Ramaprasada Rao, CJ. and
Ramanujam, J.

United India Fire and General Insurance Co., Ltd. *v.* **Ayisa**

29th November, 1978.

C.M.A. Nos. 515 and 516 of 1975.

Motor Vehicles Act (IV of 1939), *section* 96 (2) (b) (ii) — *Fatal accident — Claim for compensation — Compensation awarded — Appeal by Insurance Company — Contention by Insurance Company that the driver did not have a valid licence at the time of accident—Insurance policy not containing a clause incorporating section* 96 (2) (b) (ii)— *Insurance Company held liable.*

In a fatal accident case, the Motor Accident Claims Tribunal awarded compensation. The Tribunal found that the driver of the car did not have a valid licence on the date of the accident. The Insurance Company contended before the Tribunal that since the driver did not have a valid licence the Insurance Company could avoid the contract of Insurance. The Tribunal found that the licence of the driver had expired towards the end of September, 1971 and the same was renewed only on 7th January, 1972. The date of accident was 31st December, 1971 and on that date the driver did not have a valid licence. However, the Tribunal held that the Insurance Company was liable since section 96 (2) (*b*) (ii) of the Motor Vehicles Act had not been incorporated in the insurance policy. On appeal by the Insurance Company against this view to the High Court,

Held, that the Tribunal came to the right conclusion. In this case one of the conditions incorporated in the policy was that the vehicle should not be driven by any person who is not duly licensed or by a person, who had been disqualified from holding or obtaining a driving licence during the period of disqualification. It was therefore clear that the appellant had not chosen to take advantage of the provisions contained in section 96 (2) (*b*) (ii) by incorporating a suitable provision in the insurance policy excluding the use of the vehicle by all non-licensees. In view of the various decisions and in view of the provisions contained in the policy, the appellant could not avoid its liability.

T. R. Rajagopalan, for Appellant.

S. J. ——— *Appeals dismissed.*

V. Ramaswami, J.

P. V. Narayanan *v.* **The State of Tamil Nadu.**

6th December, 1978.

W.P. No. 4755 of 1978.

Constitution of India (1950), *Article* 226— *Physical Director in Veterinary College— Post found unnecessary in the Madras Animal Husbandry Subordinate Service — Incumbent transferred to Tamil Nadu Educational Subordinate Service in* 1966—*Seniority fixed on* 19*th December,* 1966—*Objections raised by persons in Tamil Nadu Educational Subordinate Service — Seniority refixed on* 23*rd July,* 1970—*Appeal to Government disposed of on* 18*th May,* 1971— *Writ petition filed in* 1978 *end—Long delay in approaching Court fatal to petition—No merits in petitioner's case either.*

The petitioner was a Physical Director in the Madras Animal Husbandry Subordinate Service. As the Government found that there was no need of a physical director in that Department, the petitioner was transferred to the Tamil Nadu Educational Subordinate Service sometime in 1966. When the post was merged, his seniority was fixed on 19th December, 1966 with reference to

his date of entry as physical director in the Veterinary College. But one of the persons already in the Tamil Nadu Educational Subordinate Service took objection to the fixation of seniority of the petitioner and ultimately the Government agreed with the objection and made an order on 23rd July, 1970 refixing the petitioner's seniority. The petitioner preferred an appeal against this order to the Government and this was rejected on 18th May, 1971 stating that the Government saw no reason to consider the earlier decision. The petitioner thereafter made representations to various authorities and finally filed a writ petition to quash the order, dated 23rd July, 1970.

Held: The petitioner should have invoked the jurisdiction of the High Court if he was aggrieved by the refixation of his seniority, long back. Not having questioned the order earlier, the Court could not permit the petitioner to question the same at this late stage in 1978 end.

Even on merits, the Court could not see any force in the contention of petitioner. When once the petitioner was transferred from the Madras Animal Husbandry Subordinate Service to the Tamil Nadu Educational Subordinate Service, normally his seniority would be fixed with reference to the data on which he was transferred to the different service, because he could not affect the seniority of the persons who were already in that service.

The High Court was not satisfied that the Court could interfere at this late stage.

W. S. Sivasankar, for Petitioner.

S.J. ——— *Petition dismissed.*

Ramanujam, J.

S. P. Palaniappan *v.*
Lalitha Ammal.

27th November, 1978.

A.S. No. 2 of 1974.

Transfer of Property Act (IV of 1882), *section* 58—*Suit for recovery of money—Equitable mortgage — Mortgagor pleading that documents were given only to prove his financial stability for borrowing money — Equitable mortgage by deposit of title deeds inferred from the facts.*

The plaintiff-1st respondent had advanced moneys to the 2nd respondent, three sums of Rs. 1,000 each on 19th December, 1967, 23rd December, 1967 and 16th November, 1968 under three promissory notes. The first promissory note was marked Exhibit A-1 and the third promissory note as Exhibit A-2. For recovering the sum advanced on 23rd December, 1967, the plaintiff filed a suit and obtained a decree. Thereafter, the plaintiff filed a suit O.S. No. 456 of 1970 in the Sub-Court, Erode, for recovery of the sums covered by Exhibits A-1 and A-2. The plaintiff also claimed a mortgage decree for the said sums on the ground that the 2nd respondent had on 10th April, 1969 created an equitable mortgage by deposit of title deeds (Exhibits A-3 to A-9) relating to his properties at Erode to secure the payment of the amounts due under the said three promissory notes. The suit was resisted by the 2nd respondent and the 2nd defendant who denied the equitable mortgage. The lower Court accepted the case of the plaintiff-1st respondent and decreed the suit. On appeal by the second defendant,

Held: In this case the first defendant borrowed under three promissory notes and on the date of borrowing no security had been given with reference to the borrowings. But after section 58 of the Transfer of Property Act had been extended to Tirunelveli, the first defendant handed over the documents to the plaintiff on 10th April, 1969. The handing over of the documents could only be in connection with the borrowings which he had already made. It was true there was no document in writing to prove the first defen-

dant's intention to create a security for the debt. But the fact remained that the documents of title were handed over by the first defendant in connection with the existing debt. From this an intention to create a security for the existing debt could easily be inferred. Whether the requisite intention existed, was a question of fact in each case and was to be ascertained after considering real documentary and circumstantial evidence. In this case the custody of the title deeds with the creditor for more than a year, the existence of the debt and the admission of the first defendant that he handed over the documents to the plaintiff in connection with the debt were sufficient to raise the presumption of an equitable mortgage.

T. R. Rajagopalan, for Appellant.

S.J. ——— *Appeal dismissed.*

Mohan, J.

Murugan *v.*
Natesan.

6th December, 1978.

A.S. No. 96 of 1972.

(A) *Deed—Construction—*'A' *executed a deed of settlement in favour of* 'K' *for the performance of charity—Recitals in the document—* 'K' *to manage and perform the charity till his lifetime—Thereafter to appoint any one of 'their heirs' to do the charity—*'K' *appointed one* 'M' *his foster son to perform the charity—Suit by the agnates of* 'K' *for a declaration that they are the persons entitled to perform the charity—Claim by* 'M' *negatived.*

(B) *Words and Phrases—'Foster son'—Cannot be equated to 'adopted son'.*

One Arunachalam Chettiar endowed certain properties for the performance of some charities and appointed his son Karuppiah as trustee and directed him to perform the charity. As for future management he gave a power of appointment to Karuppiah and stated that he can appoint any one of his choice, among their heirs to manage the properties and do the charities after the lifetime of Karuppiah.

Karuppiah appointed one Murugan as trustee to manage the trust properties and perform the charity. After the death of Karuppiah, the agnates of Karuppiah claimed that they were entitled to be trustees of the charity and sought to recover possession from the said Murugan. Their claim was upheld.

Held, that Murugan who claimed to be the adopted son of Karuppiah cannot get the status of an adopted son in the absence of any evidence to show that he was duly adopted and the fact that Murugan is described as foster son by Karuppiah himself in his Will in more than one place clearly shows that Murugan can't be the adopted son of Karuppiah and his claim to be the trustee in preference to the agnates of Karuppiah cannot be upheld.

K. Sarvabhauman and *T. R. Mani,* for Appellant.

R. Srinivasan, for Respondent.

R.S. ——— *Appeal dismissed.*

Sathiadev, J.

Kuttya Nadar *v.*
K. Kumareswaraperumal Nadar.

7th December, 1978.

C.M.A. No. 252 of 1975.

Civil Procedure Code (V of 1908) *(as amended by Act CIV of* 1978), *Order* 41, *rule* 19—*Appeal in the list—Court adjourning the appeal to some other date for want of time finally for hearing—On adjourned date appellant's counsel reporting no instruction—Appellant also absent — Appeal dismissed — Petition to restore by changing counsel also dismissed — Allegation that petitioner was under impression that the case would not be heard—Dismissal order, whether correct.*

The appeal was in the list on 9th January, 1974. For want of time on that day it was adjourned to 30th January, 1974 for hearing finally. On 30th January, 1974, the appellant's counsel reported no instructions. Appellant was also absent. Appeal was dismissed. To restore the appeal an application was filed by changing the appellant's counsel. The allegation in the affidavit filed in support of the petition for restoration was that the appeal was not in the list and the appellant thought that the appeal will not be taken up

for hearing on that day. The petition for restoration was dismissed. On appeal against the order of dismissal,

Held, that the appellant's counsel was well aware of the circumstances under which he was reporting no instructions and the allegation that the petitioner thought that the appeal would not be heard was no ground for restoration of the appeal.

T. R. Rajaraman, for Appellant.

T. S. Srinivasan, for Respondent.

R.S. ——— *Appeal dismissed.*

Ramaprasada Rao, CJ.

P. M. Kuppa Sah *v.*
Raja Ram Sah.

10*th November*, 1978.

C.R.P. No. 1244 of 1977.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) as amended by Act (XXIII of 1973), section 10 (3) (c)— Petition for eviction by landlord seeking additional accommodation — Physical occupation by landlord of concerned building whether sine qua non for maintainability of application.

The landlord in the instant case gave notice of termination of tenancy to all his three tenants. On receipt of the notice, one of the tenants vacated. As soon as the tenant vacated, the landlord put his own belongings in the portion and locked it up and kept it in his own possession and control. Finding that the other two tenants did not vacate, the landlord filed the present application under section 10 (3) (*c*) of the Tamil Nadu Buildings (Lease and Rent Control) Act, seeking additional accommodation.

As jurisprudence contemplates judicial possession as the nearest equation of physical possession, in a case where the landlord keeps his things in a portion of the premises, vacated soon after he gave notice of termination of tenancy, and keeps it locked up under his control, and is in legal possession thereof, then, the intention of the landlord should be deemed to be to keep it in his physical possession, and this satisfies the requirements under section 10 (3) (*c*) of the Act. This is a case where the landlord filed the application under section 10 (3) (*c*). This is certainly maintainable because the landlord, though not in physical possession, was in legal occupation of the portion of the buildings.

M. Srinivasan and *S. Desikan*, for Appellant.

R.S. ——— *Petition allowed.*

V. Balasubrahmanyan, J.

Thiagaraja Sundar *v.*
Sri Pasupatheeswaraswami Devasthanam at Avoor represented by its Executive Officer.

27*th October*, 1978.

S.A. No. 786 of 1975.

Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act (LVII of 1961), section 51 (iv)—Suit land a Coconut Tope whether immune from the provisions of the Act.

The definition of "tope" does not exclude the cultivation of crops other than the fruit or nut-bearing trees. It only emphasises that the land must contain a group of fruit or nut-bearing trees as constituting the main crop in that land. On the evidence on record, in the present case there was no doubt whatever that the suit land was predominantly a coconut tope. The evidence showed that in an area measuring 53 cents, there were as many as 48 coconut trees.

