*Privy Council Appeal No. 46 of 1922.*

A. S. N. Nainapillai Marakayar, since deceased (now represented by A. S. N. Sheik Muhammad Marakayar and others) - - *Appellants*

*v.*

T. A. R. A. Rm. Ramanathan Chettiar and others - - - *Respondents.*

Gopala Thevan and another - - - - - - - *Appellants*

*v.*

T. A. R. A. Rm. Ramanathan Chettiar and others - - - *Respondents*

*(Consolidated Appeals)*

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 14TH DECEMBER, 1923.

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*Present at the Hearing:*

LORD SHAW.
LORD CARSON.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR JOHN EDGE.]

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These are two consolidated appeals by defendants or their representatives from decrees, dated the 22nd December, 1916, of the High Court at Madras, which dismissed two appeals from decrees, dated the 24th April, 1914, which a Subordinate Judge of Tanjore had made in original suits 40 and 42 of 1913 in favour of the plaintiffs for the ejectment of the defendants from lands, including groves, in Tanjore and for mesne profits.

The plaintiffs in each of the suits were five of the six trustees of the Mantrapureeswarasami Temple in Kovilur, in Tanjore. That temple will hereafter be referred to as "the Temple." The sixth trustee, who was made a defendant in each suit, did not interfere in the conduct of the suits. It will be understood that when later in this judgment the defendants are referred to, the reference is to the defendants other than the sixth trustee.

The lands in respect of which a decree of ejectment has been made in each suit are part of the village of Mangal in Tanjore, and are part of the endowed property of the Temple. It is not disputed that the defendants were tenants of the Temple of lands to which the suits relate, nor is it now disputed that they received notices to quit. The defendants admit that the melvaram rights in the property in question are vested in the Temple, but their case is that the kudivaram rights in that property are vested in them and never were vested in the Temple, and they claim that they have permanent rights of occupancy in the lands under Section 6 of Madras Act I of 1908, and also independently of that Act.

It cannot now be doubted that when a tenant of lands in India in a suit by his landlord to eject him from them, sets up a defence that he has a right of permanent tenancy in the lands, the onus of proving that he has such right is upon the tenant. In *The Secretary of State for India* v. *Luchmeswar Singh*, L.R. 16 I.A. 6, it was held that the onus of proving that they had a permanent right of occupancy in lands was upon the defendants, who alleged it as a defence to a suit by their landlord to eject them, and that proof of long occupation at a fixed rent did not satisfy that onus; and in *Seturatham Aiyar and others* v. *Venkatachala Goundon and others*, L.R. 47 I.A. 76, in a suit by their landlords for the ejectment of the defendants from lands in a ryotwari district in Madras, the giving of notice to quit not being disputed, it was held that the onus of proving that the defendants had rights of permanent occupancy was upon them.

A permanent right of occupancy in land in India is a right, subject to certain conditions, of a tenant to hold the land permanently which he occupies. It is a heritable right, and in some places it possibly may be transferable by the tenant to a stranger. That permanent right of occupancy can only be obtained by a tenant by custom, or by a grant from an owner of the land who happens to have power to grant such a right, or under an Act of the Legislature. No custom by which the defendants could have obtained a right of permanent occupancy is alleged or proved in these suits.

Their Lordships will first consider whether the defendants have proved that they have rights of permanent occupancy under Madras Act I of 1908 in the lands in suit, and then whether they have proved that they have otherwise than under that Act rights of permanent occupancy in the lands.

