness of that view was not challenged in this Court.

On the second ground, the trial Court held that on the evidence that the tenants' rights 'were independent of prescription", and that they had not raised any plea of acquisition of rights of occupancy by contract, express or implied. The High Court observed that on the evidence no "foundation is laid for invoking the presumption of lost grant to give a legal original, or lawful title to long continued possession of the land by a particular tenant or tenants", and that the plea of acquisition of the right of occupancy based on prescription was not made out. This plea was also not reiterated before us, and the appeals were supported only on the last ground.

The grant was, it appears, made by a Carnatic Nawab which is recognised on all hands to be a shrotriem grant. There is, however, on the record no evidence to prove the date of the grant, the names of the grantor and the grantee, the extent and terms, of the grant, the purpose and nature of the grant, and whether the grant was of kudiwaram as well as of melwaram or of melwaram alone. The original deed of grant has not been produced and is no other direct evidence of the terms of the grant from which the terms of the grant may be gathered. The trial Court held that the later documents, such as the statement in the Inam Enquiry, the Inam Fair Register and other documents, conduct of the shrotriemdars and the tenants, and recognition accorded to the rights of the tenants viewed in the light of probabilities justified an inference that the grant was of the whole village, but according to the High Court the evidence on the record was inconclusive and the case must be decided against the tenants because the onus to prove that the grant was of an estate lay upon the tenants, and that the tenants had failed to discharge that onus.

The problem must be approached in two distinct brancheswhether the evidence justifies an inference that the grant was of a whole village. and if there be no such evidence whether s. 3 (2) (d) Explanation (1) of the Madras Estates Land Act gives rise to a presumption in favour of the shrotriemdars or the tenants. Between the years 1640 to 1688 the territory which now forms the District of Nellore was under the sovereignty of the Sultan of Golkonda. In 1688 this territory along with Golkonda passed under the Moghal dominion. After the War between the East India Company and Sultan Hyder Ali, it was arranged between the Government of Madras and the Nawab of Carnatic that the latter should bear the cost of the military defence of the Carnatic region. The Nawab agreed to assign the revenues of the Carnatic region for a period of five years to the East India Company, and in pursuance of this arrangement, the East India Company took over the administration of the Carnatic region in 1790. On August 18, 1790 the Board of Revenue, Madras issued instructions to the Collectors of Revenue appointed by the East India Company, relating to the administration of the Districts. Dighton who was the first Collector of the Nellore District unde r the new dispensation found on enquiry that some villages in the District had been alienated. on shrotriem tenure. He proceeded to investigate the title of the grantees and issued a number of sanads. During the course, of his management Dighton addressed on November 13, 1790 to the "Chellayapalem Shrotriemdar Mutharaju Ramachandrayya Sthala Karnai Varu" the following communication : "You shall pay as per installments varahas 283 (two hundred and eighty three) being the beriz in respect of your shrotriem known as Chellayapalem village in Gandavaram Paraganas, as entered in the circar shrotriem jabitha, into the Nellore Treasury, obtain receipt and happily enjoy the produce realised from that village, you shall enjoy happily by giving shares to the kapus as per mamool."

Administration of the territory by the East India Company came to an end on August 31, 1792. On July 31, 1802 the East India Company assumed sovereignty over the District of Nellore and one Travers was appointed Collector in September 1801. Travers recognised 207 shrotriem villages without disturbing the arrangements which were then in existence, dispensed with the duties of sthalakarnams and collected quit rent on their inams. It appears that the shrotriem of Challayapalem was continued under the arrangement of the year 1790 which we have set out.

Soon after the East India Company took over the administra- tion of what later came to be known as the Presidency of Madras, Regulation 31 of 1802 setting up machinery for the better ascertainment of titles of persons holding or claiming to hold lands exempt from payment of revenue to Government under grants and for fixing assessment on such lands was promulgated. A register of Inams in Government Taluks was prepared and in Col. 14 of the Inam Register the Inams registered pursuant to the Regulation were set out. In the village Challayapalem are found mentioned in that Register-three Inams the Challayapalem shrotriem (which is in dispute in the present case), and two other personal Inams each of an area of 0-93 cents. Apart from the preparation of this Inam Register, nothing substantial was done under the Regulation till 1860. About the acting of the shrotriemdars and the tenants between 1802 and 1860 there is very little evidence. There is no evidence as to when the five minor inams, including those two mentioned in the Inam Register, were created, who paid the revenue, whether tenants were shifted from lands in their occupation, or lands originally not occupied were brought under cultivation. In 1860 the Inam Commission commenced an inquiry in the Nellore District. Exhibit B-195 is a record of the statement made by the