The question is whether the suit tope is immune from the protective provisions of the Act. Section 51 (*iv*) of the Tamil Nadu Act (LVII of 1961) is quite clear and says the Act shall not apply to such topes so long as they continue to be used for such purposes as are provided in the section. The expression "converted" occurring in section 51 (*iv*) of the Act is not a term of art and it has not been used in any technical sense by the Legislature and all that it means is that if the land once becomes a tope as defined in section 2 (29) of the Act, then the land must be regarded as having been converted into a tope as contemplated in section 51 (*iv*) of the Act, and it would fall outside the scope of the Act and it will only cease to be so exempt if the land becomes reconverted into something other than a tope.

Sri Panchanateswaraswami Devasthanam by its Trustees v. *Barkis Bivi*, (1972) T.L. N.J. 591, referred to.

N. Sivamani, for Appellant.

N. Vanchinathan, for Respondent.

R.S. ——— *Appeal dismissed.*

Nainar Sundaram, J.

Duraisami Mudaliar *v.*
Ramasami Chettiar.

5th December, 1978.

C.R.P. No. 2578 of 1978.

Execution—Suit for declaration of title and recovery of possession — Suit property a vacant site—Superstructure put up by defendant—Suit decreed—No direction for removal of the superstructure—Execution of the decree for possession, whether can be granted.

The statutory principle which has got to be kept in mind is that where a Court directs by a decree or order that vacant possession of land should be given, that decree can be made effective by directing its own officer to remove the superstructure on it, and to deliver vacant possession of the property to the decree-holder. It may not be necessary to have any specific power—in that behalf and such a power is exercised in every case in which vacant possession is ordered. The power to remove the superstructure on the land is an incidental power, necessary and ancillary to the power to deliver possession of the property. Should there be any obstruction within the meaning of Order 21, rule 97 of the Code of Civil Procedure, that has got to be dealt with specifically under the said provision.

Where however the superstructures were put up before the institution of the suit and were not ordered to be *removed* as a part of the mandate in the decree, the proper course would be to direct the judgment-debtor to remove the superstructure put up by him so as to effectuate vacant delivery of the suit site to the decree-holder.

Sivasubramanian, for Petitioner.

N. Vanchinathan, for Respondent.

R.S. ——— *Petition dismissed.*

T. Sathiadev, J.

C. S. Narayanaswamy Iyer *v.*
R. Narayana Sarma.

14th December, 1978.

C.M.A. No. 299 of 1976 and
C.R.P. No. 1548 of 1977.

Execution—Decree of trial Court set aside on appeal—Provision for costs of trial Court and appellate Court in the appellate Court decree—Execution of the decree for costs—One of the appellants dead at the time of the hearing of the appeal — Legal representatives not brought on record—Decree of appellate Court whether a nullity.

In the trial Court, the liability of the first defendant was limited only to Rs. 125. Aggrieved by this portion of the decree, he had joined with other defendants in appeal preferred to the High Court. Therefore merely because the first defendant had joined with other defendants in the appeal, it cannot be inferred that the decree is a joint and indivisible one. The contention that but for the liability of the first defendant, other defendants will not be within the scope of the suit, cannot be a ground to treat the decree as drafted as a joint decree. If no appeal had been filed in the High Court the only relief which the plaintiff could have had was to demand payment of Rs. 125 by the first defendant and nothing else. Regarding the rest of the decree, the plaintiff had to confine himself only against the other defendants mentioned in the decree. But when the Court passes a decree in a specific manner there is no question of construing it as anything different from what it unambiguously provides and the judgment can be looked into to vary the decree because nothing prevented the plaintiff to ask for the amendment of the decree. This is not a case where the concept of general and indivisible decree will be applicable. Even though the 8th appellant died before the passing of the decree by the High Court the decree of the High Court has not become a nullity for the failure to bring on record the legal representatives of the 8th appellant.

M. Srinivasan, for *K. Raman* and *R. Sitaraman,* for Appellant.

V. Ratnam and *K. Srinivasan,* for Respondent.

R.S. ——— *Appeal and revision dismissed.*

Ramaprasada Rao, CJ. and
Ramanujam, J.

Sarojini Ammal *v.*
State of Tamil Nadu represented by the Secretary to the Government Revenue Department, Madras.

13*th November,* 1978.

W.P. Nos. 3282|7 and 463, 1135, 1802, 4100 and 5904 of 1973.

Tamil Nadu Cultivating Tenant's Arrears of Rent (Relief) Act (XXI of 1972)—*Provisions of the Act whether violative of Articles* 14, 19 *and* 31 *of the Constitution.*

Constitution of India (1950), *Articles* 14, 19 *and* 31.

Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act (XXI of 1972), was passed by the State Legislature and received the assent of the President on 9th August, 1972. The Act is intended to give relief to cultivating tenants as they were not in a position to pay the arrears of rent on account of their indebtedness and poor economic condition and to protect them against actions initiated for their eviction and for recovery of arrears of rent. In the above circumstances it was considered necessary as part of the agrarian reforms, to give relief to the cultivating tenants from the burden of discharging the arrears of rent on condition of payment of current rent due to the landlords and with that object, the above Act was enacted. Section 3 of the Act provides for relief to the tenants regarding payment of arrears of rent outstanding on the 30th of June, 1971 provided the cultivating tenants deposited the whole current rent, that is, rent due for the fasli year commencing on the 1st of July, 1971 and ending with 30th June, 1972, within 6 months from the date of publication of the Act, that is on 11th August, 1972. Section 4 is a deeming provision under which if any cultivating tenant paid on or after 1st July, 1972 any rent to the landlord or deposited into Court, it shall be deemed to be payment towards the current rent. Sub-section (3) of section 4 however disentitles any cultivating tenant to claim any refund from the landlord on the ground that the payment or deposit made on or after 1st July, 1971 towards the discharge of any arrears is in excess of the rent due as current rent. Section 5 prohibits any suit for recovery of arrears and for eviction of cultivating tenants within the period of six months from the date of publication of the Act. Section 7 provides for restoration of possession of land to cultivating tenants who have been evicted on or after 1st March, 1972 and before the publication of the Act on the ground of non-payment of rent, provided he paid the current rent. Section 9 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in certain statutes. The provisions set out show that the main object of the Act is to give an option to the tenant to pay the current rent within a specified period if he is to have the benefit of all the outstanding arrears getting wiped off. The Act does not wipe out the entire dues payable by the tenants compulsorily.

The Act provides ameliorative reliefs to the cultivating tenants with a view to enable them to concentrate on agriculture without being distracted by the proceedings that are likely to be initiated by the landlords for eviction or for recovery of arrears of rent from the tenants. It must be noted that under the impugned Act the tenants do not get an automatic discharge of the arrears due by them. An option is given to them and if they want to claim the benefits of the Act they are bound to pay a portion of the rent in arrears. Time is fixed for the exercise of the option. By exercising the option the burden of previous arrears gets discharged and thereafter the tenants can apply themselves earnestly to the cultivation of the lands and increase food production for the benefit of the public. Therefore the impugned measure can be taken to be a part of agrarian reform intended to better the conditions of agriculturists, for lightening the burden on them of accumulated arrears of rent, and for securing a common benefit of increased agricultural production. Hence, the impugned provision must be taken to be a reasonable restriction under Article 19 (5).

N. Srinivasan, for *N. R. Chandran, V. Narayanaswamy, V. Srinivasan, V. Shyama-*

lam, V. Natarajan, K. Sarvabhauman, for Petitioners.

T. S. Subramaniam, R. Sundaralingam, R. Shanmugam, P. S. Ramachandran, S. Palaniswamy, and the Government Pleader, for Respondents Nos. 1, 2, 3.

R.S. ——— *Petitions dismissed.*

Gokulakrishnan, J.

C. Muthu Bhattar *v.* **The Authorised Officer (Land Reforms), Madurai.**

24th January, 1979.

C.R.P. No. 3616 of 1974.

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (1961), *section* 9 (2) (b)—*Return furnished by petitioner — Statement prepared on the basis of the return —Failure to give opportunity to petitioner to represent—Not fatal to the case.*

Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1963)—*Lands in question minor inam land— Ryotwari patta issued to petitioner—Inclusion of those lands in petitioner's holding not correct.*

From the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act it is clear that the opportunity contemplated in section 9 (2) (*b*) of the Act is only in respect of cases where the party does not furnish any information under section 8 of the Act. Admittedly the petitioner had furnished information and a statement was prepared on the basis of the return so filed by him under section 8 (1) of the Ceiling Act. Hence the contention that failure to give opportunity to make representation, under section 9 (2) (*b*) of the Ceiling Act is fatal, cannot be appreciated inasmuch as the draft statement was published on the basis of the return furnished by the petitioner under section 8 (1) of the Ceiling Act. The provision in section 9 (2) (*b*) of the Ceiling Act need not be invoked.

An extent of 44.70 acres of land included by the Authorised Officer in the holding of the petitioner were minor inam lands and a ryotwari patta was granted to the petitioner under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1963). The petitioner opposed the inclusion of those lands in his holding on the ground that he can enjoy the lands only so long as he continues to render the services of *sthanikam* and *archaka*. Even though patta had been granted in the name of the petitioner, he had not paid the compensation specified in the Act to enable him to become the absolute owner of the lands. Admittedly the lands measuring about 44.70 acres were service inam lands even though patta had been granted in favour of the petitioner herein. Inasmuch as these 44.70 acres of lands were inalienable they cannot be considered as lands of a person who is entitled to hold the same in section 7 of the Ceiling Act. The lands of this nature held by a person cannot come under the definition of section 5 (19) of the Act, since, he who is holding such service lands, can be considered neither the owner nor a possessory mortgagee, nor a tenant, nor an intermediary. The definition of owner in section 3 (33) of the Ceiling Act, will not also apply to a person who holds such service inam lands. The inclusion of the 44.70 acres of land for the purpose of calculating the ceiling area of the petitioner's holding was not correct.

V. Ratnam, for *K. Srinivasan,* for Petitioner.

The Additional Government Pleader, for Respondent.

R.S. ——— *Petition allowed.*

M. M. Ismail, J.

V. Palaniappa Chettiar *v.*

P. Vaidyanatha Iyer.

8th December, 1978.

S. A. No. 619 of 1974.

Civil Procedure Code (V of 1908), *section* 34 *—Suit for dissolution of partnership and rendition of accounts — Partner, if can get honorarium from firm — Interest claimed from date of plaint—Plaintiff held entitled to interest only from the date of decree.*

The plaintiff filed a suit for dissolution of partnership and for rendition of accounts. A certain item was claimed by the first defendant as exclusively belonging to him earned in his individual capacity as honorarium. The claim was rejected by the lower appellate Court. The plaintiff claimed interest from the date of the plaint. The lower appellate Court rejected the claim and granted interest only from the date of the decree.

On appeals to the High Court,

Held: The first defendant's claim was not tenable. It is difficult to appreciate what honorarium a partner can get from the firm and how he can claim that as something earned by him not in his capacity as a partner but something different. In the absence of facts throwing light, the amount must be held to have been earned by him as a partner. The appellant (plaintiff) was entitled to interest only from the date of the decree as it was not a case for rendition of accounts of a firm already dissolved but a suit for dissolution of the firm and rendition of accounts.

K. P. Sivasubramaniam, for Appellant.

R. Gopalaswami Iyengar, for Respondent.

R.S. *S.A. No.* 619 *dismissed, S.A. No.* 1473 *partly allowed.*

V. Balasubrahmanyan, J.

K. R. Manickam Pillai *v.*

Mavathur Panchayat.

