PRIVY COUNCIL

V. Seethaya

Vs.

P. Subramanya Somayajulu

Privy Council Appeal No. 47 of 1925
(Lords Phillimore CJ., Blanesburgh, Atkin J. Salvesen and Sir Lancelot Sanderson JJ.)

14.02.1929

JUDGMENT

LORD ATKIN J.

1. This is a consolidated appeal from the judgment of the High Court at Madras given in eleven suits of ejectment brought by the respondents against the respective appellants. Seven out of the eleven suits were instituted in 1913, and the only question so far decided and the only question before the Board is whether the civil Court in which the actions were brought had jurisdiction and not as the appellants contend the revenue Courts. The determination of this question has required recourse on seven different occasions to the Courts and has occupied nine years in Madras. The case has taken six years more to reach the Board. Their Lordships deplore this delay, which was obviously much greater than was necessary, and reaches the borders of a scandal. They do not, however, propose to recapitulate the various stages in which the case toiled to and fro between the lower Courts and the High Court, or to apportion blame; but will address themselves at once to the question of jurisdiction. This question arises under the Madras Estates Land Act, 1908. By Section 189 of this Act exclusive jurisdiction is given to the revenue Courts to entertain all suits set out in Schedule A, which includes a suit to eject a ryot. This, by reference to Section 6, involves the question whether the ryot holds land in the estate" of a landholder, and we are thus brought to the definition of estate, which by Section 3(d) means:

> "any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made or recognized by the British Government or any separated part of such village."

2. The present respondents claim under an inam grant made "about 250 years ago." The grant has been recognized by the British Government. In the course of these proceedings the respondents have admitted that they did not own the kudivaram before the grant, and that they did not acquire the kudivaram independently of and after the grant. The question of jurisdiction, therefore, depends upon whether the inam grant was of the "land revenue alone"; whether it granted the melvaram alone or also the kudivaram, i.e., the land revenue alone or also the cultivator's share of the produce.

3. The principal question in the case is whether the terms of the original grant were proved, and, if so, what is the proper construction to be put upon them. The respondents' case was that the original grant was lost; its express terms were not proved; and that the proper inference from all the facts, including acts of ownership by themselves and their predecessors, was that under the grant they received the kudivaram. The appellants, on the other hand, said that the respondents had disclosed a copy of the original grant which the appellants tendered in evidence. They contended that the document in sufficiently plain terms gave the melvaram only. The respondents, while denying the admissibility of the copy, said that the grant on its true construction gave the kudivaram as well as the melvaram, or at any rate was so ambiguous as to admit extrinsic evidence leading to the same result. The document tendered was a Telugu document purporting to be a copy of two documents. The first was a document making a grant of the village in question to the predecessor of the plaintiffs for 6 pagodas, setting out the boundaries and signed by the grantors. The second was a Telugu translation of a Persian Dumbala dated 1765 A.D., increasing the revenue to be paid by the holders from 6 to 25 pagodas. The document contains the endorsement "originals have been retained with us and copies have been filed 1858." signed by the then predecessors of the respondents, one of whom Ponnapalli China Ramaswami was a plaintiff to some of the original suits now before the Board, but died at an advanced age during the proceedings. Their Lordships agree with the learned Chief Justice and his colleagues in the High Court that the document was admissible as evidence of the terms of the lost original. The document is over 30 years old and is produced from proper custody. By Section 90, Evidence Act of 1872, the Court may therefore presume the signatures authenticating the copy to be genuine. The statement to which the signatures are appended, viz., that the document is a copy of the original, appears to be evidence both for the reason given by the Chief Justice, i. e., as a statement made by a deceased person in a document relating to a relevant fact, and also as an admission made by a party and a predecessor-in-title of the parties.

4. The document being admissible is secondary evidence of the terms of the original grant. The Court therefore must proceed upon the footing that the express terms of the original written grant are before it, and must proceed to construe them. Some confusion has been introduced into the case by conflicting decisions as to presumptions to be made in construing such a grant. The original District Munsif held that there was a presumption that such a grant did not give the kudivaram.