Unless the endowed lands of the Temple in the village of Mangal constitute an "estate" within the meaning of that term

in Madras Act I of 1908 that Act does not apply to them, and the defendants are not tenants with a right of permanent occupancy under Section 6 of the Act. An " estate " is defined by Section 3 of the Act, which so far as it is material in this case is as follows :—

> " 3. In this Act, unless there is something repugnant in the subject or context :—
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> . . . . . . . . . . . . . . . . . . . . . . . . . . .
>
> (2) " Estate " means
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> . . . . . . . . . . . . . . . . . . . . . . . . . . .
>
> (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 ; "

The term " kudivaram " is not defined in the Act, but, as was explained by the Board in *Suryanarayana and others* v. *Patanna and others*, L.R. 45 I.A. 209, " kudivaram " is a Tamil word which signifies a cultivator's share in the produce of land as distinguished from the landlord's share in the produce of the land received by him as rent, which is sometimes designated as " melvaram." See also *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu and others*, L.R. 46 I.A. 123, where it was mentioned by the Board that the " kudivaram " or " kudivaram interest," as it is called in Section 8 of the Act, is in fact a species of tenant right or right of permanent occupancy.

It is the plaintiffs' case that the village of Mangal, including the melvaram and kudivaram rights in it, was at some time before 1723 granted as an endowment to the Temple by the then Raja of Tanjore, subject to a yearly payment in cash to the Raja, part of which he remitted to the Temple as an allowance for the maintaining of pooja at the Temple. The grant, or sanad, has been lost. The Raja of 1723 had recalled the grant, but had continued the cash allowance to the Temple. In 1723 the managers of the Temple complained to the then Raja of Tanjore that the allowance in cash was insufficient to maintain the pooja at the Temple, and thereupon the Raja granted to the Temple a sanad which as translated is as follows :—

> " Rokha Dafter Karkoon. Ta : (Taluq) Kovil Kottay . . . (illegible) Kadoorambh. On Thursday thirtieth Vaisak Bahoolam Sobhankruth Samvatsar, Soorsan year Arba Isarin Muyu Alph (1124), at Vedarania on the auspicious occasion of the solar eclipse, Tilai Naik Bhandari, residing at Vedarania came before —— and made a representation as follows : ' That the mohin (allowance)—account of the Divani (Government Treasury for pooja worship) of the Devastan Kovil Kottay is very insufficient, that Nakshi Gootga (Rokkaguthakai) village was being carried on for the Devastan from the beginning and thereby daily worship, special worship, and car-festivals used to be performed. Has been made Sanjayath. For this reason, God's worship and oochavams are not being performed as before and car-oochavams and special oochavams have remained unperformed. Hence, His Highness will be graciously pleased to permit to be carried on as before the Nakshi Gootaga village for the God and for this purpose an order should be issued.' To this effect he made a petition.

Thereupon, His Highness being pleased by way of favour has ordered the Nakshi Gootaga (village) to be carried on and has approved of the berij (assessment). This permission is dated . . . (torn) Ramjan. From the year aforesaid the Nakshi Gootaga (Rokkaguthakai) of the Manje Mangal village including the nanja and punja lands has been given (to) Sri Buddhi-pradeswar Swami (of) Kovil Kottay on the annual (payment) of Chakras 125—the previous Gootaga (lease amount) being 100, one hundred Chakras and the present increase being Chakras 25—in all, Chakras one hundred and twenty-five. Out of this (amount), let credit be given for Chakras 72, seventy-two per year for the Mohin—Divani's (Government's) Mohin (allowance) for worship out of the Gootaga (lease amount) and let the balance be credited in the Divani (Treasury) from time to time. Matters should be conducted in this way from year to year. Let a copy be taken and let the original sannad be returned to the Sthanik. Pa Hoo Pa . . . (illegible) Hajrat Rajesri Siv Row Narsing Row Peshway. Prepared, date 1 . . . (illegible).

"Commenced."

The grantee of the sanad is the Temple, and the village which in the sanad of 1723 is described as the Nakshi Gootga (Rokkaguthakai) village is beyond doubt the village of Mangal. Rokkaguttaghei, another spelling of the vernacular word Rokkaguthakai, means, according to the Manual of the District of Tanjore, an "assessment, also fixed at favourable rates, either from favour or as an inducement to reclaim waste." (*See* p. 487 of *A Manual of the District of Tanjore*, compiled under the orders of Government, printed at Madras in 1883.)