17th October, 1978.

S.A. No. 792 of 1975.

Tamil Nadu Panchayats Act (XXXV of 1958), *section* 64*—Panchayat—Private market — Conducting of — No prohibition in the statute from establishing more than one market in the area nor that there must be space between two markets — Discretion of the Panchayat to decide.*

Under the Tamil Nadu Panchayats Act, 1958 there was no particular provision under which a Panchayat was prohibited from establishing markets in close proximity with each other. Nor is there any statutory provision to the effect that there must be any given space left in between two markets for which the licence can be granted by the Panchayat. All matters and considerations of this kind are left to the absolute and exclusive discretion of the Panchayat under section 64.

P. Raghaviah, for Appellant.

S.J. ——— *Appeal dismissed.*

G. Maheswaran, J.

Kholapur Traders by partner *v.*
Subramania Mudaliar.

30th January, 1979.

C.R.P. No. 2405 of 1976.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *(as amended by Act XXIII of* 1973), *section* 10 (c) *(iii) —A lawyer owning a premises in occupation of a tenant doing jaggery business—Petition for eviction of the tenant alleging requirements of the landlord for carrying on his legal profession — Legal profession, whether a business—Petitioner not entitled to an order for eviction.*

The owner of a building who was a lawyer filed a petition against a firm doing business in jaggery and occupying the premises belonging to the lawyer, for eviction before the Rent Controller, Vellore, on the ground that he required the premises for a *bona fide* business, to set up his practice. The Rent Controller ordered eviction accepting the case of the landlord and the appellate authority also confirmed the order of eviction passed by the Rent Controller.

In revision, it was held that the profession of an advocate constituted a learned profession which could not be termed as a business within the definition of section 10 (3) (*c*) (iii) of the Tamil Nadu Buildings (Lease and Rent Control) Act. The landlord could not under the provisions of the Act apply for eviction on the ground that the landlord required the premises for locating his office. The order of eviction passed by the two lower Courts was set aside.

V. Ratnam, for *T. S. Viswanatha Rao* and *Gajapathy,* for Petitioner.

K. N. Balasubramanian and *T. Dhanya Kumar,* for Respondent.

R.S. ——— *Revision allowed.*

G. Maheswaran, J.

G. Kaliaperumal Konar *v.*
The Collector of Tiruchirapalli.

27th October, 1978.

Cr.R.C. No. 854 of 1975.
Cr.R.P. No. 853 of 1975.

Tamil Nadu Paddy and Rice Dealers (Licencing Regulation and Disposal of Stocks) Order (1968), *clause* 2 (9)—*Sale of rice by one wholesaler to another wholesaler—Bullock-carts loaded with the rice intercepted — Collector ordering confiscation of the entire rice on the ground of contravention of clauses* 2 (h) *and* 2 (9)—*Sessions Judge on appeal reducing confiscation to* 1|4*th of the amount of rice—Confiscation not warranted—Sale of rice alone was prohibited.*

One *K* bought 37 bags of rice from a wholesaler at place *M* and loaded them in bullock-carts to be transported to place *T*. The carts were intercepted and on a perusal of the bills it was found that one wholesaler had sold rice to another wholesaler. The Collector who issued show cause notice to both wholesalers ordered confiscation on the ground that there was a contravention of clause 2 (*h*) and 2 (9) of the Tamil Nadu Paddy and Rice Dealers (Licencing Regulation and Disposal of Stocks) Order (1968). On appeal, the learned Sessions Judge reduced the confiscation to 1|4th of 37 bags. On a revision to the High Court,

Held: As the words in clause 2 (9) were very plain prohibiting only the sale of rice, the revision petitioner who had purchased rice from a wholesaler could not be held liable. For that reason, the revision had to be allowed. The order of confiscation by the Courts below was set aside.

V. Srinivasan, for Petitioner.

T. K. Parusuraman, Public Prosecutor, for State.

S.J. ——— *Petition allowed.*

Ratnavel Pandian, J.

Arumugam Chettiar *v.*

Minor Doraisami.

29th August, 1978.

C.R.P. Nos. 954, 959 of 1976.

Civil Procedure Code (V of 1908), *Order* 21, *rules* 58 *and* 63—*Petition to raise attachment allowed—Attachment raised—Revision against that order by decree-holder whether maintainable.*

Held, that the only remedy available to the decree-holder is to file a suit under Order 21, rule 63 of the Code of Civil Procedure which was in force at the time of the filing of the suit, though the said rule 63 has been omitted by virtue of the amendment of the Code of Civil Procedure.

Somasundaram v. *Senthilnathan,* (1967) 1 M.L.J. 25, followed.

Nicholas, for Petitioner.

Narayanaswamy, for Respondent.

R.S. ——— *Revision dismissed.*

T. Ramaprasada Rao, CJ. and

Ramanujam, J.

AR. N. Solachi Achi

AL. P. Narayana Chettiar *v.*

Life Insurance Corporation of India.

13*th September,* 1978.

O.S.A. No. 43 of 1978.

Tamil Nadu Indebted Agriculturists (Temporary Relief) Act (XV of 1976), *section* 2 (c) *—Debt definition — Notification — Exemption for Insurance Corporation—Debtor cannot claim the relief or benefits adumbrated in the Act against the Life Insurance Corporation.*

The Legislature reserved to itself the power to notify from time to time such financial institutions against which the relief or the benefits conferred on the debtors could not be claimed under Act XV of 1976. It therefore follows that if, on a particular date, any institution, such as the Life Insurance Corporation of India, is so notified as an excepted financial institution then it should be deemed that such an exception should have come into effect and become enforceable as such even from the date when the Act came into force. The inclusion of a financial institution as an excepted financial institution on a date later than the date when the Act come into force, having regard to the reservation made by the Legislature itself to make such notifications in the future, could only mean that it is declaratory of a particular state of affairs and not the pronouncement or creation of a new state of affairs not contemplated under the Act. When therefore, under G.O. Ms. No. 761 of dated 2nd November, 1976 the Life Insurance Corporation of India was notified as an excepted financial institution, then it means that the debtors cannot claim the relief or benefits adumbrated in the Act as against such a notified institution, though such notification was posterior, to the date of the coming into force of the Act. The Legislature reserved to itself the right to notify from time to time such of the financial institutions, against which the relief provided for under the Act can be claimed by the debtor. The Life Insurance Corporation is one such institution.

The inclusion of the Life Insurance Corporation as an excepted financial institution, was purely declaratory of the position which was reserved by the Legislature even at the time when it passed the enactment, by including the Life Insurance Corporation of India in the notification. It means that as and from the date of the commencement of the Act the Life Insurance Corporation of India is entitled to assert its rights and resist any attempt on the part of the debtors to claim relief under the Act in question.

N. Vanchinathan, for Appellant.

R.S. ——— *Appeal dismissed.*

Paul, J.

Saradambalammal *v.*
Lakshmi Ammal.

3rd November, 1978.

C.R.P. No. 2631 of 1978.

Transfer of Property Act (IV of 1882), section 100—Charge—Civil Procedure Code (V of 1908), section 47—Wife obtaining decree for maintenance against husband — Charge created over all the properties for the payment of maintenance — Arrears of maintenance—Some of the properties sold in auction —Some property sold by husband in favour of third party—No notice of charge—Those properties whether can be released from the sale proclamation.

A revision petition was sought to be preferred against an order dismissing the appeal preferred by the revision-petitioner against the order passed in a petition under section 47 of the Code of Civil Procedure for releasing some items of the properties which were brought to sale in execution of the decree for maintenance passed in favour of the respondent. In the decree for maintenance passed, a charge was created over all the properties for the payment of the maintenance. For arrears of maintenance some of the properties being lots II and III in the execution petition were brought to sale and one *P* purchased the same. The revision petitioner claimed that her deceased husband *'V'* purchased those properties and was in possession of the same, and that the aforesaid purchase was without notice of the charge and so those items of properties cannot be brought to sale for realising arrears of maintenance.

Held, that the charge in the instant case is one created by a decree and such a charge does not come within the ambit of section 100 of the Transfer of Property Act. Hence the request that the items of the charged properties which had been purchased by the husband of the petitioner from the Court-auction purchaser who had purchased the same in the Court-auction that followed the execution of the decree for collection of arrears of maintenance be exempted from being proceeded against in execution of the decree for maintenance cannot be acceded to. *Thangavelu* v. *Thirumalaisami*, (1955) 2 M.L.J. 618: I.L.R. (1956) Mad. 697: 68 L.W. 755: A.I.R. 1956 Mad. 67, followed.

E. Padmanabhan, for Petitioner.

R.S. ——— *Revision dismissed.*

V. Ramaswami, J.

K. Perumal Chettiar *v.*
The Commissioner and Special Officer, Chengalpattu Municipality, Chengalpattu.

19th February, 1979.

W.P. No. 580 of 1979.

Madras District Municipalities Act (V of 1920), section 83 (1) (b) — Income from house endowed for charity — Exemption claimed under section 83 (1) (b)—Building held to be not a choultry though the house was occasionally let for celebrating marriages —Certiorari refused —Exemption refused from property tax.

One *E* endowed the entirety of the income from his house for the purpose of doing some charities. The petitioner claimed exemption from property tax under section 83 (1) (*b*) of the Madras District Municipalities Act, 1920. This was refused by the Commissioner of the Municipality holding that the building was not a choultry within the meaning of section 83 (1) (*b*). The building was occasionally let for celebrating marriages and the main source of income was the rental amount received for letting out the premises for holding such marriages. The question was whether it was a "choultry" within the meaning of section 83 (1) (*b*). The petitioner filed a writ petition.

Held: In this case there were neither rooms nor facilities nor was the building intended to accommodate pilgrims or travellers. The deed itself showed that the rental income was to be utilised for the purpose of charities mentioned therein and not for maintenance of a choultry. In these circumstances, the building in question was not a "choultry" within the meaning of section 83 (1) (*b*) of the Act and therefore the order of the Commissioner was correct.

N. Sivamani, for Petitioner.

S.J. ——— *Petition dismissed.*

Nainar Sundaram, J.

Hajia Ayisha Nachiar Kalvi Arakkattalai, Nagore *v.*

State of Tamil Nadu.

14*th December,* 1978.

C.R.P. No. 3314 of 1976.

(A) *Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (LVIII of* 1961), *section* 2 (1) (ii)—*"Religious trust of a public nature"—Test.*

(B) *Wakf Act (XXIX of* 1954), *section* 3 (1)—*'Wakf' — Definition — Mohammedan Law.*

(C) *Deed—Construction—'Religious trust of a public nature'.*

It is not possible to import straightaway the conception of a 'trust' as understood in the ordinary legal parlance, for the purpose of application of the provisions of the Act to the facts of the instant case. The Act has set out special definitions in respect of various categories of trust. Only when there is lack of a specific definition, one will be compelled to look to the impact and implications of an expression used, as normally understood, in the general branch of law.

To bring the matter within the ambit of 'religious trust of a public nature', the dedication of property must be for religious purposes. The link between the practice of religion and the utilisation of the property must be evident. The utilisation of the income from the property must be for the purpose of the religion in question or otherwise for religious purposes. If the purpose is merely charitable, it would be very difficult to bring the dedication as one for religious purpose. The distinction is subtle but, however, it is important because the provisions of the Act require that for a trust to claim total exemption from its provisions, it must be a religious trust of a public nature. May be, there could be cases where the trust could be both religious as well as charitable. Such a contingency has been contemplated and provided for under section 2 (3) of the Act (LVIII of 1961), when it says that a public trust could be both for a public purpose of religious nature and for any other public purpose, but, the presence of a religious purpose—may be along with other purposes—is a condition precedent so as to attract the total exemption under section 2 (1) (*ii*) of the Act.

