PRIVY COUNCIL

Nadimpalli Narayanaraju

Vs.

Yennamsetti Suryanarayudu

P.C.A.No.39 of 1937
(Lord Romer, Sir George Rankinand Mr. Jayakar JJ.)

21.07.1939

JUDGMENT

SIR GEORGE RANKINJ.

1. This is an appeal by the plaintiffs from a decree of the High Court of Madras (16th October 1937), dismissing a suit brought in the Court of the Subordinate Judge at Vizagapatam to recover possession of certain agricultural lands in the village of Thagarampudi. The trial Court's decree (17th December 1927), had been in favour of the plaintiffs. of the defendants to the suit (who numbered 15) five are respondents to this appeal : the first three respondents (defendants 3 to 5) being the persons in possession of the suit lands, while respondents 4 and 5 (defendants 14 and 15) are impleaded as persons claiming title thereto as against the plaintiffs. Much of the detail of the case has for the purposes of this appeal become unimportant; since the decree appealed from did not decide the question of title disputed between the plaintiffs and respondents 4 and 5, but dismissed the plaintiffs' claim to eject the first three respondents on the ground that the plaintiffs were landholders within the meaning of the Madras Estates Land Act (Madras Act 1 of 1908) and by Section 9 thereof could not maintain ejectment in the Civil Court against a ryot. The plaintiffs claim title under Ex. C, an instrument dated 11th May 1811, which is expressed as follows :

> Patta, dated Saturday the 3rd day of VaisakhaBahulam of the year Prajotpatti (11th May 1811), executed and granted by Sri NarayanaGajapathirajuMaharajulingaru, to NadimpalliVenkatapatiraju.
> Whereas, in the village of Thagarampudi of my mokhasa (lands granted either free as reward or on light rent) Vaddadetaluk, I have granted to you land fetching a fixed rent of Rs. 300, as manyam, and 10 visams (1/8th part) of land

known as the vudikamanugaruvu (name of land) for a tope to be planted thereon, you shall bring them to extensive cultivation and profits, and be living happily, enjoying the same hereditarily.

2. The grantor was the proprietor of the estate of Vizianagaram and the grantee Venkatapatiraju was the eldest of three brothers who were joint. The other two were called Murtiraju and Gajapatiraju. By what right the grantor could afterwards modify his grant is a question which has not been clearly answered, but by a letter to the grantee dated 21st August 1826, he purported to impose for the future a rent on payment of Rs. 50 per annum and this has ever since been paid. The terms of the letter are as follows :

> In respect of the land granted to you in the village of Thagarampudi, a reduction of Rs. 50 has been ordered from the current year Vijaya, and deducted out of your muzara. So, you shall pay theseRs. 50 every year in our Sirkar and be obtaining receipts.

3. The lands were at first enjoyed by the joint family, but the brothers separated and each became entitled to a one-third share therein. At some date which is not now material they appear to have divided the lands between them each paying to the zamindarRs. 16-10-8. The plaintiffs are great-grandsons of the original grantee Venkatapatiraju who was the eldest brother, but their suit has reference to the one-third share of the youngest brother Gajapatiraju of which they claim to be purchasers. They seek to obtain possession of one-half only of that one-third share, and the pedigree table of Gajapatiraju's branch will assist to show how they deduce their title.

GAJAPATIRAJU (d. 1859).
II
Widow
DatlaPeddaChinnaAppala
(d. 1918)
Lakshmi HarirajuAppalaJagannand
(vendor to (vendor to (vendor to (adopted son plaintiffs) plaintiffs) plaintiffs) d. 1910)
Respondent 4 Respondent 5
(defendant 14) (defendant 15)

Gajapatiraju died in 1859 leaving a widow and two daughters. In 1861 the widow relinquished her interest and the daughters became entitled. In 1918 the younger daughter ChinnaAppala died leaving her sister and two grandsons by a

predeceased son (respondents 4 and 5). The plaintiffs say that thereupon the whole of Gajapatiraju's interest vested in the elder daughter DatlaPedda: that in 1919 DatlaPedda's three sons were the reversioner's of her father, and that she relinquished her interest so as to accelerate theirs. The plaintiffs by sale deed dated 27th April 1921, purchased from these three sons of DatlaPedda the whole of the interest of her father Gajapatiraju for Rs. 32,000. On 24th September 1924, they brought the present suit to recover possession of the half share in Gajapatiraju's lands which his younger daughter ChinnaAppala had possessed. The first three respondents were also in possession of the other half share (which DatlaPedda had possessed) but, as they had certain rights therein as mortgagees this other half share was not included in the suit.