In 1724 an official memorandum was sent to the State officer of Kadaramban which mentioned the petition upon which the sanad of 1723 was granted and continued thus:—

"An arzi was therefore submitted praying that Saheb Avargal would be pleased to pass orders for continuing the Rokkaguthakai village as before and thereupon an order was passed accordingly for treating Mangalam village inclusive of nanja and punja as Rokkaguthakai village for Sri Budhipradeswaraswami of Kovilkottai, for 125 Pons per annum. Beriz fixed therefor is as follows:—Previous *guthakai*, 100 Pons; increase now made, 25 Pons; total, 125 Pons. It was granted for this sum. Out of this sum, 72 Pons, being the annual allotment made for the Sirkar pooja mohini shall be remitted, and the balance of beriz credited to the Sirkar. This shall be followed every year. The original Sannad shall be returned to the Stanikar after taking a copy thereof.

"(By order of Huzur.)

"Seal of M. R. Ry. Hazarath Siva Rao Narasinga Rao Peishwa."

There can be no doubt that the sanad of 1723 was granted; the only question as to it is, what does it mean?

That sanad of 1723, in their Lordships' opinion, purports to re-grant to the Temple all the lands of the village of Mangal as a religious endowment of the Temple subject to the assessment mentioned in it, and the effect of that re-grant was to pass to the Temple all the melvaram and the kudivaram rights in the village. The Temple had, obviously, been deriving from the village under the original sanad an income sufficient for the maintenance of the pooja worship at the Temple, and it must have obtained that income from the cultivation of the village lands either by its servants or by its tenants, but there is nothing

in the sanad of 1723 to suggest that there was in 1723 any tenant of lands in the village who had any right of permanent occupancy in them. There is no proof that in 1723 there was any tenant of lands in the village who had any right of permanent occupancy in them. The village was in 1723 of that class of village which in Tanjore was known as Ekabhogam villages, or villages of which the sole occupancy right was vested in one individual—in Mangal the Temple—to distinguish them from Arudikarie villages, which were held by a number of individuals in separate shares, and from Samudayam or Parsunkarie villages, which were held in common. (As to the three classes of villages, *see* p. 405 of the *Manual of the District of Tanjore*.)

At some time between 1749 and 1799 the Tanjore territory in which the village of Mangal is situate came by cession from the Raja of Tanjore or by conquest under the control of the East India Company, and in 1809 a Register of lands in the village of Mangal was made by Mr. Cotton as the Collector of the District. The following is an extract from his Register of Rokkaguthakai lands :—

| "Nature of the Sannad. | Names of the grantors. | Names of the original grantees. | Name of the present possessor. | Relationship of the present possessor to the original grantees. | Date of the original sannad. | Names of the villages or portions of villages comprised in the grant. | Nature and extent of the land so granted. | Amount of the revenue. | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | Nanja, Punja and Bagayat. | Total. |
| 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| * Dufter Rogah directing that the village Mangalam be held every year by Munderapureesvaraswami Covil in Covilcotoy, liable to the fixed annual money rent of 125 chakrams and specifying that Tillainayaga Pandaram at Vedaraniem has on the day of Sun eclipse represented that the Mohini hitherto allowed by the Sirkar to the said Pagoda is very small, that it had formerly enjoyed that Rokkaguthakai village which afforded them the means of performing its daily and coach ceremonies, etc., which being since resumed under amani, the performance of these ceremonies ceased and that as he therefore requests the restoration of the said village, it is now accordingly made over to the said Pagoda liable to the increased annual rent of 125 chas. instead of the 100 formerly levied thereon and that after deducting from the said 125 chas. the mohini of 72 chas. allowed by the Sirkar, the remainder is to be payable by the said Pagoda). | Unknown. | Munderapureesvaraswami Covil. | Munderapureesvaraswami Covil. | This village is enjoyed by the said Pagoda ever since this Rogah was granted. | Of Arban Glesarson Myulut—Date—(illegible) in this sannad. | The village Mangalam in Mannargoody Taluk, (is) consisting of 10 velis of nanja and 15 velis of punja as mentioned in the Palace account, byt the said Pagoda actually enjoys Velis 37, M3 and G. 12¼ of nanja. Velis 43, M.4, and G.62¼ of punja, and Velis 16, M.11, and G.15 of poramboke, composing the whole of that village. | Nanja. 10 0 0<br>Punja. 15 0 0<br>Bagayat.<br>Total 25 0 0 | ... | Rs. a. p.<br>125 0 0 |

