Judgment of the Lords of the Judicial Committee of the Privy Council in the Appeal of Innasimuthu Udayan, Appellant, and Upakarathudayan and Others, Respondents, from the High Court of Judicature at Madras; delivered 20th July 1899.

Present at the Hearing:

LORD WATSON.
LORD HOBHOUSE.
SIR RICHARD COUCH.
SIR EDWARD FRY.

[*Delivered by Sir Edward Fry.*]

This is an action brought to recover an estate which was formerly in the possession of one Innasimuthu Udayan (a man of the same name as the Appellant), who died many years ago. He had two sons, of these, one was Jacob, distinguished as Jacob I. This Jacob had a son, Jacob II., who appears to have died in the sixties, and is said by the Appellant to have adopted him and to have left a will in his favour. The other son of the original Innasimuthu was Rayer, who about 1820 was transported for some crime. He appears to have died sometime in the sixties, but whether before or after Jacob II. is not shown. He left a widow, Avammal, who died in the year 1885. Savuri Ammal the late Plaintiff in this Action now represented by the Respondents was the daughter of Avammal, and claimed in some way (though in what way is not clear) through her mother. In the course of these proceedings it seems to have been

admitted that the Plaintiff had a title to maintain the action if she could get over the case made under the Statute of Limitations by the Defendant who is the present Appellant.

The question for decision is a question of fact, viz., has the Appellant shown possession of the estate in question during 12 years before the 2nd November 1892, the date when this Action was commenced. The Plaintiff herself in her plaint states that the Appellant, after the death of Avammal in 1885, took possession of the property in question, and the Appellant is sued as being in possession. The Appellant's own statement is that he has been in possession from 1865 or 1870 (Rec. p. 33). It is not necessary to consider whether the mere fact of possession for seven years before suit throws on the Plaintiff the burthen of showing when that possession began; for in the present case the admitted fact of possession is accompanied by a series of documents of the kind usually given to and received by the possessor of an estate, and bearing the Appellant's name as the possessor of the estate, and that series of documents does not commence with the year 1885, but from dates covering the period in controversy; and it appears to their Lordships that this case might be decided on the short ground, that the documentary evidence of possession exactly similar in character to that which accompanies the admitted possession goes back far behind the 12 years in question, that this throws on the Plaintiff the burthen of rebutting the inference arising from the fact of possession accompanied by these documents, and that this burthen has not, in their Lordships' estimate of the conflicting evidence, been sustained by the Plaintiff.

Their Lordships, however, are unwilling to decide the matter without a more detailed

discussion of the evidence, especially as this case has been heard *ex parte*.

The estate in question included holdings in the following five villages :—

1. Aniki.
2. Yeranikottai.
3. Panjamari.
4. Nettendal, otherwise Sadir Nettendal.
5. Manakkudi or Chabram Manukudi.
6. Thiruppakottai, otherwise Tiruppakottai.

According to the Plaintiff her mother Avammal was in possession of the estate on her death in 1885 ; the Appellant's case is that the estate descended from the original Innasimuthu Udayan to Jacob I., then to Jacob II., and that on his death it fell into the possession of his adopted or quasi adopted child the Appellant, that it was managed by the Appellant's father during his minority, and that then somewhere from 1865 to 1870 he entered into possession, and has so remained ever since.

The first class of documents which are produced by the vakil of the Plaintiff consist of number-chits showing the cultivation and collection of money in the four villages of Aniki, Yeranikottai, Panjamari, and Nettendal ; they all bear the name of Innasimuthu Udayan as the possessor and they extend in a broken series from the year 1845 to the year 1870, and then they cease ; these documents confirm the statement made by some witnesses that no mutation of names had taken place on the death of the original proprietor ; but what is more noteworthy is the date at which the series of documents ceases, viz. 1870. If the Appellant be correct that he got into possession at or about that date, the cesser of this stream of documents is perfectly natural ; if on the other hand the story of the Plaintiff were true that the Appellant only got into possession on the death of Avammal

in 1885 the absence of any document later than the year 1870 in the possession of the Plaintiff is inexplicable.

The following sets of documents relating to the estate are produced by the Appellant.