Held, that in the present case, the objects could not be characterised to be religious and there was no link between the objects of the trust and any tenets of the Mohammedan religion.

R. G. Rajan, for Petitioner.

The Additional Government Pleader, for Respondent.

R.S. ——— *Revision dismissed.*

V. Sethuraman, J.

Johara Bivi *v.*

Julaika Bivi.

5*th January,* 1979.

C.R.P. No. 1941 of 1976.

Tamil Nadu Court-fees and Suits Valuation Act (XIV of 1955), *sections* 39 *and* 50—*Suit for administration of the estate of one 'A' by his widow—Court-fee paid as provided by sections* 39 *and* 50 *of the Act — Administration suit whether maintainable — Court-fee paid whether correct.*

The plaintiff was the widow of Ameer Batcha Rowther who died on 25th January, 1972. The plaintiff claimed 1|8th share in the net estate of the deceased after making provisions for various items like funeral expenses, "Iddat" etc. The suit was valued for the purposes of jurisdiction at Rs. 8,500 as the probable value of the plaintiff's share and a Court-fee of Rs. 100 was paid thereon under section 39 read with section 50 of the Act. The plaintiff undertook to pay any additional Court-fee which may be leviable in respect of the decree to be passed in her favour at any time as the Court may order payment of the same on ascertainment of the actual decree to be paid in the suit. The defendants contended that the Court-fee paid was not proper. An issue regarding the payment of Court-fee was framed. It was taken as a preliminary issue and the trial Court held that the payment of Court-fee by the plaintiff was

not proper and the suit should have been filed as a partition suit.

In revision by the plaintiff, the High Court held that the authorities go to show that in the case of Mohammedans, the proper remedy would be a suit for administration especially in cases where the residue of the property has to be ascertained and the share of the plaintiff has to be allotted. The residue has to be ascertained after making the provisions prayed for. The Court-fee paid in the present case was proper and it is not necessary to value the reliefs under section 37 read with section 22 of the Tamil Nadu Court-fees and Suits Valuation Act.

S. M. Hameed Mohideen, for Petitioner.

N. Sankaravadivel, for Respondents Nos. 1 to 4 and 6 to 8.

R. Vijayan, for Respondent No. 10.

Sivaji, for the Government Pleader.

R.S. ——— *Petition allowed.*

T. Ramaprasada Rao, CJ.

P. V. Subba Chetty and Sens *v.*

M/s. Madras Stainless Steel Emporium (Regd.).

11*th January,* 1979.

C.R.P. No. 2743 of 1977.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *(as amended by Act XXIII of* 1973), *sections* 10 (2) (ii) (a) *and* 10 (2) (iv)—*Partnership consisting of mother and sons carrying on business in the premises — Dissolution of partnership— One partner continuing to stay in the premises and carrying on business under a different name—Payment of rent by the new firm— Petition for eviction by landlord on the ground of sub-letting and wilful default if lies.*

Under section 10 (2) (*ii*) (*a*) of the Tamil Nadu Buildings (Lease and Rent Control) Act, a landlord is entitled to an order for eviction if there is a subletting of the building or any portion thereof without his written consent. Section 10 (2) (*vi*), on the other hand, speaks of a situation where the tenant has ceased to occupy a building for a continuous period of four months without reasonable cause. If the case of subletting of a part of the building is proved, then it would also pragmatically mean that the tenant has ceased to occupy that portion of the building for a continuous period of four months without reasonable cause. In this sense, where there is a partial letting out of a portion of a building and that is made out as a ground for eviction under section 10 (2) (*ii*) (*a*) then, it could also be viewed as if there has been a cessation of occupation of the building by the main tenant for over a period of four months if such subletting continues for that period without reasonable cause. But if it is a case where the entire building is sublet without authority, then obviously it follows that the tenant has ceased to occupy the building and section 10 (2) (*vi*) would come into play, only if the cessation in relation to such non-occupancy could be for well over a period of four months. This is only one factor which distinguishes the purpose and meaning of the reliefs contemplated under section 10 (2) (*ii*) (*a*) and section 10 (2) (*vi*). In that sense, therefore, it has to be considered whether in the instant case there has been subletting and if such subletting continued for a period of well over four months; then the landlord can claim eviction both under sections 10 (2) (*ii*) (*a*) and 10 (2) (*vi*) of the Act. Even so, if it is a partial subletting and if it continues for more than four months the same result follows.

Held, that relief asked for by the landlord on the ground that there had been such cessation of occupation was not available to the landlord in the circumstances of the case. On the question of wilful default the finding of the Appellate Authority was not satisfactory and hence, the matter was remitted to the Appellate Authority to find out whether there was wilful default or not in the payment of rent.

Murli Dhar v. *Chuni Lal and others,* (1970) All India Rent Control Journal page 922, Followed.

K. P. Unni Krishnan, for Petitioner.

R.S. ——— *Remitted to the appellate authority.*

Ramanujam, J.

B. Nathmall Vaid *v.*
State of Tamil Nadu.

2nd November, 1978.

S.A. No. 1483 of 1975.

Wild Birds and Animals Protection Act, section 3 *(G.O. Ms. No.* 2152 *dated* 21*st February,* 1960)*—Death of a tusker elephant in patta land of estate owner—Information given by landowner to District Forest Officer—Two tusks of the elephant handed over to the officer by the landowner — Acknowledgment given by officer to landowner that the tusks would be returned after getting formal approval of the higher authorities—Failure to return the tusks—Suit by estate owner against Government for the value of the tusks—Claim by Government of the property as belonging to the Government—Landowner whether entitled to a decree.*

A close reading of the Government Order would clearly indicate that the ownership of the tusks vested only with the owner of the land in which the elephant was found dead. Perhaps, the tusks will become Government property if the officials of the Forest Department had chased the animal and the animal as a result of the chase entered into the plaintiff's land and died there. But, so long as there was no proof of any chase and the wild animal had voluntarily left the reserve forest and died in the plaintiff's patta land, the Government cannot claim the ownership of the tusks.

It is clear whatever might be the position in regard to live animals, as regards wild animals which are found dead in a private land the owner of the land is entitled to claim ownership of the dead animal, and the bodies of wild animals which are found on a particular land become the absolute property of the owner of the soil even if killed by a trespasser, unless the trespasser chased the animal on the land of one person and killed it on the land of another. Admittedly, the animal was found dead in the patta land of the landowner. The dead elephant in question had not been chased or pursued by the forest authorities, but it had been shot at by some unknown persons and it voluntarily quit the reserve forest and entered the private land where it died.

M. A. Rajagopalan and *G. Swaminathan,* for Appellant.

Additional Government Pleader, for Respondent.

R.S. ——— *Second appeal allowed.*

Sengottuvelan, J.

T. N. Lakshmanan *v.*
M|s. S. P. Hajee Alavudeen Saheb Sons.

9th February, 1979.

C.R.P. No. 2759 of 1976.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) *(as amended by Act XXIII of* 1973), *sections* 10 (3) (a) (*i*) (*iii*) *and* 10 (3) (c) *and* 21*—Non-residential building—Petition for execution by landlord on ground of requirement for his own residential purposes—Petitions, if maintainable.*

Section 10 (3) (*a*) (i) of the Tamil Nadu Buildings (Lease and Rent Control) Act deals with a residential building and lays down that in the case of such building, a landlord can ask for eviction of the tenant for his own occupation if he is not occupying a residential building of his own in the city. Section 10 (3) (*a*) (iii) lays down that in the case of a non-residential building, a landlord can ask for eviction of non-residential premises if he is not occupying for purposes of a business a non-residential building in the city. Section 10 (3) (*c*) lays down that a landlord who is occupying only a part of a building, whether residential or non-residential, may notwithstanding anything contained in clause (*a*), apply to the controller for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof if he requires additional accommodation for residential purposes or for purposes of a business which he is carrying on, as the case may be. A landlord can ask for eviction of a residential building for residential purposes only, and a non-residential building for non-residential purposes only.

Held, that since the premises in question is a non-residential premises and since the claim of the landlord is for residential purposes, the landlord is not entitled to evict the tenant.

P. R. Varadarajan, for Petitioner.

T. Somasundaram and *A. S. Venkatachalamurthy,* for Respondent.

R.S. ——— *Petition dismissed.*

Nainar Sundaram, J.

Duraisami Mudaliar *v.*
Ramasami Chettiar.

5*th December,* 1978.

C.R.P. No. 2578 of 1978.

Civil Procedure Code (*V of* 1908), *Order* 21, *rule* 97—*Suit for declaration and possession of vacant site—Superstructure put up by defendant before institution of suit — Court directing judgment-debtor to remove superstructure — Validity — Superstructure put up by defendant during pendency of suit or after decree — Competence of executing Court to order removal or demolition.*

Where a Court directs by a decree or order that vacant possession of land should be given, that decree could be made effective by directing its own officer to remove the superstructures on it, and to deliver vacant possession of the property to the decree-holder. It might not be necessary to have any specific power in that behalf, and such a power was exercised in every case in which vacant possession was ordered. The power to remove the superstructures on the land was an incidental power necessary and ancillary to the power to deliver possession of the property. Should there be any obstruction within the meaning of Order 21, rule 97 of the Code of Civil Procedure, that has got to be dealt with specifically under the said provisions.

There will not be any difficulty with reference to a case where the superstructure came to be put up by the defendant either during the pendency of the suit or after the decree. In such a case, in execution of the decree for possession, the executing Court could order the removal or demolition of the construction made during the pendency of the suit or after the decree.

Where, however, the superstructures were put up before the institution of the suit and were not ordered to be removed as a part of the mandate in the decree, the proper course in appropriate cases would be to direct the judgment-debtor to remove the superstructures so put up by him so as to effectuate vacant delivery of the suit site to the decree-holdr.

S. Sivasubramanian, for Petitioner.

N. Vanchinathan, for Respondent.

S.J. ——— *Petition dismissed.*

Ramanujam, J.

G. K. Jose *v.*
Ramathal B. P. Sitarama Chettiar.

16*th January,* 1979.

C.R.P. Nos. 118 and 136 to 138 of 1979.

Tamil Nadu Buildings (*Lease and Rent Control*) *Act* (*XVIII of* 1960), *sections* 10 (2) (i) *and* 14 (1) (*b*)—*Eviction petition for wilful default—Tenant tendering rent—Refusal by landlady to receive—Tenant should deposit the rent either in bank or before the Rent Controller—Failure to do so making him liable for wilful default—Demolition and reconstruction—Plan obtained by landlady after filing of the eviction petition — Requirement* bona fide.

A landlady filed an eviction petition both on the ground of wilful default in the payment of rent and for demolition and reconstruction. The tenants pleaded that they tendered the rent to the landlady but it was refused and accordingly they could not be charged with wilful default. However the Appellate Authority found that the default committed by the tenants was wilful in that even if the landlady had refused to receive the rent, they should have deposited the amount in a Bank or before the Rent Controller, which they did not do, and once they failed to remit the rent after knowing the consequences of non-payment, the default should be taken to be wilful. The tenants pleaded that the landlady obtained a plan for reconstruction only after the filing of the petition and so the ground of demolition and reconstruction was not *bona fide*. On revision by the tenants before High Court,

Held: On the question of wilful default, the decision of the Appellate Authority was not erroneous.