"(Signed) J. COTTON,
"*Collector.*"

The entry in column 4 shows that the village had been originally granted to the Temple, and the entries in columns 5 and 6 show that, according to the Collector's information, the village had been enjoyed by the Temple from the time of the original grant down to the time when he made the Register in 1809 The entries in columns 2 and 8 show that, according to the Collector's information and belief, all the lands of the village

had been granted to the Temple. Their Lordships regard the entries in the Register of 1809 relating to the village of Mangal as valuable as showing what, on the information which he had obtained, the Collector believed to be the title to the village of Mangal and to all the lands in that village.

In the Paimash, or Survey Account, for Fasli, 1226 (1816 or 1817), the person then in the enjoyment of the total nunja (dry land), punja (wet land), tope and manai garden, of the village of Mangal was stated to be the Temple, and the enjoyment was stated to be Rokkaguthagai Ekabhogam. In the Paimash for Fasli, 1238 (1829), the village of Mangal was described as a Rokkaguthakai Miras Ekabhogam village, which meant that it was a Rokkaguthakai village and that all the lands in the village were the property of one proprietor.

It is stated in the judgment of the High Court—and it must be assumed correctly—that 21 velis of the wet land of the village of Mangal were cultivated by the Temple, by its servants and with its own ploughs, before 1820, and that in those 21 velis of the endowed lands the Temple then owned both the melvaram interest and the kudivaram interest, and the defendants were unable to explain how it happened that the Temple could have owned the kudivaram interest in 21 velis only of the endowed lands.

It was proved that in 1883 a small area of the waste lands of the village of Mangal was acquired by the Government under the Land Acquisition Act, and that no part of the compensation paid for those waste lands was claimed by any person except the Temple, and that to the Temple was paid all the compensation awarded under that Act. From that fact it may be concluded that the grant of the lands in the village in 1723 included the waste lands of the village, if there could be any doubt that all the lands of the village of Mangal were granted by the sanad of 1723 to the Temple as an endowment.

Their Lordships find that the melvaram and the kudivaram interests in the lands of the village of Mangal were at some time before 1723 granted by a Raja of Tanjore, and re-granted in 1723 by the then Raja of Tanjore, to the Temple, and consequently, that the lands in suit are not an " estate " within the meaning of Act I of 1908, and that the defendants did not obtain any rights of permanent occupancy under that Act.

It remains to be considered whether the defendants have proved that they, or those through whom they claim title as occupiers of the lands in suit, obtained at any time a right of permanent occupancy in the lands. No grant of a right of permanent occupancy has been produced. But the defendants asked the Courts below, and now ask their Lordships, to presume that they or those through whom they claim, were tenants of those lands in suit with a right of permanent occupancy in them. It does not appear that in 1723, or in 1809 or in 1816 or in 1829, there were any tenants of lands in the village who had a right of permanent occupancy in the endowed lands of the Temple. As Act I

of 1908 does not apply in this case, and as there is no proof of any custom conferring on tenants of lands of the village any right of permanent occupancy, and as no grant of a right of permanent occupancy has been produced or even alleged, it is not apparent how a right of permanent occupancy could have been obtained by the defendants or by any predecessor in titles of theirs, except by a lost grant or grants, and that is not even suggested.