shrotriemdors Muthuraju Subbarao and Muthuraju Subbarammanya of Chellayapalem. In Col. 6 it is recorded that the grant was made during the time of the Nawabs for maintenance so as to be enjoyed from son to grandson and so on in succession, and in Col. 7 details of the lands are set out. Out of the total area of the land 21 Gorrus 12/16 are recorded as poramboke, 5 Gorrus and It Visas as minor inams, and 126. 3- 1/4 visas as cultivated lands--dry, wet and garden. The boundaries and particulars of the inam lands are shown as if the inam grant was of the whole village, the description of the boundaries being of lands of other villages to the East, South, West and on the North of lands of military barracks. Income of the shrotriem is fixed at Rs. 1,449-5-5 per annum and the total jodi at Rs. 1,225-12-2, leaving a balance of Rs. 223-9-3 to the shrotriemdars. This statement is described as written and filed by Muthuraju Subbarao and Subbarammayya shrotriemdars of Challayapalem, and that it was confirmed by the Village Officers. Pursuant to the enquiry made by the Inam Commissioner entries were posted in the Inam Fair Register. In Ext. A-1 which is described as "an extract from the Register of Inams in the village of Chellayapalem shrotriem in the taluk of Nellore" in Col. 21 it was recited that the shrotriem "being more than 50 years old could be confirmed. In the account of Fasli 1221 the income of the shrotriemdars for ten years previous to that Fasli is given. It is shown in the margin that the shrotriem is rented from Fosli 1263 to Fasli 1287, that is for a period of 25 years for the sum of Rs. 244 above the jodi. The cost of the repair to be borne half by the tenant and half by the shrotriemdars. Almost the whole land is now under cultivation and there is scarcely any room for further improvement. I propose to give a deduction of Rs. 20 on account of the cost of repair which the shrotriemdar will have to pay and adopt the remainder as the value of the shrotriem". In Cols. 10 & 11 it is recorded that the inam was hereditary, but by whom it was granted it was not known. It is common ground that Ext. A-1 did not include the area of five minor inams for which separate entries Exts. A-2 to A-6 were posted. The total area of the village as then estimated exceeded 466 acres and Ext. A-1 related to 453-06 acres, the balance being in respect of minor inams. Pursuant to the entries in the Inam Fair Register, con- firmatory title deeds were issued. Exhibits A-2 and A-3 relate to devadayam grants : the extent covered by Ext. A-2 is 5-68 acres, and by Ext. A-3 is 2-83 acres. In Cols. 1 1 & 12 headed "By whom granted and written instrument in support of the claim" it is recorded that "the name of the grantor and the written instruments in respect of the claim not known". Three other entries in the Inam Fair Register were Exts. A-4, A-5 & A-6. Exhibit A-4 is in respect of land 3-12 acres, Ext. A-5 is in respect of 0-93 cents and Ext. A-6 also is in respect of 0-93 cents. Here also it was recorded that the "grantor's name and the date of the grant are not known."

The next public document to which reference may be made is the "Descriptive Memoir of Chellayapalem shrotriem village in the Kovur Taluk of the Nellore District"-Ext. A-7. It recites that the boundary of the village had remained unchanged by settlement: the area prior to settlement was (omitting fractions) 469 acres, and by the settlement it was found to be 767 acres, showing an increase of 298 acres, but "nothing had been merged in this village by the settlement." According to the settlement accounts of land, the total cultivable area was 682 acres, minor inams 18 acres and poramboke 67 acres. Under the bead "minor inams included in the village" were Personal Inams 5-08 acres Religious Inams 8-64 acres, Village Officers 2-87 acres and village artisans 1-80 acres.: Under Ext. A-7 the whole village was described is the Challayapalem shrotriem. Apparently the village was identified with the shrotriem. These are all the extracts from public records which have a bearing on the principal question in dispute. The plaintiffs in suit No. 2 of 1946 are purchasers

under two deeds Exts. A-101 and A-102 respectively dated January 14, 1889 and August 7, 1889 from the previous holders. They are strangers to the family of the original grantees, and it is not surprising that they are not in possession of the deed of grant, and the earlier record relating to the management of the village.

Exhibit B-1 the letter addressed by Dighton to the shrotriemdar may at first blush suggest that the village was accepted and confirmed as one of the shrotriem villages in the Gandavaram Paragana. But Ext. B-1 was not of the nature of a sanad : it did not contain a reference to the terms of the grant, the date of the grant, the names of the grantor and grantee, and was based on information by a "Jabitha (list) relating to Circar's shrotriems". In Boswell's Manual it is recited that Dighton had investigated the title of the inamdars in the District and had granted sanads, but Ext. B-1 did not purport to be a confirmatory sanad or a fresh grant, or a deed embodying the result of any investigation regarding the title of the Mutharajus to the village. Exhibit B-1 undoubtedly refers to Mutharaju Ramchandrayya as "Chellayapalem Shrotriemdar" and fixes the revenue at 283 pagodas in respect of "your shrotriem known as Challayapalem village". But Dighton was a Collector of Revenue appointed by the East India Company which was in 1790 not invested with de jure sovereignty over the region. There is also no record of any enquiry made by Dighton is respect of the Challayapalem shrotriem. The object of the letter Ext. B-1 is apparently two-fold : to fix the revenue, and to ensure that the tenants were not subjected to unlawful exactions. For the latter purpose it was directed that the shrotriemdar was to enjoy the produce from the village by giving shares to the kapus (tenants) is per mamool.Exihibit B-1 does not refer to any minor inams, and treats the Challayapalem village as the shrotriem of Muthurajus.