The Court could not make out how the obtaining of a plan subsequent to the filing of the eviction petition would show that the requirement of the premises by the landlady for the purpose of demolition and reconstruction was not *bona fide*. On the findings of the Appellate Authority which were based on the materials on record it was not possible to say that the requirement of the respondent (landlady) was not *bona fide* at all. The Court accepted the findings of the authorities below that the landlady required the premises *bona fide* for demolition and reconstruction.

K. M. Santhanagopalan, for Petitioners.

S.J. ——— *Petition dismissed.*

Ismail, J.

M. A. Masthan Rowther *v.*
Sulaika Beevi (died).

10*th November,* 1978.

S.A. No. 936 of 1972.

Deed—Construction — Document styled as settlement, stamped as settlement and registered as settlement—No specific clause creating interest in praesenti—*Nature of document —Document to be construed as a whole.*

When the Court is called upon to construe a document, the document has to be construed as a whole, after taking into account all provisions contained therein. One cannot merely rely upon a word here and a word there for finding out the intention of the executant of the document. Even in the absence of a specific provision in the instant case that *in praesenti* defendants 3 and 4 (children of settlor's predeceased sister) will obtain an interest in the property, such inference can be drawn from a reading of all the clauses together, because the document contemplated only such a situation. If there was no transfer *in praesenti* there was no question of the executant providing that after his death his two wives would be entitled to claim share in the property or the executant providing that after his death, his two wives would not be entitled to claim any share in the property or the executant imposing an obligation on the third defendant to maintain him and his wives. Consequently, if all the clauses are read together, there can be no doubt whatever that the intention of the executant was to create an interest *in praesenti* in favour of defendants 3 and 4.

Held, that the document is a settlement and not a simple gift.

R. Gapalaswami Iyengar and *M. Srinivasan,* for Appellant.

T. R. Ramachandran, T. R. Rajagopalan and *S. S. Mathivanan,* for 2nd to 4th Respondents.

R.S. ——— *Appeal dismissed.*

T. Ramaprasada Rao, CJ. and
Ratnavel Pandian, J.

M. S. N. Pandian Nadar *v.*
The Collector of Madurai.

17*th January,* 1979.

W.A. No. 37 of 1979.

(A) *Natural justice — Principles — Violation—Possession and cultivation of land by 'P' — Pursuant to an earlier order of the Government as lessee for the purpose of caradomom cultivation—Lease for a period of ten years—No default by lessee — Government Notice asking lessee to transfer the land to the Forest Department for preservation of lands and hill atmosphere—Notice whether liable to be quashed.*

(B) *Constitution of India* (1950), *Article* 226 *—Duty of the Court to see whether the grantor acted within the framework of the grant.*

(C) *Maxim*—"Audi alteram partem"—*Applicability.*

Natural justice has often been described as not being a principle which has to be tested by subjective standards but ought to be used within a certain amount of specificity and objectivity.

In a contract like the one under consideration, when a right is reserved to the grantor to snap the lease during the tenure of the lease, then it cannot be said that the grantee had in him the vested right which he can claim until the period of lapsing of the term of the lease granted under the original Government Order. The very fact that the appellant was conscious of the terms of the contract whereby it could be snapped after giving him three months' notice by the grantor presumes that it is a fallible right and not an infallible one for him to treat it as having been interfered with if such a right is disrupted by an overt act on the part of the grantor as a result of an action expressly

contemplated under the terms of the contract. It only remains for a Court of law exercising jurisdiction under Article 226 of the Constitution to see whether the grantor has acted within the framework of the grant and if such action has been taken and is provided for under the grant, then no question of violation of the principle of natural justice would arise. Even so the principle *audi alteram partem* would not arise for the simple reason that no question of hearing the lessee does arise in a case if such a contract contemplated the cessation of contractual right by the grantor giving three months' notice to the lessee and thus putting an end to the contract. So long as such a condition in a contract is valid and enforceable, isolation of the principles of natural justice cannot be urged or put in front for opposing such an act on the part of the grantor. So long as such a condition in a contract is valid and enforceable, isolation of the principles of natural justice cannot be urged or put in forefront for opposing such an act on the part of the grantor who severed the ties of contractual relationship as per the provisions of the contract itself.

M. V. Krishnan, for Appellant.

R.S. ——— *Appeal dismissed.*

Ramanujam and *Paul, JJ.*

The Clan Line Steamers Limited *v.*

Gordon Woodroffe and Company (Madras) (Pvt.), Limited.

6th November, 1978.

O.S.A. No. 102 of 1978.

Letters Patent (Madras), clause 12—*Suit for declaration and permanent injunction — Where leave to sue necessary, grant of leave a condition precedent to entertain the suit— In a suit already instituted if a new party is sought to be added again or as to whom leave to sue is required, Court would grant leave.*

Where leave under clause 12 of the Letters Patent was necessary, the granting of such a leave was a condition precedent to the Court having jurisdiction to entertain the suit; and therefore such leave had to be obtained at the time of the institution of the suit.

If a suit had been instituted against a defendant in respect of whom leave to sue under clause 12 need not be obtained as he was residing or carrying on business within the jurisdiction of the Court but subsequently a new party was sought to be added, against whom, under clause 12 of the Letters Patent, leave to sue would be required, inasmuch as he did not reside or carry on business within the jurisdiction of the Court, there could be no objection to the Court granting such leave, for in effect a new suit was being instituted against the new party.

The fact that the suit as originally instituted was instituted without obtaining leave under clause 12, would not be a bar to the Court granting leave under clause 12 when a new defendant is sought to be added and when the suit in respect of that defendant could only be instituted after obtaining leave under clause 12 in view of the fact that that defendant was not residing or carrying on business within the jurisdiction of the Court.

A. C. Muthanna and *J. Subramanian,* for Appellant.

S. Chellaswamy, for Respondent No. 1.

Subramaniam and *K. C. Ramamurthy,* for Respondent No. 2.

A. Arumainathan and *N. Karthikeyan,* for Respondent No. 3.

S. Rajaram and *L. Jayakumar,* for Respondent No. 4.

S.J. ——— *Appeal dismissed.*

T. Ramaprasada Rao, CJ.

Karmega Kone *v.*
Udayar Kone.

1st December, 1978.

S.A. No. 2489 of 1974.

Adverse Possession—Plea of, stands on the same footing as plea of estoppel—Specific plea in the pleadings necessary.

The plea of adverse possession is essentially a question based upon probable facts and cannot rest upon mere surmises and stories weaved out in the course of the trial and in the witness box. The plea of adverse possession stands on the same footing as the plea of estoppel. It has been the consistent view of Courts that a plea of estoppel has to be pleaded and not only pleaded but also proved. So also a plea of adverse possession, which again rests upon proof of positive and essential facts, has to be pleaded, so that the adversary might be able to meet the specific case or the party who unjustly wishes to wrest the property belonging to another and claim title in himself on the plea of adverse possession. A plea of adverse possession essentially implies that the person claiming title to a property on that basis does not own it. He wishes to snatch it from the real owner on the bare ground that he was continuously, publicly and openly in possession of the property of the adversary to the knowledge of the adversary and without any objection or intervention on the part of the real owner. These are essential facts which form the rocky foundation of the plea of adverse possession. The law requiries an express pleading on that question for the simple reason that the real owner, who is said to have been lethargic, might set up a case (might be true in some cases) that such possession of the claimant was only possessive and was never intended to be adverse so far as his real title was concerned and that even if it could be projected as such an adverse claim, the time from which it should be deemed to have commenced should also be made specific and public, so that the real owner might be given a fair and just opportunity to plead otherwise and set up a case that such adverse possession as claimed by the other person did not begin on the date claimed by him. It is because of such necessity of proof of such essential elements like those enumerated above that the law requires a specific plea in the pleadings regarding adverse possession.

R.S. ——— *Second appeal dismissed.*

M. A. Sathar Sayeed, J.

Ramaswami, *In re.*

12th December, 1978.

Crl.A. No. 410 of 1976.

(A) *Criminal Procedure Code,* 1973 (*II of* 1974), *section* 154—*First information report —Prompt lodging of—Necessity — Delay of four hours—Effect.*

It is no doubt true that the object of insisting upon prompt lodging of the first information report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed. On account of delay, the report not only gets bereft of the advantage of spontaneity, but also danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

In the present case, the delay of four hours in lodging the complaint is satisfactorily explained. One would rather think to save the life of a person particularly when the patient is in a serious condition, by taking the said person to the hospital rather than going to the police station and informing about the occurrence. In any event there is no gross delay, as alleged, in lodging the complaint which affects the case of the prosecution.

(B) *Evidence Act* (*I of* 1872), *section* 45—*Murder trial—Injuries on deceased—Expert evidence of doctor with regard to—Evidentiary value.*

In matters of appreciating the evidence with reference to the injury inflicted on the deceased, the Court has to believe only the expert evidence of the doctor who has deposed in the case. Thus, where the evidence of the doctor is that a knife with a blade 4" long

could cause an injury which is 8" deep, there is nothing for the Court to disbelieve it when there is no serious cross-examination of the doctor with regard to it.

(C) *Criminal trial—Appreciation of evidence —Duty of Court—Proof beyond reasonable doubt—What is.*

It must be noted that credibility of testimony, oral and circumstantial depends considerably on a judicial evaluation of the totality and not isolated scrutiny. It is necessary that proof beyond reasonable doubt should be adduced in all criminal cases. Proof beyond reasonable doubt is a guide-line, not a fetish and the guilty cannot get away with it, because truth suffers some infirmity when projected through human process. In the present case, the evidence adduced by the prosecution clearly established the guilt against the accused and it has fulfilled the ingredients of section 304, Part II and section 324, Indian Penal Code. Under the circumstances the conviction of the accused under the aforesaid section must be confirmed.

T. S. Ramanujachari, for Applicant.

M. Karpaga Vinayagam, on behalf of the State.

V.K. ——— *Appeal dismissed.*

Venugopal, J.

L. K. K. Gafoor *v.*

J. Lakshmana Mudaliar.

1st March, 1979.

C.R.P. No. 3377 of 1975.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 10 (3) (a) (iii)—*Non-residential building—Petition for eviction—Owner's occupation—Dismissal by trial Court—Eviction ordered by appellate Court—Revision before High Court—Landlord dying pending revision—Eviction ordered — Right under order not personal right but incorporeal right annexed to the estate of the deceased and can be taken advantage by his legal representatives—Statutory exception to doctrine* actio personalis moritur eum persona *—Absence of averment in petition not changing non-personal action into a personal action.*

Section 10 (3) (*a*) (*iii*) of Tamil Nadu Buildings (Lease and Rent Control) Act provided that if the landlord required a non-residential building for carrying on business by himself or members of his family, he could file a petition for eviction of the tenant, provided he or the members of his family were not in occupation of any non-residential building in that locality. The very fact that section 10 (3) (*a*) (*iii*) provided that the landlord could require the building occupied by the tenant for carrying on business by him or the members of his family was a clear indication that the section itself provided a statutory exception to the doctrine *actio personalis moritur eum persona* When the landlord obtained an order of eviction under section 10 (3) (*a*) (*iii*), such a right could not be characterised as a personal right which came to an end with the death of the landlord. It is an incorporeal right annexed to the estate of the deceased and it could be taken advantage of by the legal representatives of the deceased.

The absence of an averment in the petition that the building was required for carrying on business by the landlord or the members of his family would not by itself convert a non-personal action into a personal action. The statutory exception provided under section 10 (3) (*a*) (*iii*) of the Act to the doctrine *actio personalis moritur eum persona* cannot be governed or controlled by the pleadings of parties and hence it will not come to an end on the death of the landlord. It will certainly enure to the benefit of his legal heir.

N. Sivamani, for Petitioner.

S.J. ——— *Revision dismissed.*

Ramanujam, J.