A public temple, such as is the Temple in this case, is a religious institution, and is recognised in law as a juridical person, but it can act only through persons who have authority to act for it, and they can act for the temple only within the scope of their authority. The position of the Shebait, the manager or the trustees of a temple, is, so far as their powers to deal with the endowed lands of the temple is concerned, analogous to the position of a Mahant of a mutt to deal with the endowed lands of a mutt. They can doubtless sell or mortgage the endowed lands of the temple if there is an actual, special, and unavoidable necessity of the temple to do so, but that necessity would have to be proved by those who alleged that it existed. Except in a case of such unavoidable necessity the Shebait, the managers or the trustees of a temple, or the Mahant of a mutt, have no power to sell or mortgage the endowed property in their custody, and obviously they have no right to impair the endowed property by creating or granting in favour of any one rights of permanent occupancy in the endowed lands. The law on this subject is well established: see *Maharanee Shibbessuree Dibi* v. *Mothooranath Acharjee*, 13 Moore's I.A., at p. 275; *Abhiram Goswami and another* v. *Shyama Charam Nandi and others*, L.R. 36 I.A. 148; *Palaniappa Chetty and another* v. *Deirasikamony Pondara*, L.R. 44 I.A. 147; *Vidya Varuthe Dhirta* v. *Balusami Ayyar and others*, L.R. 48 I.A. 302. In the case of a Shebait a grant by him in violation of his duty of an interest in endowed lands which he has not authority as Shebait to make may possibly under some circumstances be good as against himself by way of estoppel, but is not binding upon his successors.

In *Satya Sri Ghoslehl and others* v. *Karlik Chandra Dass and another*, 15 Cal. L.J. 227, which came before the High Court at Calcutta in second appeal in a suit to eject the defendants from debutter lands, which the lower Appellate Court had dismissed on a presumption that the defendants had a permanent tenancy in the lands, Sir Lawrence Jenkins, C.J., and Chatterjee, J., said that the decree appealed from rested not on direct proof but on presumption, and that it would seem that the property there in question was debutter, and remanded the suit so that it might be ascertained if that property was debutter when the tenancy commenced, holding, rightly, that:—

> "The presumption in favour of a permanent tenancy implies that there is ground for inferring that the tenure was always intended to be and always was hereditary, or that it acquired that character by subsequent grant. But a presumption in favour of a transaction assumes its regularity it cannot be made in favour of that which offends legal principles."

They further rightly said :—

"If it was debutter at the time the tenancy originated, then this would affect the applicability of the presumption, for, to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty in a *sebait*, and is not therefore presumable."

In the present case there was nothing proved, or even attempted to be proved, from which it could be inferred that the tenure of tenants of the lands in suit, or of any lands in the endowed property of the Temple, had originally been a tenure of permanent occupancy or any higher tenure than that of a tenancy at will. Between 1820 and 1830 some of the endowed lands in the village of Mangal were let by the Temple for cultivation on short leases of from one to five years; such leases were granted to the highest bidders. In 1831 some of the tenants of the Temple's endowed lands, apparently all of them, agreed amongst themselves to cultivate jointly the endowed lands of which they were tenants, and they executed and delivered to the Collector, who was then the manager of the Temple and its endowments, a muchalka by which they took the endowed lands for a term from fasli 1241. That muchalka is absolutely inconsistent with any of the tenants having then any right of permanent occupancy in any of the endowed lands of the Temple and with their believing that they had any right of permanent occupancy in any of the Temple's lands. In 1870 Sir C. H. 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. See also *Seena Pena Reena Seena Mayandi Chettiyar* v. *Chokkalingam Pillay and others*, L.R. 31 I.A. 83.

One of the reasons for these consolidated appeals as stated in the Case for the appellants is: "4. Because the appellants have acquired permanent occupancy right by prescription." 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. (See *Madhavrao Waman Saundalgekar and others* v. *Raghunath Venkatesh, Deshpande and others*, decided by the Judicial Committee on the 10th July, 1923.