The statement -of Mutharaju Subbarao and SubbarammayyaExt. B-195-suggests that the original grant was in favour of Mutharaju Sithanna-their ancestor. The statements in Col. 6 that the grant is from the Nawab whose name is not mentioned, and in Col. 7 about the details of the entire extent of the village, do not furnish any evidence as to the character and extent of the original grant. It is true that the boundaries of the lands granted are described as if the grant was of a whole village, and nothing is mentioned about the origin of the minor inams. Exhibit A-1the Inam Fair Register Extract-is in respect of 453-03 acres whereas the total area of the village as then measured exceeded 466 acres. The area of 13 acres was undoubtedly held by minor inamdars in respect of which entries Exts. A-2 to A-6 were posted in the Inam Fair Register. Those entries are of no assistance in tracing the source of the minor inams. In each of those extracts under the head "By whom granted and written instrument in support of the claim" it is recited that the names of the grantor and the written instrument in support of the claim "are not known". Sanads in respect of the minor inams were issued because the inams p.C.I./65--11 were found to be more than fifty years old. Inams in respect of which entries Exts. A-5 and A-6 are posted are found mentioned in the Inam Register prepared under Regulation 31 of 1802, but not the inams in respect of which Exts. A-2, A-3 and A-4 are issued. It also appears that in the Inam accounts, the inam relating to Ext. A-2 appeared for the first time in Fasli 121 1, the inam relating to Exts. A-5 & A-6 in Fasli 1216, the inam relating to Ext. A-3 in Fasli 1250 and the inam relating to Ext. A-4 in Fasli 1260. But the accounts maintained under Regulation 3 t of 1802 ware apparently not maintained either regularly or in respect of all the inams. In the absence of reliable evidence from entries in these rough accounts, no inference that the minor inams were granted by the shrotriemars could be made. The name of the grantor is not to be found

in Exts. A-2 to A-6. Exhibit A-7 proves the existence of minor inams, but has no bearing on the question whether the whole village Challayapalem was granted in inam. In Exts. A-48, A-49, A-104, A-105 and A-103 the predeces- sors-in-interest of the present inamdar had described the village as "Challayapalem Shortriem"; in Exts. A-102, B-44, B-4-5, B-12 to B-19, B-20 to B-43, the present inamdar's grandfather was a party and therein also the inamdars were described as "shortriemdars of Chellayapalem". There are documents Exts. B-2, B-3, B-4, B-5, B-6, B-9, B-1 12 & B-1 16 and other documents in which the village is described as "Chellayapalem Shrotriem". But these recitals have no evidentiary value in support of the case that the whole village was granted.

The statements in Ext. B-195 related only to a part of the village and that the income realised by the inamdar was Rs. 1,449-5-5 per year, out of which the revenue payable to the Government was Rs. 1,225-12-2 and the balance enjoyed as inam was only Rs. 223-9-3. Exhibit A-1-Extract from the Inam Fair Register-does not lead to the inference that the area of the entire village was granted. The recommendation made by the Deputy Collector was confined to the shrotriem. The shrotriem was confirmed merely because it was more than fifty years old, and what was confirmed was not the area of the entire village, but the shrotriem grant admeasuring 453- 06 acres out of a total area of 466 acres.

Evidence on the record about the actings of the shrotiemdars and the tenants for the period 1790 to 1862 is vague and inconclusive. It appears from the Inam Register that for a period of 25 years the shrotriem was under an Ijara. The Inam Fair Register recites that garden lands were irrigated from the private wells of the shrotriemdars. From the accounts for Fasli 1216 it appears that more than a hundred acres were then lying uncultivated, but for sometime before 1862 the whole village was under cultivation.

On the other hand there is the evidence that the tenants' successors were recognised in place of their predecessors, family partitions were approved, and the shrotriemdars received their proportionate shares from the divided sharers, and the tenants were not disturbed in their possession. Chellayapalem has at all material times been included in the list of villages maintained in the Collector's office. It was within the boundaries which are not shown to have been altered. A village in the Madras region is a geographical area of arable and waste lands, and contains the establishment of a karnam, village munsiff and watchmen, and Chellayapalem has at all material times been recognised as a village, and has been administered accordingly. Minor inams were always regarded as part of the village, and popularly and even in the public records the village was identified with the shrotriem. The shrotriemdars have failed to produce their books of account relating to their management. It is however admitted by them that they were collecting jodi from the holders of minor inams and paying it into the public exchequer. It was explained by S. Rama Rao P.W. 1 that he "collected the cess" as a registered proprietor and paid it over into the treasury, because a demand was made upon him by the Revenue authorities for the whole amount of land cess due. But long possession, fixity of rent, assertion of title in formal deeds may not necessarily justify an inference of permanent occupancy rights. Again the mere fact that the village was treated as one unit for the purpose of revenue administration does not justify any positive inference and the fact that five separate sanads were issued in respect of the minor inams without any evidence to prove the date and the terms of the grant leaves the matter in doubt. Some of these circumstances

may prima facie support the inamdars and the other the tenants, but on a careful review of all those circumstances, we are unable to disagree with the opinion of the High Court that the grant was not proved to be of a whole village.