V. L. Balakrishnan Naidu *v.*

The Authorised Officer, Land Reforms, Coimbatore.

19th October, 1978.

C.R.P. No. 2103 of 1976.

Madras Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961) *and (Act XXXIX of* 1972), *sections* 78 *and* 83—*Petitioner, holding excess land—Return submitted—Objections heard and order passed—No appeal by petitioner against that order—Publication of final statement followed by a notification — Appeal by landholder to the Tribunal—Only revision lies and not appeal.*

The petitioner held lands in excess of the ceiling area of 15 standard acres. Therefore, he was called upon to submit a return by issuing a notice in form 8-A. A return was filed and after hearing objections of the petitioner, an order under section 10 (5) of the Madras Land Reforms (Fixation of Ceiling on Land) Act was passed on 10th April, 1973. Though an appeal lay against the said order to the Land Tribunal under section 78, the petitioner did not file any appeal. Subsequently a final statement under section 12 was published on 1st August, 1973 which was later followed up by a notification dated 24th October, 1973 under section 18 (1). At that stage the petitioner filed an appeal before the Land Tribunal under section 78 against the final statement under section 12. The Land Tribunal dismissed the appeal on the ground that no appeal lay against the final statement under section 12. On revision against this order,

Held: Admittedly the order under section 10 (5) became final, the same not having been appealed against even though an appeal lay under section 78 to the Land Tribunal. The Order challenged before the Land Tribunal was an Order passed under section 12. Against an order passed under section 12 only a revision lay to the Land Commissioner under section 83. Though revisional power was originally given to the Land Tribunal under section 81, that section had been deleted by Act XXXIX of 1972 and therefore, after 1972, the Land Tribunal had no revisional jurisdiction and the revisional jurisdiction after 1972 rests only with the Land Commissioner under section 82 in respect of an order enumerated in that section. Section 82 refers to an order under section 12 while section 78 dealing with the appellate power of the Land Tribunal does not refer to an order under section 12. Therefore it is clear that no appeal lay to the Land Tribunal against an order under section 12 and only a revision lies to the Land Tribunal under section 82 as at present. The only remedy open to the petitioner against the order under section 12 was to go before the Land Commissioner by filing a revision petition. In this view the order of the Land Tribunal has to be sustained.

S. J. Jagadev, for *M/s. G. M. Nathan, N. Vanchinathan* and *P. Shanmugham,* for Petitioners.

The Additional Government Pleader, for Defendant.

R.S. ——— *Petition dismissed.*

V. Ramaswami, J.

S. Ramaswamy *v.*

The Government of Tamil Nadu.

13th March, 1979.

W.P. No. 1214 of 1978.

Tamil Nadu Co-operative Societies Act (LIII of 1961), *section* 28 (1) (c)—*Agricultural credit society—President carrying on fertilizer business — Society also doing fertilizer sales business—President whether disqualified from bring President of society.*

It may be seen from section 28 (1) (*c*) of the Tamil Nadu Co-operative Societies Act, that in order to attract disqualification a person must either be interested directly or indirectly in a contract made with the society or (2) interested in any sale or purchase made by the society privately or in any auction or in any contract or transaction of the society involving financial interests; and (3) such a contract or transaction be subsisting or not completed. Carrying on the same business as that of the society could not be considered to come under any of the prohibitions mentioned above. It could not he stated that by reason of such carrying on the

business, the petitioner (President of the N. Pudur Agricultural Credit Society) was interested directly or indirectly in any contract made with the society or any sale or purchase made by the society. The provision implied that he should be a party or had interest in the party to the contract with the society. It might be said that allowing him to carry on such a business would affect the interests or business of the society. But that had not been made a specific disqualification under section 28 (1) (*c*) or any other provision under section 28 dealing with disqualification.

M. Kalyanasundaram, for Petitioner.

S.J. ——— *Petition allowed.*

Varadarajan, J.

Karuppusami Gounder *v.*
Palaniswami Gounder.

22nd November, 1978.

S.A. No. 2294 of 1975.

Easement—Suit for permanent, injunction—Common pathway for co-owners — Right reserved for enjoying particular land — Not open to one of the co-owerns to enjoy it to reach same other land.

Land (S. No. 880) belonged to the defendant and his two brothers *P* and *R*. In the partition effected between them under Exhibit A-2, they left a common pathway in S. No. 880. At that time, the plaintiff was the owner of S. No. 867 which was adjoining the pathway. Subsequently, the plaintiff purchased the share of *P* in S. No. 880 with the pathway right from *P*'s son *V* under Exhibit A-1. The plaintiff claimed the pathway right to reach S. No. 867. This was objected to by the defendant. The plaintiff filed a suit for permanent injunction restraining the defendant from interfering with his right to use the pathway for reaching S. No. 867. The trial Court dismissed the suit, but the lower appellate Court allowed the suit. The defendant filed a Second Appeal.

Held: It would not be open to one of the co-owners of the common pathway right reserved for enjoying a particular land to enjoy that right for reaching some other land. It was not open to the plaintiffs to use the common pathway in the present case reserved for enjoyment of S. No. 880, to reach some other land, namely, S. No. 867 which belonged to the plaintiff and not to any of the three brothers at the time of partition between those three brothers under Exhibit A-2.

S.J. ——— *Appeal allowed.*

Sethuraman, J.

Alamelu Chinnakannammal *v.*
Manickkammal.

12th December, 1978.

C.R.P. No. 1192 of 1976.

Tamil Nadu Court-Fees and Suits Valuation Act (XIV of 1955), *section* 40—*Applicability —Plaintiff alleging affixing of thumb impression on blank papers to be used for writing a will—Document found to be a settlement, objection to registration—Document compulsorily registered—Suit by plaintiff for declaration of her title to the properties and injunction — Suit valued at Rs.* 1,300 *and Court-fee due thereon accordingly paid — Court-fee paid whether proper.*

Held, that having regard to the way in which the suit had come to be filed in the present case, it was clear that the plaintiff did not admit at any time that the document was executed by her or that she was a party to the document. Her case was that it was a forged one. Forged documents would not confer title on any person and it would be unnecessary to get the document set aside in order to succeed in the prayer for declaration. The payment of court-fee is to be adjudged on the plaint allegations. Whether the allegation of forging is correct or not will have to be gone into in the suit. The suit was properly valued and the petition dismissed.

R.S. ——— *Petition dismissed.*

Mohan, J.

Lakshmi Ammal *v.*

The Special Tahsildar (L.A.), Miscellaneous Scheme, Saidapet.

19*th December*, 1978.

A. No. 481 of 1974.

Will—Construction—Use of the words "சர்வ சுதந்திரம்" and "ஆண்டு அனுபவித்துக் கொள்ள வேண்டியது" —Nature of estate conferred—Absolute or life estate.

Held, that in the absence of a word like "பாத்தியம்" or "பாத்தியதை" after the words "சர்வசுதந்திரம்" in a will the latter expression above the words "ஆண்டு அனுபவித்துக் கொள்ள வேண்டியது" would connote only a right of enjoyment. That is made clear by the recital in a later clause of the will "மேல்படி இலக்கமி அம்மாளுக்கு சந்ததிகள் வண்டாகிறவரையி லும் மேல்படி பாவத்துமான சொத்துக்களை இருவரும் தானதி விக்ரயங்கள் செய்யக் கூடாது." There is a clear restraint against alienation. It is axiomatic that in construing a will, it must be read as a whole and every clause must be given effect to. What has been taken by "L" under the will in the present case was only a life estate and not an absolute estate.

V. C. Veeraraghavan and *M. D. Lakshminarasimhan*, for Appellant.

The Additional Government Pleader and *D. K. Srinivasagopalan*, for Respondent.

R.S. ——— *Appeal allowed.*

Ramanujam, J.

Mohamed Abdul Kader Maricair alias M. M. Maricair represented by Power of Attorney Agent, Idris Maricair *v.*

The State of Pondicherry represented by its Chief Secretary, Pondicherry.

22*nd December*, 1978.

C.R.P. No. 841 of 1977.

Pondicherry Land Reforms (Fixation of Ceiling on Land) Act, 1973 (*IX of* 1974), *sections* 2 (26), 4 (1)—*Private trust—Lands belonging to—Private trust a person under the Act—Entitled to hold land—Cannot be clubbed with the holdings of the founder.*

There was no specific provision in the Pondicherry Land Reforms (Fixation of Ceiling on Land) Act which treated the land held by a private trust as the lands of the founder. In the absence of a specific provision stating that the lands held by the private trust shall be taken as lands held by the founder, the authorities could not invoke the provisions of the Act relating to the public trust to justify the inclusion of the lands held by the private trust with the holding of the founder. So long as the Act treated the private trust as a person, the private trust was entitled to hold the ceiling extent of six standard hectares, under section 4 (1).

F. A. Rasheed, R. Santhanam and *A. Abdul Ravoof*, for Petitioner.

C. Krishnan, for Respondent.

S J. ——— *Petition allowed.*

Mohan, J.

Ranganatha Pillai *v.*

The Commissioner for Hindu Religious and Charitable Endowment, Administration Department, Madras-34.

8*th January*, 1979.

A. No. 250 of 1975.

Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959), *section* 6, *clause* (ii)—*"Hereditary trustee"—Meaning.*

Held, that the definition of a 'hereditary trustee' in section 6, clause (*ii*) of the Tamil Nadu Hindu Religious and Charitable Endowments Act is very wide in its amplitude. Hereditary trustee is not to be understood as from father to son or from son to his son. Having regard to the comprehension definition, it is enough if a usage is established for a long number of years evidencing exercise of hereditary trusteeship of a particular temple or temples by members of a family. In the instant case, there was no gainsaying that it was the plaintiff's family alone that exercised such right. There were very valuable documents in which description was found that the predecessors of the plaintiffs were the trustees. No objection was taken to the geneological tree and the trusteeship had been continuously exercised by the members of the plaintiff's family without any objection or hindrance. Non-description of the trusteeship as "parambarai" or "adheenam" is immaterial. Hence it must certainly be held to be hereditary.

K. E. Rajagopalachari, M. Srinivasan and *S. K. Parthsarathy,* for Appellant.

The Additional Government Pleader, for Respondent.

R.S. ——— *Appeal allowed.*

T. Ramaprasada Rao, CJ.

C. G. Ramanathan *v.*

Commissioner, Corporation of Madras, Madras.

18*th January*, 1979.

C.R.P. No. 949 of 1978.

Madras City Municipal Corporation Act (IV of 1919), *section* 100— *Fixation of annual value of building—Method to be followed.*

In order to arrive at the annual valuation of premises ordinarily let out and which is within the jurisdiction of the Corporation of Madras, the taxing authorities are entitled to assess and estimate the rent which the property may fetch, when the property is leased out in the normal course. 'Which is reasonably expected to fetch' is a matter which varies from case to case. It all depends on the facts of each case. If there is no proof of actual letting the building prior to the challenged valuation for the purpose of fixing the property tax, then the yardstick adopted by the corporation in fixing such reasonable rent can be scrutinised by the authorities in the higher hierarchy. But if on the other hand there is no proof or at any rate, acceptable material on which the taxing authorities can act and arrive at the reasonable rent which the property would fetch in normal circumstances, then such material cannot be lightly brushed aside and it is not open to the owner to dictate that the rent which was being paid by the tenant in occupation, after negotiations with him, should be taken, willy nilly, as the basis for arriving at the annual value of the premises. If there is available material, which has to be accepted and against which nothing is said, then it is mandatory on the part of the taxing authorities functioning under the City Municipal Corporation Act, to adopt the rent quoed in he lease deed, unless it is shown to be far too low than the market rent.