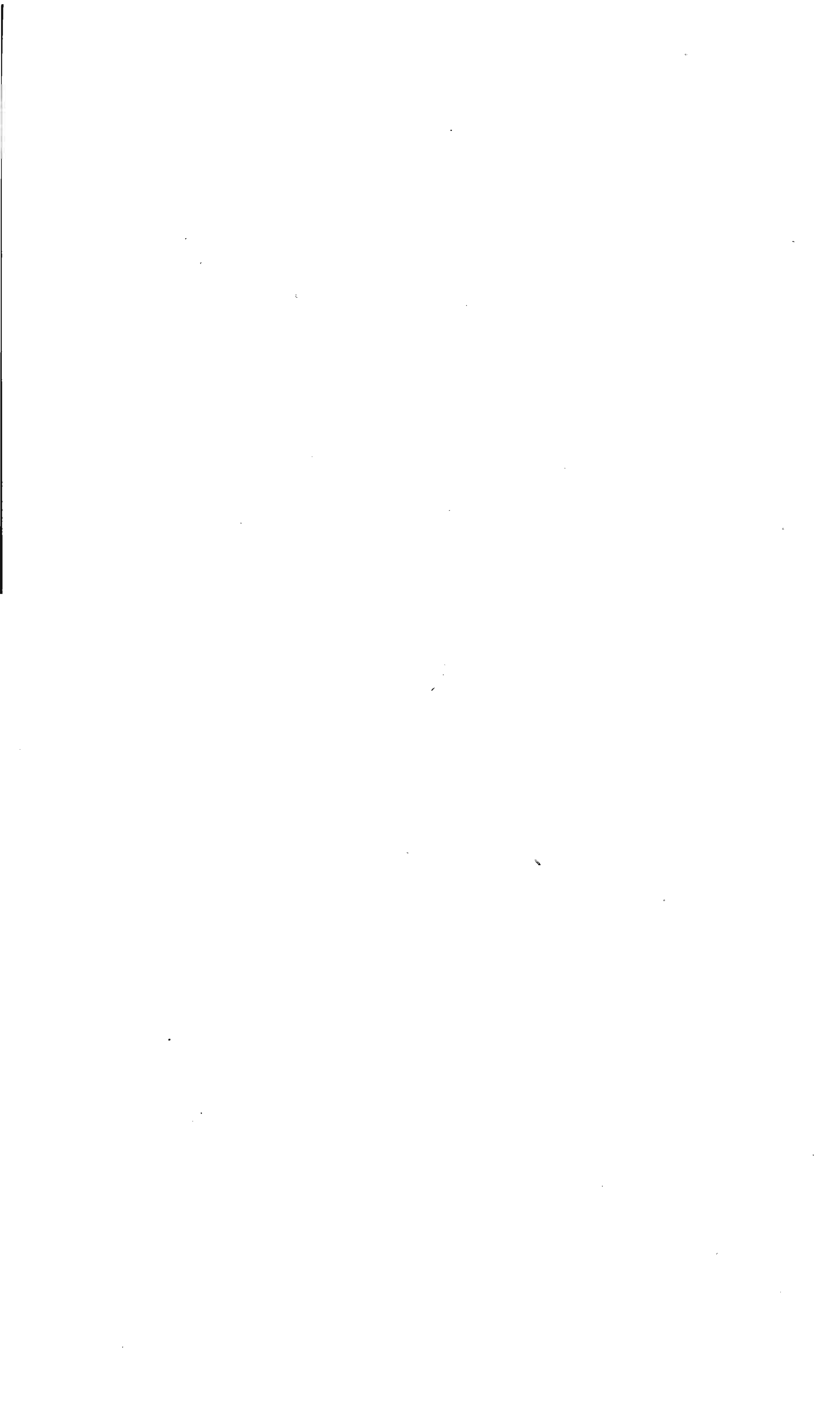
Another reason for these consolidated appeals as stated in the Case for the appellants is: "5. Because the respondents having allowed and recognised the alienations made by the predecessors of the appellants, are now estopped from denying that they have permanent rights of occupancy." The appellants' case, that they have permanent rights of occupancy, was not argued on the ground of an estoppel, for there is no estoppel on the evidence in the case, but on the ground that it must be presumed, from matters which will be presently referred to, that the defendants, or those through whom they claim titles as tenants, had at some time acquired rights of permanent occupancy in the lands in suit.