The second branch of the argument must then be considered. The High Court expressed its conclusion on this branch of the case as follows :

> "Whether a tenant raises the plea that the lands were in an estate and therefore ryoti and the civil court has no jurisdiction, or the tenant relies upon the statute in answer to a suit by the landlord either for an injunction, sent case,the burden of proof would undoubtedly be on the tenantto establish the case which he put forward either to exclude the jurisdiction or to negative the right of the plaintiff. The burden will be on him to show that the grant was either a grant of a whole village or a grant of a named village."

In so enunciating the law, the High Court relied upon the judgment of this Court in District Board Tanjore v. M. K. Noor Mohamed Rowther(1) and held that in law the burden of proving that a particular grant was a grant of an estate lay upon the tenants in all cases, and the tenants having failed to discharge that burden their claim must fail. In considering this argument, it is necessary to make a brief review of the history of land tenures and the provisions of the Madras Estates Land Act, 1908 as they were amended from time to time. After the assumption of sovereignty in 1801, the East India Company promulgated the Permanent Settlement Regulation 25 of 1802, which dealt with the tenure of zamindars in their estates. This Regulation was passed on July 13, 1802 and by s. 4 thereof inams were exempted from its scope. On the same date, another Regulation 31 of 1802 was enacted. This Regulation dealt with inams and provided for making rules for the better ascertainment of titles of persons holding or claiming to hold, lands exempted from the payment of revenue to Government under grants not being "Badshahi" or Royal and for fixing an assessment on such lands. By s. 15 it was enacted that a register of inams shall be kept in each zillah of the lands held exempt from the payment of revenue, and that the register 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. It appears that nothing effective was done to investigate the titles of the claimants to inams till 1859, when the question of examining their title was taken up by the Inam Commission. The Inam Commission made inquiries and issued confirmatory sanads. We have already referred to Title Deed No. 1762 issued in respect of the grant in favour of the shrotriemdars.

The traditional rights of occupants of land in the southern region were recorded by the Board of Revenue as early as in 1818 in its proceeding dated January 5, 1818 that :

> "The universally distinguishing character, as well as the chief privilege of this class of people, is their exclu-

(1) A.I.R. 1953 S.C. 446

> sive right to the hereditary possession and usufruct of the soil, so long as they render a certain portion of the produce of the land, in kind or money, as public revenue; and whether rendered in service, in money, or in kind, and

> whether paid to rajahs, jageerdars, zamindars, polygars, motahdars, shrotriemdars, inamdars or Government Officers, such as tahsildars, amildars, aumeens, or tanadars, the payments which have always been made by the ryot are universally termed and considered the dues of the Government."

The Legislature with a view to define the relations between landlords and tenants in inam villages promulgated Madras Act 1 of 1908. The material part of s. 6 (1) as amended by Madras Act 8 of 1934 and 18 of 1936 provided "Subject to the provisions of this Act, every ryot now in possession or who shall hereafter be admitted by a landholder to possession of ryoti land situated in the estate of such landholder shall have a permanent right of occupancy in his holding.

Explanation (1).-For the purposes of this sub- section, the expression 'every ryot now in possession' shall include every person who, having held land as a ryot continues in possession of such land at the commencement of this Act.

Explanation (2).-

Explanation (3).....

Section 3 sub-s. (2) defined the expression "estate" within the meaining of the Act and insofar as it is material for this case, it provided as originally enacted "In this Act, unless there is something repugnant in the subject or context-

"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;

(c) any unsettled palaiyam or jagir;

(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 recognised 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."

"Kudivaram" is a Tamil word, which signifies the cultivator's share in the produce of land as distinguished from the landlord's share received by him as rent, which is called "melvaram". "Kudivaram" has acquired a secondary meaning, it means the cultivator's interest in the land, and

"melvaram" the landlord's interest in the land. The definition of "estate" in cl. (d) gave rise to considerable litigation which called for determination of two questions : (1) whether there was a grant of the whole village so as to make the area granted an estate; and (2) whether the landlord to whom the land was granted owned the "kudivaram". In cases which came before the Courts it appeared that apart from the grant which was claimed to be a grant of an estate, there were in each village other grants, religious, service and personal, and evidence about the commencement of these minor grants and the terms on which they were granted was not forthcoming.