Held, that in the present case there was abundant proof, which is also admitted, that a few months before, the premises were let out for Rs. 900 per month, the additional amount of Rs. 400 being referable to amenities. It follows that the reasonable rent which the premises can be expected to fetch at all times can be fixed at Rs. 900 per month. In this

view of the matter, the order of the Appellate Authority cannot be sustained. It is accordingly set aside, the rental value is fixed at Rs. 900 per month and the rental value is fixed at Rs. 900 per month.

Gopinath, for Petitioner.

S. Palaniswamy, for Respondent.

R.S. ——— *Petition allowed.*

Ismail, J.

K. J. Ramamoorthi *v.*
O. T. Ramamurthy.

19*th January,* 1979.

C.R.P. No. 2502 of 1976.

Tamil Nadu Indebted Agriculturists (Temporary Relief) Act (X of 1975), *section* 2 (b) *and* (c)—*'Agriculturists' and 'debt'—Definition.*

The definition of the term "debt" in section 2 (*c*) of the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act (X of 1975), consists of two limbs and the latter limb is an inclusive one. It is only with regard to the inclusive portion of the definition, which deals with rent, there is the requirement that the rent should be in respect of lawful use and occupation of agricultural lands. There is no such requirement in respect of the former limb of the definition according to which debt is a sum of money which a person is liable to pay under a contract, express or implied, for consideration received.

The present is not a case where the suit was filed by the petitioner-plaintiff for recovery of rent and therefore it is the former limb of section 2 (*c*) that applies. If so, there is no requirement that the debt should have been incurred in respect of the lawful use and occupation of agricultural land. The decision in (*E. N. Chacko,* In re, (1954) 67 L.W. 1027), dealt actually with a case of a decree obtained for recovery of a debt. It is only in that context that that decision has to be understood as meaning that the debt must relate to a contract relating to lawful use and occupation of land used for agricultural or on horticultural purposes.

V. Kunchithapatham and *N. V. Balasubramanian,* for Petitioner.

B. R. Ramesh Babu, for Respondent.

R.S. ——— *Petition dismissed.*

Maheswaran, J.

V. S. Valliappa Chettiar (deceased) *v.*
The State of Tamil Nadu represented by the Special Deputy Tahsildar (L.R.) No. III, Ramanathapuram at Madurai.

22*nd January,* 1979.

C.R.P. No. 371 of 1974.

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961), *section 22—Statement by landholder before Authorised Officer about concerned transfers as made in ignorance of law and on an erroneous impression that all transfers made between the date of commencement of the Act and notified date are void—Authorised Officer not proceeding with section 22 inquiry — Authorised Officer not determining whether the transfers would defeat the provisions of the Act — Order of the Authorised Officer liable to be set aside.*

A duty is cast on the Authorised Officer to find out whether the concerned transfer was such as would defeat any of the provisions of the Act. It is a mandatory provision and the Authorised Officer has to follow the procedure laid down in section 22, strictly, for enquiry has to be held by the Authorised Officer under section 22 to find out whether the transfers were entered without *bona fide* intention to transfer title under the documents of transfer. That procedure has not been followed in this case; there is nothing on record to show that he has even dropped the proceedings under section 22. Nothing is mentioned about the enquiry under section 22. He has not come to the conclusion that the transfers had the effect of defeating the provisions of the Act. On that view, the order of the Authorised Officer is not sustainable. The proper course to be adopted under such circumstances is to remit the matter to the Authorised Officer for an enquiry

afresh. The revision is allowed and the order of the Land Tribunal is set aside.

S. V. Jayaraman and *V. Kannan*, for Petitioner.

The Additional Government Pleader, for Respondent.

R.S. ——— *Revision allowed.*

T. Ramaprasada Rao, CJ.

A. Elliah Devar *v.*

D. Ramakrishnan.

15*th February*, 1979.

C.R.P. No. 3185 of 1978.

(A) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of* 1960) *(as amended by Act XXIII of* 1973), *section* 10 (3) (c)—*Tenant in essential service—Petition for eviction by landlord—Dismissal of petition as not maintainable — Effect of findings therein — Landlord getting exemption from the Government—Second application for eviction, whether maintainable.*

(B) *Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of* 1960) *(as amended by Act XXIII of* 1973), *section* 19—*Earlier application for eviction — Dismissed as not maintainable—Second application under new set of circumstances whether barred.*

After an earlier application by the landlord for eviction of his tenant had been dismissed on the ground of his being in essential service the landlord obtained from the Government exemption under section 29 of the Tamil Nadu Buildings (Lease and Rent Control) Act. Subsequently the landlord filed under an application under section 10 (3) (*c*) of the Act for the eviction of the tenant. Both the Rent Controller and the Appellate Authority found, as a fact, that the application was *bona fide*, that the hardship which might result to the tenant would not outweigh the advantage which the landlord might gain by reason of the order of eviction and that, in the circumstances of the case, it was just and proper that an order of eviction should be made. A revision petition was filed wherein it was held that the grant of exemption by the Government which enabled the landlord to present this petition for eviction of the petitioner, even though he was in the essential service clinched the issue. In the earlier petition which had gone up to the High Court resulting in an order in C.R.P. No. 349 of 1973 though the main contention was regarding the maintainability of the petition because the tenant was in the essential service, certain findings were rendered by the Rent Controller and the Appellate Authority and certain observations were also made by the High Court touching on this issue. But the main petition for eviction filed in the earlier proceedings was dismissed on the ground that it was not maintainable because of the ban contained in section 10 (4) (1) of the Act. Therefore any finding rendered on merits in the earlier proceedings cannot avail the tenant at a stage where the landlord has, through the agency of the Government, secured an exemption and gained a privilege to file an application against the tenant notwithstanding the statutory ban under section 10 (4) (1) of the Act. It is not in dispute that the Government gave a concession to the respondent to file the petition taking the building away from the operation of section 10 (4) (1) of the Act. Therefore, a different situation had arisen enabling the landlord to file the present application. In those circumstances, the tenant cannot once again plead that the earlier findings on merits, which cannot project itself due to the dismissal of the main application as not being maintainable, cannot be operative as findings which would in turn invoke the principle of *res judicata*. They were findings rendered in a case in which it was not necessary to do so. The main application was dismissed as not maintainable. Therefore any ancillary finding given therein cannot be relied upon later for any purpose, for it cannot be said to have been adjudicated finally as between the parties in a lawfully instituted action. Therefore it cannot be said that the earlier disposal of C.R.P. No. 349 of 1973 would prevent the landlord from urging his case on merits after he obtained an order under section 29 from the State Government.

K. N. Subramaniam, for Petitioner.

D. Ramakrishnan, for Respondent.

R.S. ——— *Petition dismissed.*

T. Ramaprasada Rao, CJ. and Ramanujam, J.

K. Somasundaram Pillai *v.* R. Dorairaj.

5th January, 1979.

L.P.A. Nos. 25 to 32 of 1975.

Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1963), *sections* 3 *and* 15—*Whole Inam Village taken over by Government under the Act with effect from* 15*th April,* 1965—*Old waste and grama natttham — Lease of sites before the taking over by the landholder to several persons — Lessees putting up superstructure—Lessees — Undertaking to deliver possession of sites after removing superstructure whenever called upon — Eviction notices issued after expiry of lease periods—Suit by landholder for recovery of possession along with mesne profits — Suit decreed—Execution of decree by landholder—Plea by tenants of extinguishment of landholder's rights except to the extent recognised by the Act—Landholder's right either to claim recovery of possession or mesne profits subsequent to date of notification challenged.*

A conjoint reading of sections 3 and 15 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act indicates that though all lands in an inam estate including poramboke vest in the Government under section 3 (*b*) on the date of the notification of taking over of the estate and the interests of the landholder therein are completely extinguished, there is no such vesting in the Government and extinguishment of rights of the landholder under that section in the sites on which buildings have been erected either by the landholder or by another person. Such sites have been separately dealt with in section 15. Under section 15, buildings belonging to the landholder which have been put to particular uses are dealt with in sub-sections (1) to (3). Sub-section (4) deals with buildings other than those referred to in sub-sections (1) to (3). As per sub-section (4) the building vests in the person who owned it immediately before the notified date. The definition of 'building' in sub-section (5) includes the site on which the building stands and the adjacent premises occupied as an appurtenance thereto. If the definition of 'building' in sub-section (5) is incorporated in sub-section (4) it will mean that the building and the site on which it stands as also the site appurtenant thereto will vest in the owner of the building as and from the notified date, whether he be the landholder or any other person. However having regard to the object of section 15 (5) which is to effectuate sub-section (4), it can apply only to cases where the site will otherwise vest in the Government under section 3 (*b*) of the Act as part of the inam estate. If the landholder is taken to continue to own the site over which buildings have been built by the tenants notwithstanding the notification, it will be in the teeth of the general vesting contemplated in section 3 (*b*). He can avoid that vesting of the site only if he had put up the building himself and not when someone else had put up a building therein. He cannot take advantage of the existence of buildings put up by the tenants to claim that the site continues to vest in him. Section 3 (*b*) contemplates the vesting of all lands including grama nattham. But an exception has been made in section 18 in respect of *poramboke* lands on which buildings had been erected, by treating such lands as part of the buildings and vesting them in the person owning the buildings.

It was not claimed in the instant cases that the sites over which superstructures had been erected by the tenants were part of the landlord's private property. Admittedly the land over which the superstructures have been erected was grama nattham which is a *poramboke*. Therefore there is no question of the landholder having ownership of the land after the notified date so as to make him to claim co-ownership with the tenants in respect of the buildings, which as a result of sub-section (5) includes the sites also.

Held that the landholder has no right to claim recovery of possession or mesne profits subsequent to the date of notification.

K. Sarvabhauman and *T. R. Mani*, for Appellant.

P. Jayaraman, for Respondent.

R.S. ——— *Appeal allowed.*

Ismail, J.

Mrs. J. Kasthuri *v.*
Seth Ghanashamdas Vensimal Deva Bank.

11*th January,* 1979.

C.R.P. No. 3654 of 1976.

Tamil Nadu Court-fees and Suits Valuation Act (1955), *sections* 25 (d) *and* 40—*Suit for declaration — Three documents styled as hundis duly signed by plaintiffs given to defendant to accommodate the first defendant — Subsequent discovery by plaintiff of collusion and conspiracy to mulct them with liability—Suit for a declaration that the hundis were invalid and inoperative — Proper court-fee payable.*

The petitioners, who were the plaintiffs in the suit, stated that one 'G' introduced one 'L' of the first defendant firm to them, that the said 'L' became an intimate friend of the second plaintiff, that the said 'L' represented that he would require hundis for the purpose of accommodation to enable him to discount with third parties and raise monies thereon for the purpose of his business, that the said 'L' also assured the plaintiffs that he would himself make the necessary arrangements for the honouring of the hundis on the due dates and that no liability would be fastened upon the plaintiffs and that he had facilities with the second defendant for accommodation to the extent of Rs. 50,000. The plaintiffs further stated that to oblige the first defendant they gave three documents styled as hundis duly signed by them, that no dates or other particulars were mentioned in those documents except the signatures and addresses of each of the plaintiffs in each of the documents, that the suit documents were not supported by consideration at all and that they were intended to accommodate the first defendant. The plaintiffs alleged that the defendants had colluded and conspired together with the *mala fide* intention of mulcting liability on the plaintiffs and threatened to take action against them in respect of the aforesaid hundis, that the conduct of the defendants was thoroughly *mala fide* and fraudulent, and collusive, the plaintiffs were being cheated by the defendants compelling them to part with large sums of money as though fall consideration was paid under each of the hundis; and hence it had become necessary to institute the suit for a declaration that the three hundis were invalid and in-operative. On the question of court-fee payable,

Held: For the purpose of determining the court-fee payable, it is the substance of the relief that a plaintiff prays for that has to be taken into account and not the technical forum of the prayer. Otherwise, mere astuteness and ingenuity of the person drafting the plaint will have the effect of not only camouflaging and disguising the read relief which a plaintiff claims in a suit but also nullifying and defeating the provisions of law dealing with the payment of court-fee based on the nature of the relief sought by the litigants in a Court of law.