5. The High Court, relying on a decision of a Full Bench of the Court in *Muthu Goundan v. Permal Iyen* took the view that the presumption was that both the melvaram and kudivaram are in cluded. It is, however, made clear by the subsequent decision of this Board in *Chidambara Sivaprakasa v. Veerama Reddi (at p. 303)* that there is no presumption either way, and that each case must be decided on its own circumstances. The document is in the following terms :

6. Deed of gift executed and given on the 15th day of Adhika Chaitra Suddam of the year Parabhava, corresponding to 1610 of the Era of Salivahana, in favour of Ponnapalli Annappa Garu, who is eager in performing the six acts, viz. : Yagna, Yajana, Adhyayana, Adhyapaka, Dana and Pratigraha by Puligadda Mallaparaju, Lakaraju Perraju, and Mazumdar Papanna, Rajas of Komaravole, and residents of Nizampatam.

7. As we have granted to you the Shrotriyam of Arepalli agraharam village, Nizampatam taluk, in the name of Siva on the occasion of the lunar eclipse, for 6 pagodas, you shall enjoy the same accordingly from son to grand son and shall live happilly.

8. The usual Sanskrit sloka omitted.) Signatures of the Rajas :

> (Signed) Mallaparaju. (Signed) Perraju.
> (illegible).
> Memorandum of the description of the boundaries for the agraharam executed and given on the 9th day of Chaitra Bahulam of the year Parabhava corresponding to 1610 of the Era of Salivahana in favour of Ponnapalli Annappa Garu who is eager in performing the six acts, viz. : Yagna, Yajana, Adhyayana, Adhyapaka, Dana and Pratigraha by Puligadda Mallaparaju, Lakaraju, Perraju, Mazumdar Papanna Garu, Rajas of Komaravole, residents of Nizampatam.
> As we have granted to you Arepalli agraharam attached to Nizampatam, fixing a Srotriyam of 6 pagodas thereon, particulars of the boundaries which have been shown in respect thereof are as follows :

North-west. - Cherukumilli Ponnapali village boundary lying to the north of the Kudali (meeting place) of Oherukumilli and Arumbaka - Patugattu roughly.
North-east. - The village boundary of Nadimpalli and Rajavole.
East. - From the village boundary of the aforesaid Rajavole roughly through the middle portion and through the channel forming the village boundary of Dhulipudi, roughly Bagirevugunata.
South-east. - The Kudali (meeting place) of Nagaram and Dhulipudi.
South. - To the south of Chavutavalu, roughly Turukalaguntalu through the middle of Chittupaggala Katta and on the southern side of Vadanadum and through the middle of Peddaputtalu, the Kudali of Balusulapalem and Pudiyala roughly. South-west. - Jammulagunta boundary through the middle portion of Nallavada.
West. - Arumbaka through the patu gattu of the said village and through the middle of the vada and through Kudali and through Chavata Dibbalu and through Daggulamadugu roughly.
As we have granted to you the said agraharam, you should enjoy the same from son to grandson paying the Shotriyam thereon and be happy.
(Usual Sanskrit sloka omitted.)
Signatures of Rajas :
(Signed) Mallaparaju. (Signed) Papanna. (illegible).
Seal.
A copy of the Telugu translation written on the right-hand side of the Dumbala written in the Persion language :
Having fixed a Srotriem of 25 pagodas (twenty-five pagodas) as fixed rent for next Fasli 1172 in respect of maluva and motarfa libabu and tobacco of Arepalli village, sircar Nizampatam, a cowle has been given by Nageshwara Dikshitulu, Somanna, Subbanna, Somayajulu and others (illegible) referred to in cowle for the coming Fasli 1172. Without allowing it to remain (illegible), rich ryots should be permanently selected to (illegible) satisfaction and cultivation should be carried on extensively and the produce should be tendered to the sircar in season.
30th Mahazulahali 1175. Hizra.
Originals have been retained with us and copies have been filed. 1858 (torn).
(Signed) Ponnapalli China Ramaswami. (Signed) Ponnapalli Suryanarayana Somayajulu.
(Signed) Lakshmipathi.