In G. Narayanaswami Nayudu v. N. Subramanyam(1), in a suit filed by the receiver of the Nidadaole estate for possession of certain lands the tenant claimed that he had acquired occupancy rights under s. 6 of the Madras Estates Land Act 1 of 1908. There were in the village minor inams of three classes : archaka service inams, village service inams, and dharamdaya inams, and there was no evidence whether the grant to the plaintiff's estate of the village was made first, or whether the minor inams were granted first. It was contended on behalf of the plaintiff estate that inasmuch as there were minor inams 'in the village, the Venkatapuram agraharam could not be said to be "a village of which the land revenue had been granted as inam within the meaning of s. 3(2)(d) of the Act". The Court rejected that contention and observed :

> "The definition in sub-section 2, clause (d) was obviously intended to exclude from the definition of "Estate" what are known as minor inams, namely, (1) I.L.R 39 Mad. 683.
>
> particular extents of land in a particular village as contrasted with the grant of the whole village by its boundaries. The latter are known as "whole inam villages". The existence of "minor inams" in whole inam villages is very common and if these inam villages do not come within the definition of "Estate" almost all the agraharam, shrotriyam and mokhasa villages will be excluded. This certainly cannot have been the intention of the legislature. These minor inams are generally granted for service to be rendered to the village or to the owner and that seems to be the nature of the minor inams in this case."

The Court therefore held that s. 3 (2) (d) of the Madras Estates Land Act excludes from the definition of "estate" minor inams, and a grant which purports to be a grant of a whole inam village is an estate within the meaning of cl.

(d) of s. 3 (2), even though it may be found that there are lands held by grantees under minor inams. The Legislature in 1936 substituted for cl. (d) of s. 3(2) the following clause by the Madras Estates Land (Third Amendment) Act, 18 of 1936:

> "(d) any inam village of which the grant has been made, confirmed or recognized by the British Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees."

Then came the judgment of the Madras High Court in Tulabandu Ademma v. Sreemath Satyadhyana Thirtha Swamivaru(1). In that case the original grant was lost. In Col. 6 of the statement prepared by the Inam Commissioner in that case, it was recorded that "the former Zamindars granted the land, comprised within the 'Chekunama' for the math. There is no sanad as it was destroyed by fire. There was no entry under the heading 'particulars of the inam land mentioned in the sanad', but under the head 'Gudicut' (the total area of the village) was the entry 158.23 acres, from which were deducted 25.10 acres described as private lands, and 5.4 acres 'inams of other persons' leaving 128.6 acres as the area covered by the grant." In Col. 10 it was stated that there was no 'Chekunama'. The Court held that the grant being of less than the whole village, the tenant could not rely on s. 6 of the Act. In that case the boundaries of the agraharam as described in Col. 10 in the Inam Register (1) A.I.R. 1943 Mad. 187.

were admittedly the boundaries of the whole village, but in the view of the Court Col. 10 had to be read in conjunction with the other columns. There was no evidence whether the other inams were granted before the grant in favour of the Devasthana or after. This case apparently marked a departure from the rule which was enunciated earlier by the Madras High Court in G. Narayanaswami Nayudu's case(1). The Legislature immediately reacted against this view and enacted, by Madras Estates Land (Amendment) Act 2 of 1945, added the following Explanation to cl. (d) of s. 3(2). Explanation (1) read as follows "Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes."

This Explanation was made operative retrospectively from the date on which Madras Act 18 of 1936 was brought into force. The Explanation was apparently intended by legislative process to restore the interpretation which the Madras High Court had given to the expression "whole village" in G. Narayanaswami's case(1). But the legislature had used somewhat involved phraseology in enacting the conditions which gave rise to the presumption. If a minor inam was proved to be granted prior to the date of the grant, by virtue of Explanation (1) the grant expressed to be of a named village had to be regarded as a grant of an estate. If it was proved that the grantee after receiving the whole village created minor inams, the grant was of the whole village and therefore grant of an estate. But where evidence about the creation of the major and minor inams was not forthcoming, the question had to be decided on the presumption that the subject-matter of the grant shall be deemed to be an estate, notwithstanding that it did not include lands granted on service or other tenures or lands reserved for communal purposes. On the true effect of the Explanation there was a sharp conflict of judicial opinion resulting in three distinct views. In one set of cases it was ruled that the burden of proving that a tenant is entitled to permanent rights of occupancy in his holding by virtue of s. 6 of the Madras Estates Land Act always lies upon the tenant, and it is for the (1) I. L.R. 39 Mad. 683.