In the very able argument which was addressed to their Lordships in support of these consolidated appeals it was contended that their Lordships ought to presume that the defendants or those through whom they claim had acquired at some time rights of permanent occupancy in the lands in suit from the fact that in some receipts given by servants of the Temple tenants of endowed lands in the village were described as "kudimiras." Their Lordships are not certain what in Tanjore "kudimiras" means. No doubt by itself "miras" generally means a proprietor of some kind, and "kudi" by itself appears to mean a house, a village, a town, an inhabitant, or a tribe. "Kudimiras" in those receipts may have been a description of the tenant as the proprietor of a house in the abadi of the village, or it may have been a misdescription. It appears from one Paimash that there were men who were described as "kudimiras" in respect of their interests in houses in the abadi of the village. In the case already cited from L.R. 31 I.A. 83 the Board declined to act on a vernacular descriptive term of parties in that case, which the Board considered as being of uncertain meaning. The particular descriptive term was "ulavadai mirasidar." The appeal in that case related to lands in Tanjore. Also, in support of the argument that their Lordships ought to presume that the defendants had a right of permanent occupancy in the endowed lands, many other documents and papers were relied upon as showing that tenants of the endowed lands had to the knowledge of officials of the Temple sold or mortgaged such interests as they had in endowed lands of the village of Mangal. Their Lordships are unable to make any such presumption. Such a presumption would mean that some managers or trustees of the Temple had violated their duty to the Temple. It has not been proved that there ever were any lands in the village in which, by grant or custom, there was any right of a tenant to a permanent occupancy, and the only presumption which their Lordships can make in the cases of such sales and mortgages is that it was to the interests of the Temple that the ordinary cultivators of the Temple lands should be solvent persons, and not persons who were compelled to sell or mortgage such interest as they had in Temple lands in order to raise money.

All the documents and papers from which their Lordships have been asked by the counsel for the defendants to presume that the defendants had rights of permanent occupancy in the lands in suit were before Mr. G. Kothanda Ramanjulu, the Subordinate Judge who tried the suits, and on the appeals before Sadasiva Aiyar, J., who wrote the judgment of the High Court, with which Napier, J., concurred. All those learned judges were, from their local knowledge, in a better position than their Lordships are to correctly appreciate the meaning of the vernacular terms in use in the Tamil country of Tanjore in reference to interests in lands, and all those learned judges, in carefully considered and exhaustive judgments, found, to state briefly their findings, that the endowed property of the Temple, of which

the lands in question formed part, was not an "estate" within the meaning of Madras Act I of 1908, and that the defendants were not, under that Act or otherwise, tenants with a right of permanent occupancy.

The appellants having failed to prove that they or any of them had any right of permanent occupancy in any of the lands in suit, their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed with costs.



**In the Privy Council.**

A. S. N. NAINAPILLAI MARAKAYAR, SINCE DECEASED (NOW REPRESENTED BY A. S. N. SHEIK MUHAMMAD MARAKAYAR AND OTHERS)

*v.*

T. A. R. A. Rm. RAMANATHAN CHETTIAR AND OTHERS.

GOPALA THEVAN AND ANOTHER

*v.*

T. A. R. A. Rm. RAMANATHAN CHETTIAR AND OTHERS.

(*Consolidated Appeals.*)

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