

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 560

DATED 29th Jan 1897

[Despatch Abstract.]

Recording Board's Prop circulating
to Collectors the decision of the High
Court re. the onus of proof of the
occupancy right of tenants in pro-
prietary estates.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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Revenue (1897) Department.

CURRENT No. 615

929/11

No. Hm. No. June 2.22

No. Hm. No. Oct. 2.22

Order No. 560729th Jan 1897

28
26/1/97

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From

Board of Revenue
Land Revenue

No. 462

Dated 10-12-96

Received 21st Jan 1897

Registered 22nd Jan 1897

Enclosures

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SUBJECT.

Is circulating to all collectors, for information and guidance, the High Court's decision in Indian Law Reports, XVI Madras, 271-4, regarding the onus of proof of the occupancy right of tenants in proprietary estates.

c. 26/1/97
R. 22/1/97

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BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

BOARD OF REVENUE (LAND REVENUE), No. 462, 10TH DECEMBER 1896.

PROCEEDINGS OF THE BOARD OF REVENUE (LAND REVENUE).

RESOLUTION—No. 462, dated 10th December 1896.

The High Court's decision in Indian Law Reports, XVI Madras, pages 271-74, regarding the onus of proof of the occupancy right of tenants in proprietary estates will be reprinted and circulated to all Collectors for information and guidance.

(True Copy and Extract.)

Heelan
Secretary.

To all Collectors.

Copy to the Secretary to Government, Revenue Department. ✓

APPENDIX.

APPELLATE, CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

VENCATA MAHA LAKSHMAMMA (PLAINTIFF), APPELLANT,

v.

RAMAJOGI (DEFENDANT), RESPONDENT.*

Rent Recovery Act—Act VIII of 1865 (Madras), section 12—ejectment—occupancy rights—"onus probandi."

A zamindari having given to the defendant, who was a cultivating raiyat in the zamindari, a notice to quit, now sued to eject him from his holding. The defendant pleaded that he and his ancestors had been jirayati raiyats from time immemorial and it was found that their holding had lasted at least 150 years. The defendant had executed and delivered to the plaintiff a muchalka for one year, and he had made no default in payment of rent:

Held, that the plaintiff having failed to prove that the defendant's tenancy had commenced under her or her ancestors, the suit should be dismissed.

Chockalinga Pillai v. Vythealinga Pandara Sannadi (1) distinguished.

SECOND APPEAL from the judgment of H. R. Farmer, District Judge of Vizagapatam, in appeal No. 148 of 1890, confirming the decision of the District Munsif of Yellamanchili in suit No. 471 of 1889.

Suit in ejectment by a zamindari against a cultivating raiyat on her estate. The defendant claimed a right of permanent occupancy alleging that he and his ancestors had been in possession as jirayati tenants from time immemorial. The plaintiff did not prove that the defendant's tenancy had commenced under her or her ancestors and the suit was accordingly dismissed by the District Judge. The plaintiff preferred this second appeal.

The Advocate-General (Honourable Mr. Spring Branson) and Pattabirama Ayyar for appellant.

Ramachandra Rau Sahib for respondent.

JUDGMENT.—The appellant is the zamindari of Kasimkota and respondent is a raiyat in the zamindari. In fasli 1298 the former gave the latter notice to quit, and there is no dispute as to the sufficiency of the notice. The respondent, however, denied that he was a tenant from year to year and contended that he had occupancy right. Both the Courts below dismissed the plaintiff's suit. The District Munsif considered that it was for the plaintiff to show that

* Second appeal No. 1987 of 1891.

(1) 6 M.H.C.B., 164.