tenant to establish affirmatively that the minor inams in the village were granted before the date of the grant of the named village, and if he failed to do so his claim is liable to fail : see Rama Rao v. Linga Reddi(1) and Ramadhan Chettiar v. State of Madras(2) In another set of cases it was held that where relief is claimed before the Court on the plea that a grant of land was of an estate, or that it was not of an estate, and the evidence is inconclusive, the person who has approached the Court for

relief must fail : see the judgment of Krishna Rao J., in Nelluru Sundararama Reddy v. State of Andhra Pradesh (3) ; Varada Bhavanarayana Rao v. State of Andhra Pradesh (4) ; and Addanki Thiruvenkata Thata Desikacharyulu Ayyavarlamgaru v. The State of Andhra Pradesh and Ors.(5) In the third set of cases it was held that the Explanation raises a presumption where a grant is expressed to be of a named village, that the area which formed the subjectmatter of the grant shall be deemed to be an estate, and it is for the party contending that the grant in question falls outside the definition of s. 3 (2) (d) of the Act to prove that case either by showing that the minor inams not comprised in the grant were created contemporaneously with or subsequent to the grant of the village by the original grantor : see Janakiramaraju v. Appalaswami(6); Nelluru Sundarama Reddy v. State of Andhra Pradesh (7) State of Andhra Pradesh v. Korukonda Bhattam Appalacharyulu(8) and Sri Varadarajaswamivari Temple v. Sri Krishnappa Govinda and others(9).

In expressing the first view the non-obstante clause in the Explanation was read as prescribing the conditions on proof of which the statutory presumption arises. The Explanation was apparently read as implying that the conditions for the raising of the presumption were that the grant as an inam is expressed to be of a named village, and that the other lands not included in the grant were granted before that date on service, or other tenure or reserved for communal purposes. If this be the true effect, the Explanation had little practical utility. The intention of the legislature apparently was to declare rights of occupancy of tenants in inam villages, and it would be difficult to believe that the legislature intended to place upon the tenants onus of proof which in normal cases would be well-nigh impossible to discharge. A large majority of the inams are ancient and the (1) A.I.R. 1957 A.P. 63 (2) A.I.R. 1958 Mad. 104. (3) I.L.R. [1959] A.P. 337 F.B.(4) [1964] 2 S.C.R. 501. (5) A.I.R. 1964 S.C. 807. (6) I.L.R. (1954) Mad. 980. (7) I.L.R. [1959] A,P. 339 F.D.(8) I.L.R. [1959] A.P. 687. (9) I.L.R. [1958] Mad. 1023 records bearing on the commencement, extent and nature of the grant would invariably be in the possession of the inamdars. To expect that tenants who are generally illiterate, and who came to occupy the lands not infrequently many years after the original grant, would be able to lead evidence on matters principally within the knowledge of the inamdars, and information whereof the inamdars would be interested in withholding, would be to attribute to the legislature gross ignorance of local conditions.In terms the presumption arises on proof that the grant is an inam expressed to be of a named village, and it arises even if it appears that there have been other minor inams granted for service or other tenure or have been reserved for communal purposes. The non-obstante clause in the Explanation, in our judgment, does not prescribe a condition for the raising of the presumption. The presumption arises only when it is proved that the grant is expressed to be of a named village, and the burden of proving that the grant is so expressed must lie upon the party who claims to bring the grant within the exception, but once it is proved that the grant is expressed to be of a named village, raising of the presumption will not depend upon proof that certain lands in the village were granted on service or other tenure, or were reserved for communal purposes before the grant of the village. In expressing in the cases of Rama Rao(1) and Ramadhan Chettiar (2) the view that the burden lay upon the tenants to prove that the grant was of an estate, it was assumed by the Madras High Court that this Court had rendered a considered decision in the District Board of Tanjore's case(3) that the onus of proving that a grant of land is a grant of an estate lies upon the tenant. But it appears that no such decision was given by the Court in that case. In the District Board of Tanjore's case(3) the defendant who had taken a lease for three years of a piece of land belonging to the District Board claimed that he had acquired permanent

occupancy rights under s. 6 of the Madras Estates Land Act, because after the expiry of the period of the lease the Board had not resumed possession. It was the Board's case that after expiry of the period of the lease, the Board bad taken possession of the land and had brought it under cultivation. The Subordinate Judge held that the land did not constitute an estate within the meaning of s. 3(2) (d). The High Court disagreed with that view. In appeal to this Court Mahajan, J., on (1) A.I.R. 1957 A.P. 63. (2) A.I.R. 1958 Mad. 104. (3) A.I.R. 1953 S.C. 446.

a review of the evidence opined that the grant was not of a named village, the grant being in terms of areas and not of a named village, and that there were two grants neither of which could be called a grant of a village. Chandrashekhara Aiyar, J., observed that there were two personal grants under one parvangi to two different persons, and it could not be said that there was a grant of a whole village or of a named village. smaller areas having been carved out therefrom prior to the date of the grant on service or other tenure, and the remaining part still being recognised and treated as a revenue unit with a nomenclature of its own. It is abundantly clear that the Court decided the case on evidence and did not place reliance on the onus of proof. It is true that Mahajan, J., in his judgment has recorded that:

> "It was conceded by . . . the learned counsel for the respondent that the burden of proving that certain lands constitute an "Estate" is upon the party who sets up the contention", and Chandrasekhara Aiyar, J., observed that "A small area of 5 acres and 40 cents was granted under the same grant in favour of Chinna Appu Moopan. If this conclusion is correct-and nothing satisfactory has been urged on the side of the respondents why such an inference is not open on the entries found in the Inam Register, the 1st respondent should fail, as the burden is on him to establish that what was originally granted was an 'estate'."