It is clear that the plaintiffs in the present case having executed the hundis, they will have to have those hundis cancelled or set aside and for that purpose they will have to pay court-fee under section 40 of the Tamil Nadu Court-fees and Suits Valuation Act. By merely couching the prayer in the form of a declaratory relief, the plaintiffs cannot avoid the reality of the situation, namely they are challenging the hundis executed by him on the ground that they were not supported by consideration and they were obtained by misrepresentation or fraud.

T. P. Radhakrishnan, for Petitioners.

The Additional Government Pleader, for State.

R.S. —— *Petition dismissed.*

Ramanujam, J.

Vaiyapuri Paradesi Annadhana Chatram and Dharmasthapanam *v.*

The Authorised Officer.

31*st January,* 1979.

C.R.P. No. 2694 of 1977.

(A) *Tamil Nadu Land Reforms Act (LVIII of* 1961), *section* 2—*"Public trust of a religious nature"—Creation of trust under a document —Charity to be performed under the document more or less in the precincts of the temple—Charity whether a religious charitable trust.*

(B) *Hindu Religious and Charitable Endowments Act (XIX of* 1961), *section* 3—*Notification issued by State Government—Provisions of Act made applicable to institution—Effect of notification—The expression "as if it were"—Meaning of.*

It is debatable if fixation of different ceiling extents between private and public trusts is warranted. The document in question stated that certain properties had been purchased from public subscriptions and endowed for the purpose of performing *annadana dharmam,* that is feeding of the poor, in a place situated just opposite to Sri Prasanna Venkatachalapathi Temple. The document also provided for the method of selection of trustees and for the due administration of the trust. But the document did not say that the poor feeding, which was the sole object of the trust, should be conducted in connection with any festival in the temple or that it was confined only to the worshippers of the temple. The poor feeding contemplated under the document did not have any connection with the temple or the festivals conducted therein. Charity referred in the document was not connected with the temple and its affairs. Therefore it is clear that the trust as created under the original document Exhibit A-1, dated 8th April, 1897, was purely of a charitable nature. It cannot be said that merely because the poor feeding was done in a place just in front of the temple it would make a purely charitable trust into a religious and charitable trust. To make a charitable trust a religious trust as well, it must be shown that the object of the trust had some nexus or connection with the temple or its affairs or the worship or the conduct of the festivals therein. The document of trust did not restrict the poor-feeding either to the worshippers or to the persons who resort to the temple for worship. Nor was it restricted to any festival or religious function offered in the temple. The trust in this case, as originally created, was only of a charitable nature and not a religious trust of public nature.

The effect of a notification issued under section 3 of the Tamil Nadu Act XIX of 1961 is not to change or alter the character of the trust, but to treat it as a specific endowment for the purpose of the application of the provisions of the Act. There is clear from sub-section (3) of section 3 which says that on a notification issued by the Government under that sub-section extending all or any of the provisions of the Act to the charitable endowments, the provision so extended shall apply to such charitable endowment "as if it were a specific endowment". The expression "as if it were" is of considerable significance. The use of the expression indicates that a charitable endowment is not treated as a specific endowment for all purposes but it has to be treated as a specific endowment only for the purposes of the application of the provisions of the Act under which the notification has been issued. Therefore, it is not possible to say that as a result of the notification the petitioner institution, which was only a charitable endowment had automatically become a specific endowment or a religious institution. If it were a specific endowment it will, of course, come under the definition of religious institution as defined in the said Act. But having regard to the fact that a charitable endowment has to be treated as a specific endowment only for the purposes of the application of the Act but not for all purposes, the character of the institution cannot be said to have been changed by the issue of the notification under section 3.

There is considerable force in the contention that while a private trust as a person is entitled to hold 15 standard acres, a charitable

institution which is a public trust has been deprived of such benefit by restricting the ceiling area to 5 standard acres and that this works considerable hardship on the institution. In fact there appears to be no basis for making the distinction between the ceiling extents to be held by a private trust and, a public trust. It is however a matter of legislative policy and it is for the Legislature to consider the question.

P. S. Ramachandran, for Petitioner.

The Additional Government Pleader, for Respondent.

R.S. ——— *Petition dismissed.*

Ramanujam, J.

Kuppa Pandithan *v.*
Marudhachala Pandithan.

1*st February,* 1979.

C.R.P. No 3358 of 1978.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), *sections* 10 (2) (i), 10 (3) (a) (i)—*Petition for eviction —Wilful default—Owner's occupation—Subletting unauthorised—Eviction ordered both by Rent Controller and Appellate Authority—Revision by tenant—Tenant disputing title of landlord — Rent Controller's jurisdiction to decide dispute whether* bona fide—*Need not refer to civil Court in all cases.*

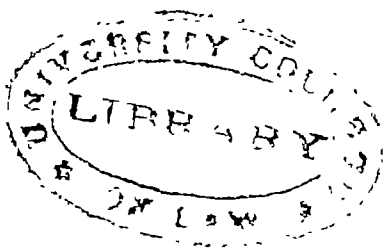
The landlord filed a petition for eviction on the grounds of wilful default in payment of rent, requirement for owner's occupation and unauthorised subletting by the tenant. The tenant contended that he had lent Rs. 3,100 to the landlord on the specific understanding that he could occupy the building till the debt was discharged and questioned the landlord's requirement of the building for own occupation. The Rent Controller as well as the Appellate Authority ordered eviction. The tenant filed this revision. According to the tenant, there was no relationship of landlord and tenant and the Rent Controller ought to have referred the matter to a civil Court.

Held: It is not as if in every case where the tenant merely alleged that he was not a tenant, the matter should then and there be dismissed and the Rent Controller had no jurisdiction to decide the question. Such an incidental question had to be decided by the Rent Controller before he passed an order of eviction against the tenant and therefore, on such a question the parties could not be referred to a civil Court.

In this case, no document had been produced to prove that the lending was on condition of the petitioner being allowed to continue in the premises till the money was repaid by the landlord. Even assuming that the petitioner had lent the sum of Rs. 3,100 to the first respondent (landlord), still that would not stand in the way of the first respondent getting an order of eviction.

Pathy and *Sundaram,* for Petitioner.

S.J. ——— *Petition dismissed.*



T. Ramaprasada Rao, CJ. and
V. Ratnam, J.

Ramaswami Naidu *v.*
M. S. Velappan.

19*th February*, 1979.

L.P.A. No. 113 of 1975.

Deed—Construction—Will or Settlement—Important tests to be applied.

While interpreting an instrument, particularly to find out whether it is of a testamentary character, which will take effect after the lifetime of the executant or whether it is an instrument creating a vested right *in praesenti* in favour of a person, the question has to be examined with care, after looking into the substance of the document, the treatment of the subject by the settlor, the intention appearing both expressly in the instrument or by necessary implication, and avowed intention of the settlor not to revoke the settlement at any time making it also public by registering the document, under the appropriate law of the country. Some of the important tests laid down in the decided cases appear to be;

(*i*) the nomenclature used by the settlor in styling the document.

(*ii*) the express dispositive words used which touch upon the time when the vested interest is created.

(*iii*) the reservation of the power of revocation in the instrument.

(*iv*) the effect of the reservation of a life estate in favour of the executant under the instrument.

(*v*) registration of the document under the appropriate law.

In the instant case the document itself is styled as a settlement deed. It has been registered. The right to enjoy the properties and secure the benefits and the temple honours as trustees under it have become a *fait accompli* even during the lifetime of the executant of the document '*M*'. One other factor which has a great impact upon the facts and circumstances of this case is that the instrument is expressly made not revocable.

The accepted definition of a will is that it is an instrument whereunder a person makes a disposition of his properties to take effect after his death and which is in its own nature, ambulatory and revocable during his lifetime. So far as the other condition which is also thought of while interpreting an instrument for the purpose of deciding whether it is a will or a settlement, namely, whether it is a intended not to take effect until after the death of the donor, we have to refer to section 19 of the Transfer of Property Act. Though the disposition may be postponed till the lifetime of the settlor and though *prima facie* it may appear that the disposition consummates only after his death yet, such postponement not being illegal, if in a given instrument there is a present disposition and vesting of right *in praesenti* and if such a conclusion can be arrived at reasonably by reading the instrument as a whole then a mere ambulation of interest during the lifetime of the settlor would not make it a testamentary one.

Held, that the document in question was a settlement and not a will.

K. Venkatasami, for Appellant.

V. Krishnan, for Respondent.

R.S. ——— *Appeal dismissed.*

Ramanujam and
Sengottuvelan, JJ.

Sri Ranga Vilas Motor Transports, Krishnagiri *v.*

The State of Tamil Nadu.

6th March, 1979.

W.P. No. 2963 of 1974.

Motor Vehicles Act (IV of 1939), *sections* 68 *(D),* 68 *(H)—Applicability — Petitioner transport operator running stage carriage between Tiruchirapalli and Bangalore — Expiry of the permit on 8th October,* 1974— *Publication of a draft scheme by the Director of Tamil Nadu State Transport Department on 17th September,* 1971 *to nationdlise the said route—Objections submitted by petitioner—Oral hearing to all objectors by the Special Secretary to Goverment — Approval of the scheme and subsequent notification — Validity of the scheme.*

The petitioner was a transport operator running a stage carriage between Tiruchirapalli to Bangalore. The permit of the petitioner was due to expire on 8th October, 1974. Meanwhile the Director of Tamil Nadu State Transport Department published a draft scheme on 17th September, 1971 under section 68-C of the Motor Vehicles Act, 1939, hereinafter referred to as the Act, to nationalise the said route. The petitioner submitted his objections on 9th November, 1971. After giving an oral hearing to all the objectors the Special Secretary to Government, Home Department, approved the scheme. The approved scheme was notified in G.O. Ms. No. 2080, Home, dated 23rd August, 1971. The validity of the said scheme was challenged in this writ petition.

Held, that the authority who has to sanction the scheme under section 68-C can only consider the materials which are relevant with reference to the *criteria* laid down in that section. If the evidence sought to be let in is not with reference to the *criteria* set out in section 68-C the authority is justified in not letting in such irrelevant evidence. It cannot be contended that a valid concurrence has not been obtained from the Central Government. Where the power is delegated to more than one person or authority by the State Government and if any anomalous situation is created by such delegation, the petitioner can question such delegation, but where such a situation has not arisen the petitioner cannot raise this contention on the basis of the assumption that the Government will delegate the power to more than one authority.

In view of the decision in W.P. No. 4425 of 1975, *V. G. Ramakrishnan* v. *Special Secretary to Government, Home Department,* the contention based on the mistake occurring in Annexure 1 cannot be accepted.

G. Ramaswamy, for *Mrs. Jothi Balasundarapi,* for Petitioner.

R. Krishnamoorthy, Government Pleader, for Respondents Nos. 1, 2 and 4.

U. N. R. Rao, Senior Central Government Counsel, for Respondent No. 3.

K. Parasaran, for *R. Balasubramanian,* for Respondent No. 5.

R.S. ——— *Writ petition dismissed.*

[End of Volume (1979) 1 M. L. J. (N.R.C.).]