1892.
October 18,
December 23.

defendant was a tenant from year to year and liable as such to be ejected after due notice. On appeal the District Judge held that, as between the zamindar and the raiyat, the former was merely the assignee of land revenue, whilst the latter was *prima facie* the owner of the soil and that the zamindar was not entitled to eject the raiyat. For the appellant it is contended that it was for the raiyat to establish his occupancy right and that, as he failed to do so, the zamindar was entitled to a decree. The facts found by the District Judge are that defendant's family has been in possession for about 120 years, that about 16 years ago defendant repaired an old well and formed a mango tope, that he executed the muchalka (exhibit C) for one year only, viz., for fasli 1298, and that plaintiff has not proved that the tenancy commenced under him or his ancestors. The question is whether upon these facts the zamindar is entitled to determine the tenure by notice to quit and to eject the defendant. We have been referred to the decision in second appeals Nos. 1627 and 1834 of 1888 and also to the decisions in *Chockalinga Pillai v. Vythealinga Pandara Sannadi*(1), *Krishnasami v. Varadaraja*(2), *Thiagaraja v. Giana Sambanda Pandara Sannadi*(3), and *Baba v. Viswanath Joshi*(4). It is clear from those decisions that in each of the cases the defendant conceded that the plaintiff or his ancestor was the original owner of the land. In the first case *Chockalinga Pillai v. Vythealinga Pandara Sannadi*(1) it was admitted that the land was the property of the mutt and that the tenancy commenced under a muchalka executed by the defendant's father in August 1837. In *Krishnasami v. Varadaraja*(2) the land was admitted to be the property of the temple. The same was the case in *Thiagaraja v. Giana Sambanda Pandara Sannadi*(3), and the tenancy commenced under the temple in 1827. Similarly, in the case of *Baba v. Viswanath Joshi*(4) the plaintiff's title as owner was admitted and the tenancy set up was one which commenced under him. They are clear authorities for the proposition that when the plaintiff's family is acknowledged to be the owners of the land, and the tenancy set up is one which commenced under him or his ancestors, the *onus* of proving the permanency of the tenure is on the tenant, and that neither the Regulations nor Act VIII of 1865 operates to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it. In second appeals Nos. 1627 and 1834 of 1888 the defence was an alleged grant from a former zamindar of Jalandra, and the fact that the zamindar's ancestor was the owner when the defendant's holding commenced was admitted. In the case before us, however, there is no such admission, the defence being that defendant and his ancestors have been *jirayati* raiyats from time immemorial. The finding of the Judge is that the duration of the holding is at least 120 years, and it is quite possible that the holding was as old as the zamindari itself. We do not consider, in cases in which the raiyat's holding is not shown to have commenced subsequent to the permanent settlement, and when upon the evidence it is possibly as ancient as the zamindari itself, the principle laid down with reference to tenancies which admittedly commenced under the zamindar has any application. It may be that the raiyat was in possession when the zamindari itself was created, or that the zamindar, as pointed out by the Judge, was a mere farmer of the revenue. In such cases it is not unreasonable to hold that the *onus* of showing that the tenancy commenced under the plaintiff or his ancestors rests on the zamindar, and that until he shows it the zamindar may be fairly presumed to have been the assignee of Government revenue, and the tenant liable to pay a fair rent and entitled to continue in possession as long as he regularly pays rent.

As regards the muchalka executed in 1298 there is nothing in it inconsistent with the defendant's contention. Neither a patta nor a muchalka granted or executed under Act VIII of 1865 during the continuance of the holding is conclusive evidence that the holding is a tenancy from year to year. A patta or muchalka is ordinarily nothing more than a record of what the tenant has to pay for a particular year with reference to the pre-existing relation of landlord and tenant. We must also observe that the term tenant is defined in Act VIII of 1865 only for the purposes of that Act and means nothing more than that the holding is subject to the payment of rent. It does not necessarily imply that the tenant was originally let into possession by the plaintiff's ancestor, and it may be that the payment was due in consequence of the *status* of the zamindar as the farmer of public revenue. Under the circumstances we are not prepared to reverse the decrees of the Courts below, and we dismiss the appeal with costs.

(1) 6. M.H.C.R., 164. (2) I.L.R., 5 Mad., 345. (3) I.L.R., 11 Mad., 77. (4) I.L.R., 8 Bom., 228.

REVENUE DEPARTMENT.

1896.

Board of Revenue

(Land Revenue),

MADRAS.

Printed January 20th, 1897.

Proceedings, No. 462, 10th December 1896.

Circulating to all Collectors, for information and guidance, the High Court's decision in Indian Law Reports, XVI Madras, 271-4, regarding the onus of proof of the occupancy right of tenants in proprietary estates.

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