But these observations are not susceptible of the meaning that when it is proved that an inam is expressed to be of a named village, the presumption under Explanation (1) does not arise. Both the learned Judges were of the view that there was no grant which could be regarded as a grant of a whole village or a named village, and on that view the true effect of the Explanation did not fall to be determined. The concession before the Court by counsel was only that when a person alleged that certain land was an estate, the burden of proving that case lay upon him.

The second view minimizes the operation of the statutory presumption which is expressly enacted by the legislature to arise on proof that the grant is of a named village. In terms the Explanation provides that the grant of an area as a named village shall be deemed to be a grant of an estate. If the clause prescribes the condition on which the presumption arises, the onus would be discharged by the presumption on proof that the grant was of a named village. Adoption of the second view is likely to give rise to some anomalous situations of which the present set of cases is a good illustration. For instance, if the inamdar as well as the tenant sue for relief in respect of their respective cases, the application of this rule would require the Court to adopt the somewhat unusual course of dismissing the cross actions, when evidence does not justify a positive inference in favour of either party.

In Varada Bhavanarayana Rao v. State of Andhra Pradesh and others(1), this Court expressed its preference for the second view. That was a case in which the appellant held a major part of certain villages covered by five inam grants. The Inam Commissioner had granted fresh inam title deeds in confirmation of the original grants. The Special Officer appointed by the Madras Government under s. 2 of the Madras Estates Land (Reduction of Rent) Act, 1947 decided that the inam lands covered by the fresh inams were "Estates" within s. 3 (2) (d) of the Madras Estates Land Act, 1908, and recommended fair and equitable rates of rent for the ryoti lands in this estate. Subsequently the Government of Madras by a notification in the Gazette fixed rates of rent in accordance with this recommendation. The inamdar instituted an action in the Civil ,Court for a declaration that the grant was not of an estate within the meaning of s. 3 (2)

(d) of the Madras Estates Land Act. The Trial Court upheld the contention, but the High Court in appeal reversed that decision. In appeal to the Supreme Court it was contended that there were no materials on the record to prove that the original grant was of a whole village or of a village by name, and as the State had failed to discharge the burden of proving that the land constituted an estate, the action must be decreed. This Court held that the grant which was later confirmed by the title deed was of a named village, but on proof merely that the inam grant was of a named village, a presumption did not arise that it formed an estate, for the legislature had not created any special presumption either way. The question of the onus of proof it was said had to be adjudged in the light of ss. 101, 102 and 103 of the Evidence Act, and applying that principle if the plaintiff failed to prove his claim that land was not an estate, the appeal should stand dismissed. The Court in that case regarded the judgment in the District Board of Tanjore's case(2) as not decisive of the question, and proceeded to hold (1) [1964] 2 S.C.R. 501.

(2) A.I.R. 1953 S.C. 446.

on two grounds that the legislature had not provided for raising a presumption either way. First, that the "language used in Explanation (1) indicated that the conclusion that the area was an "estate" can be drawn even where the whole of the village was not included in the grant, only if it appeared that the portion not included had already been gifted and was therefore lost to the tenure," and the other that when adding the Explanation in 1945, the Legislature did not think fit to make any change in s. 23 of the Act. But as already observed, the language used by the Legislature in enacting Explanation (1) to s. 3(2)(d) expressly directs a presumption to be raised. That presumption arises when it is proved that a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall, be deemed to be an estate. Raising of the presumption is not subject to any other conditions. The Legislature has by the non-obstante clause affirmed that such presumption shall be raised even if it appears that in the grant are not included certain lands in the village which have before the grant of the named village been granted on service or other tenure or have been reserved for communal purposes. The presumption, it is true, is riot a conclusive presumption : it is a presumption of law, and is rebuttable. It may be rebutted by proof of other facts, but not the facts mentioned in the non-obstante clause.

Section 23 was added by s. 5 of the Madras Estates Land (Third Amendment) Act 18 of 1936. It reads :

> "Where in any suit or proceeding it becomes necessary to determine whether an inam village or a separated part of an inam village was or was not ,in estate within the meaning of this Act as it stood before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, it shall be presumed, until the contrary is shown, that such village or part was an estate."

