

Varadaraja Vs. Dorasami and anr.

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Court : Chennai

Decided On : Nov-10-1892

Reported in : (1893)ILR16Mad131

Judge : Arthur J.H. Collins, Kt., C.J. and ;Parker, J.

Appellant : Varadaraja

Respondent : Dorasami and anr.

Judgement :

1. The sole question in the appeal is whether the defendants have occupancy right in their holding or whether they hold as tenants of the temple from year to year. It is clear from Exhibit B that in 1826 defendants' ancestor held the village on a five years' lease which expired in 1831. Exhibit G shows that in 1831 the same Vythilinga Mudali made an offer to hold the village for two years longer at a certain rate, and that the Tahsildar reported that no better offer was forthcoming. Exhibit III, dated 16th November 1831, is the Collector's reply to this arzi. In it the Tahsildar is informed that if Vythilinga Mudali does not accept for the same amount permanently, security for the two years' rent is to be demanded. From Exhibit III-A it is clear that a permanent muchalka was obtained from Vythilinga Mudali and was returned, not being in proper form, the Tahsildar being directed to take another, and the same direction was repeated in Exhibit III-B, the second muchalka being also incorrect in form. The muchalka itself is not produced, and the book said to have contained it is missing from the Collector's office. From the

fact, however, that no further muchalkas have, been taken since 1832, and that the former system of leases for terms of years has not been reverted to, but the same rent has been uniformly paid since 1832, it is a fair inference that defendants and their ancestors have continued to hold in accordance with the muchalka given in 1832.

2. Was then that muchalka of a permanent character? It is urged for the plaintiff that the word ' permanent' in Exhibit III series is used with reference to the commutation rate, and not with reference to the duration of the tenancy, and it is argued that the terms would be similar to those in Exhibit J in Krishnasami v. Varadaraja I.L.R. 5 Mad. 345, which were held not to denote a lease of a permanent character, but only that the rent should be permanent during the continuance of the lease. In the present case, however, the words 'saswata'and ' saswatamai' are used in conjunction with 'muchalka' and the verb ' oppukollamal,' so that the language used would appear to have reference to the duration of the lease. That the parties understood them in this sense may be gathered from their conduct. Not till 1878 did plaintiff endeavour to disturb defendants in their holding. He then sent a notice (Exhibit F), dated 30th June (the last day of the fasli) stating that he had ' herewith ' removed him from the occupation and possession of the lands. That such a notice would be utterly invalid as a legal notice to quit addressed to a tenant who had been 46 years in possession it is needless to state. But the first defendant replied on 21st August 1878 (Exhibit E) asserting his rights of permanent occupancy in the most unqualified and indignant terms, and setting the plaintiff's pretensions altogether at defiance. It does not appear that any reply was sent to this letter, but the plaintiff continued for ten years longer to accept rent on the same terms from the man. whom he professed to have ejected and who had defied the plaintiff to eject him. Then, on 29th January 1888, the plaintiff sent another notice to quit at the end of the current fasli (Exhibit F-1) to which first defendant replied on 19th March 1888 (Exhibit E 1) reiterating his former defiance. Not till 30th June 1890--within a few days of the expiry of 12 years from the date of the Exhibit E--was the present suit brought.

3. We are of opinion, therefore, that there is evidence from which it can be legally inferred that the lease of 1832 was a permanent lease, and, that being so, the

plaintiff's suit must fail.

4. The decisions in *Krishnasami v. Varadaraja* I.L.R. 5 Mad. 345, and *Thiagaraja v. Giyana Sambandha Pandara Sannadhi* I.L.R. 11 Mad. 77 were referred to in the argument. In the former case the suit was brought by this very same plaintiff as trustee of another temple at Kandiur on a similar cause of action. It was held in that case by a majority of the Court that though the defendants had not been able to prove that the engagements of 1833 were of a permanent character, yet by customary law the tenants were entitled to occupancy rights. It was further held that an occupation for upwards of 70 years at the same rent was sufficient, under the circumstances of the case, to throw upon those who sought to disturb it the burden of showing that the tenancy was not accompanied with a right of occupancy. We may point out that Mr. Justice KINDERSLEY, while agreeing with his colleagues upon this point, was further of opinion that the muchalka J did evidence a permanent tenure. The present case is much stronger, for not only are the terms of Exhibit III less ambiguous, but the inference deducible from 60 years' possession at a uniform rate, nearly 12 of which were in open defiance of the landlord's claim to eject, still further strengthens defendants' claim. In *Thiagaraja v. Giyana Sambandha Pandara Sannadhi* I.L.R. 11 Mad. 77 also from Tanjorel the muchalka was produced, and it was held that the terms thereof did not lead to the conclusion that the cultivators were more than tenants from year to year. No subsequent grant of occupancy right was alleged to have been made, nor were there circumstances proved from which such a grant or right of occupancy could be presumed.

5. The case before us is distinguishable, therefore, from both of those we have considered. We must confirm the decree of the Subordinate Judge and dismiss this appeal with costs.