A copy of the Dumbala, a rough sketch of the village and a copy of the kyfiat of the villagers have been filed.

9. The learned Principal District Munsif of Tenali, who decided that he had no jurisdiction, delivered a careful and able judgment with which, on the point of construction, their Lordships, except on the question of presumption, find them-selves substantially in accord. He relied on four main points :

1. The grant purports to be a grant "of Shrotriem" or "as Shrotriem." Shrotriem, according to Wilson's Glossary, means :

"a grant of lands or a village held at favourable rate, properly an assignment of land or revenue to a Brahmin learned in the Vedas, but latterly applied to similar assignments to native servants of Government, Civil or Military, and both Hindus and Mahomedans, as a reward for past services. A shrotriem grant gives no right over the lands and the grantee cannot interfere with the occupants as long as they pay the established rents."

10. If the above definition were accepted in its full terms, the case would be concluded in favor of the appellants. But the learned Chief Justice in his judgment points out reasons for supposing that Mr. Wilson in the last sentence was purporting to give the effect of legal decisions which since his time have been questioned and their Lordships are not prepared to differ from the view that a shrotriem grant may in fact grant the kudivaram as well as the melvaram. But in this case the document itself in the final recital uses the term again;

"As we have granted to you the said agraharam you should enjoy the same from son to grandson, paying the shotriem thereon and be happy."

11. In this phrase the term can only mean revenue, and though their Lordships could not consider this consideration in itself conclusive it points to the construction contended for by the appellants. It is not without significance, though it is later than the document under construction, that the same use of the term is found in the translation of the Persian order "Having fixed a shrotriem for 25 pagodas," etc.

2. The grant was of a mouje. Their Lordships accept the view expressed by Sadasive Ayyar, J. in *Venkata v. Sitaramudu 3at 892*, that the phrase in dieates "a village in which there were peasant proprietors owning cultivable lands even then." Probably no more weight should be attached to this than may be borne by the circumstance that the village granted was presumably a revenue producing village, some of the lands of which were already occupied. Their Lordships cannot accept the view favoured by the Chief Justice that the word in the

particular context merely means a defined place.

3. It is agreed that the grantors were Deshpandyas who were revenue officers or farmers of revenue under the paramount authority. It is pointed out that this fact does not exclude the possibility of the grantors being themselves personally possessed of the land, i. e., of the kudivaram rights. This no doubt is so, but the strong probability is that they granted that which in their position as Deshpandyas they would possess, viz., the rights over the revenue.

4. The Brahmins represented by the grantee were learned Brahmins apparently not resident in the village granted, but resident about two miles away. This circumstance by itself is by no means conclusive. At the same time it appears to their Lordships to make it more probable that the grant was in the nature of an endowment of revenue rather than of land for the purposes of cultivation.

12. The learned Chief Justice deals with each of these points separately, and as to each of them finds the point inconclusive, and apart from the presumption upon which he relies, finds the document equally consistent with a grant of both varams as of the melvaram only. In their Lordships opinion this is to ignore the weight which is obtained from the effect of the whole. Taking into account all the considerations mentioned, their Lordships are of opinion that they lead strongly to the conclusion that the grant was of the melvaram only, and they so construe the document.

13. In view of the admissions made for the purposes of these cases that the respondents did not acquire the kudivaram subsequently to the grant, it becomes unnecessary to consider the subsequent acts of the parties, and the inferences to be drawn from them. The document is unambiguous and the rights given by it must be determined by its words. It follows that the decree of the High Court on the Letters Patent Appeal, dated 5th April 1922, must be set aside, and the decree of the High Court, dated 19th October 1921, be restored. The appellants should have their costs of the Letters Patent Appeal and before this Board. Their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.

Cases Referred.

AIR 1921 Madras 145 : 44 Mad. 588 (F. B.),

AIR 1922 PC 292 : 45 Mad. 586 : 49 I. A. 286 (P. C.)