The presumption under s. 23 in terms applies only to cases in which the question whether an inam village was an estate before the commencement of the Madras Estates Land (Third Amendment) Act, 1936. Under the Act, before it was amended in 1936, a grant of a village could be deemed a grant of an estate where only melvaram was granted to the inamdar and not where both the melvaram and the kudivaram were granted. By enact-

ing S. 23 the Legislature intended to declare that in determining whether under a grant of an inam village both. varams were granted or only the melvaram was granted, it shall be presumed, until the contrary was shown, that such village or part thereof was an estate, that is, only the melvaram was granted. Under the Act before its amendment, one of the conditions of the applicability of s. 3 (2) (d) was that the grant in favour of the inamdar was only of the melvaram, and that it did not include the kudivaram, and the Legislature by s. 23 as amended provided that in dispute arising between the landlord and tenant whether an inam village was or was not an estate, it was to be presumed that it was only of the melvaram. Enactment of this section was apparently found desirable 'because of certain decisions of the Judicial Committee. In Suryanarayana v. Patanna and Upadrashta Venkata Sastrulu v. Divi Seetharamudu and others(2), the Judicial Committee expressed the view that where, there was no evidence of the terms oil an ancient grant, there was no presumption that it was of melvaram alone. The High Court in Mulhu Goudan v. Perumpal lyen(3) held that the ground on which the decisions of the Judicial Committee Proceeded, though it was not necessary for the purpose of those cases to so decide, a presumption that the grant was of both the varams was deducible. The Judicial Committee overruled this decision in Chidambara Sivaprakasa Pandara Sannadhigal v. Veerma Reddi(4), and held that in each case the question was one of fact to be determined on the evidence. The legislature then intervened and enacted the presumption applicable only to cases arising under the un-amended Act. Undoubtedly in cases arising under amended Act, the conditions on which the presumption will arise are prescribed in the Explanation (1). The language use by the Legislature in the amended s. 23 clearly shows that the section was not intended to deal with cases arising under the Madras Estates Land Act as amended by Act 18 of 1936. Any reference in S. 23 to a presumption in respect of cases arising after cl. (d) as recast by Act 18 of 1936 would have been wholly out of place. There were two presumptions which applied to different situations. In cases which arose before the Amending Act of 1936 the presumption under s. 23 applied : in cases which arose since the amendment of 1936 the presumption prescribed by the Explanation (1) applied. This is so, because the Explanation though enacted by Act 2 of 1945 has been brought into force since the date on which the amending Act of 1936 became operative. (1) L.R. 45. I.A. 209.

(3) I.L.R. 44 Mad. 538.

(2) L.P. 46 I.A. 123.

(4) L.R. 49 I.A. 286.

In our view the following passage from the decision of the Madras High Court in Mantravadi Bhavanarayana and another v. Merugu Venkatadu and others(") correctly interprets s. 3 (2)

(d) "It is now settled law that by reason of the amendment made in 1945, which added an explanation to section 3 (2) (d) of the Madras Estates Land Act and numbered it as explanation 1, a grant constitutes an estate if it is expressed to be a named village irrespective of the fact that some of the lands in the village had already been granted on inam or service grants, or were reserved for communal purposes."

We do not deem it necessary to decide whether the suit for a mere declaration that the tenants were not occupancy tenants at the instance of the shrotriemdars, after determining the tenancy of some of the tenants was maintainable. The High Court has dismissed the suit against defendants 1 to 10 who were served with notices to quit, but against whom the shrotriemdars did not claim a decree for possession. There is no appeal by the shrotriemdars before us against defendants 1 to 10, and in any event on the view taken by us, the suit of the shrotriemdars must fail in its entirety. In Appeal No. 342 of 1961 the decision recorded by us on the principal question does not put an end to the litigation. The dispute arose between two rival claimants to the rights of occupancy of land. The respondent in this appeal claims that he is a transferee of the original tenant, and the appellant claims to have acquired the rights of occupancy from the shrotriemdar. In suit No. 93 of 1947, four substantive issues were raised, and the issues are discussed in paragraphs 106 to 120 of the judgment of the Trial Judge. The High Court did not separately deal with those issues, but decided Appeal No. 789 of 1950 on the view of the law which it declared in the principal appeal. We have disagreed with the High Court for reasons already set out and the other issues which have not been tried by the High Court have now to be tried.

On the view taken by us Civil Appeal No. 341 of 1961 will be allowed, and the decree passed by the High Court set aside and the decree passed by the Trial Court restored with costs throughout. In Civil Appeal No. 343 of 1961 also the decree passed by the High Court will be set aside and the suit decreed (1) I.L.R. [1954] Mad. 116.

with costs throughout. There will be one hearing fee in this Court.

In Civil Appeal No. 342 of 1961 arising out of Appeal No. 789 of 1950 from suit No. 93 of 1947, tile appeal will be remanded to the High Court with a direction that the questions which remain to be determined will be decided according to law. No order as to costs in Appeal No. 342 of 1961.

C.A. Nos. 341 and 343 allowed.

C.A. No. 342 remanded.