First there are muchilikas or undertakings to pay a share of produce and a money rent in respect of Aniki, Yeranikottai and Panjamari given to the collectors, and extending in a broken series from 1877 to 1889; these are given in many cases to English civilian officers acting as assistant collectors in the Madura district; they purport to be signed in most cases by the Appellant, in some cases by an elder brother, in one case by a younger brother, in two cases by his wife and in two cases by Michael Udayan his father, all on behalf of Innasimuthu Udayan. Now it may well be that the name of Innasimuthu Udayan appearing in the heading of these papers may have been continued without change from the original proprietor: but their Lordships hesitate to believe that the signatures to which they have referred would have been accepted by the civilian officers unless a living Innasimuthu Udayan had been in possession of the land in respect of which the obligation was accepted and the persons whom the Appellant has described as his relatives had been known to the officials to be such relatives. The practice in such cases is described by Attavanai Pillay the Curnam of Aniki (Rec. pp. 28–9) which shows that muchilikas are accepted only from the Pattadar or some person supposed to be able to act for him. These documents come from the right custody as they were filed in the District Court by a representative of the Ramnad Zemindari under which the villages are held (Rec. p. 281) and they appear to their Lordships to be evidence of much weight.

The next series of documents consists of

pottahs granted by the Deputy Collector or other person from time to time representing the Ramnad Zemindari in respect of the five villages of Aniki, Yeranikottai, Panjamari, Nettendal, and Manakkudi. These are all with one exception to be hereafter mentioned granted to Innasimuthu Udayan as the proprietor; they extend though in a broken series as regards Aniki from 1877 to 1891; as regards Yeranikottai from 1877 to 1891; as regards Panjamari from 1877 to 1889; as regards Nettendal from 1878 to 1891, and as regards Manakkudi from 1879 to 1888. In the Nettendal series however there is a pottah granted to Rayar Udayan and this seems to correspond with the fact that one of the holdings in this village which the Plaintiff sought to recover from the Appellant is described as in the name of Rayar Udayan as Pattadar (Rec. pp. 263 and 308). But the circumstances relative to this holding are not before us.

In 1877 some difficulties arose between the Collector and the Appellant in respect of the grant of pottahs in the villages of Panjamari and Aniki, and from the documents before their Lordships it appears that in March 1877 the Appellant succeeded as Pattadar of Panjamari, in obtaining a judgment for a new pottah against the Assistant Collector (Rec. p. 53); and in the following June a pottah in respect of Aniki was offered to the Appellant as being the person entitled to receive it and was refused by him on an objection as to its form (Rec. p. 98).

Another class of documents consists of formal receipts given to the Appellant on behalf of the Ramnad estate for rents in respect of the villages. These documents are like all the others not continuous, but they extend over the following periods; in relation to Aniki from 1886 to 1890; in respect of Yeranikottai from 1880 to 1890; in respect of Panjamari from 1878 to 1892; and in

respect of Nettendal for 1879 to 1892. In all cases therefore except with regard to Aniki they cover the disputed period, viz., from 1880 to 1885. (Rec. p. 117 *et seq.*, 232 *et seq.*)

None of the documents hitherto referred to relate to the 6th village, Tiruppakottai. This village belongs to a Mutt Institution in which it is not usual to exchange pottahs and muchilikas (Rec. p. 272). But the accountant under the Hakdar has produced accounts from the Mutt of the Hakdar which refer to various plots as in the name of Innasimuthu. This may be the name of the original proprietor, but the entries are at least consistent with the Appellant's case.

The evidence of the native village officers standing alone may probably be of little weight, but as concurring with the series of documents to which their Lordships have referred they do not regard it as negligible. They therefore take notice of the fact that the Curnams of Aniki and Nettendal and the accountant for Tiruppakottai support the Appellant's contention as to his possession of lands (Record pp. 28, 270, 32, 271, 273).

One other document is produced by the Appellant, viz., a usufructuary mortgage of lands in Nettendal executed by him on the 13th April 1880.

Against this body of documentary evidence the Plaintiff produced only evidence to which their Lordships attach little weight.

On this review of the evidence on both sides their Lordships are of opinion that the burthen of proving possession for 12 years before 2nd November 1892 which originally rested on the Appellant has been amply sustained by him and they concur in the view of the Subordinate Judge that the muchilikas especially are very cogent evidence of the possession by the Appellant for a stretch of time covering the period in dispute; and although they do not relate

to all the six villages, yet as according to both sides the six villages were held together, they support the Appellant's title to all the lands. Their Lordships are not able to accept as of much weight the evidence that the Appellant came sometimes and assisted Avammal in the cultivation of the land (Rec. p. 264), but even if this were the case their Lordships think that it does not explain or account for the existing body of documentary evidence.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgment under appeal to dismiss the Respondents' appeal to the High Court with costs and thereby to restore the judgment of the Subordinate Judge of Madura with a direction that all sums of money including costs which may have been paid under the judgment of the High Court at Madras be repaid, and with a further direction that if possession of the lands in controversy has been delivered to the Respondents possession be restored to the Appellant and mesne profits be paid by the Respondents to the Appellant. The Respondents must pay the costs of this appeal.