4. Respondents 4 and 5 claim title to the suit lands by saying that the instrument of 1811 has long since ceased to have effect ; that it created no more than a service tenure neither heritable nor transferable but resumable at will; that on the death of Gajapatiraju the lands were sequestered or resumed by the zamindar and regranted as a new tenure to his widow; and that on her death one-half was granted to each of her two daughters separately. Hence, respondents 4 and 5 claimed to be entitled to the lands held by their grandmother ChinnaAppala which are the lands in suit. Whether or not on this case the first three respondents could claim to have a ryoti interest in the lands, it is clear that the plaintiffs could have no interest at all. The plaintiffs do not seek to avail themselves in any respect of the case made or evidence adduced by respondents 4 and 5.

5. The first matter for consideration is the case made by the plaintiffs for ejectment of the first three respondents. These respondents are the cultivators in possession of the lands in suit. They or their ancestors (at some date not readily ascertainable) became tenants of the plaintiffs' vendors or their predecessors. Notice to quit has been given to these respondents but they claim that they are ryots with occupancy right who cannot be ejected by the Civil Court. The plaintiffs who have to succeed upon the strength of their own title disclose a title of which the root is the grant of 1811, and the question is as to the character of the right which they allege and prove. At one stage of the case it appears to have been contended (1) for the plaintiffs that the grant merely gave to the grantees the kudivaram interest on favourable terms, (2) for the first three respondents, that agricultural tenants were on the land at the time of the grant so that it gave to the grantees the melvaram interest only. It is now conceded however on both sides, and very properly, that the grant of 1811 was of both varams. Their Lordships are unable to attach importance for the purposes of this appeal to the documents upon which the

plaintiffs based a contention that the zamindar had treated the grantees under Ex. C as ryots giving them the usual jirayati leases. The operation and effect of Ex. C as a document of title cannot be determined upon the basis of subsequent documents which contradict it on essential matters. Their Lordships are not satisfied, on the other hand, by any of the exhibits that at the date of the grant of 1811 agricultural tenants other than the grantee were already on the land.

6. The question which presents itself on the threshold of the case, and which has been decided by the High Court against the plaintiffs, is whether the interest granted by Ex. C is one which constitutes the plaintiffs landholders within the meaning of the Act of 1908. The words mokhasa and manyam occur in the grant and both appear in Wilson's Glossary as meaning in the south of India lands held either at a low assessment or altogether free on condition of or in consideration of services. The word inam does not appear in the terms of the grant. The word muzara appears in the letter of 1826 and the words muzara-vasathi appear in some of the later documents : they are said to mean " allowance" or "remission." The word kattubadi (translated by "quit-rent" for want of a nearer word) appears in the plaintiffs' conveyance of 27th April 1921, to describe the annual payment under Ex. C. But the title upon which the plaintiffs seek ejectment is put forward as a transferable and heritable right to the lands under Ex. C upon payment to the zamindar of the annual sum of Rs. 50 or a due proportion thereof. If this would constitute the plaintiffs 'landholders' under the Act of 1908 then the first three respondents claim to be ryots entitled to a permanent right of occupancy under Section 6 and protected from ejectment by the Civil Court under Section 9 of the Act. The definitions which bear upon the question whether the plaintiffs' title if made out gives them the status of a "landholder " are to be found in certain sub-sections of Section 3 of the Act. By sub section (2):

> "Estate" means : (a) any permanently settled estate or temporarily settled zemindari ; (b) any portion of such permanently settled estate or temporarily settled zemindari which is separately registered in the office of the Collector ; (c) any unsettled palaiyam or jagir; (d) 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, confirmed or recognised by the British Government, or any separated part of such village; (e) any portion consisting of one or more villages of any of the estates specified above in Clauses (a), (b) and (c) which is held on a permanent under-tenure.

7. By sub-section (5):

'Landholder' means a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title or of any order of a competent Court or of any provision of law.

8. By sub-section (11) :

'Rent' means whatever is lawfully payable in money or in kind or in both to a landholder for the use or occupation of land in his estate for the purpose of agriculture.

9. By sub section (15) :

'Ryot' means a person who holds for the purpose of agriculture ryoti land in an estate on condition of paying to the landholder the rent which is legally due upon it.

10. By sub-section (16) :

'Ryoti land' means cultivable land in an estate other than private land.

11. On these definitions it is to be observed that clause (d) of sub section (2) relates to a grant made prior to the Permanent Settlement and to a village not now part of a zamindari whereas clause (e) relates (though not exclusively) to villages which are part of a zamindari but are held on permanent under-tenure. The lands now in question do not constitute a village but are only part of a village and they cannot be held to come within any of the clauses which define the word "estate". On the other hand the word "estate" as employed in the Act has not the abstract meaning " quality or quantity of the interest of the holder." The plaintiffs' title if made out can only constitute them "landholders" upon one or other of two grounds. First, that they come within the words in sub section (5) "or part thereof." Secondly, that they are within the extended meaning given to the word "landholder" by the provision that it includes every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title.

12. The application of these expressions to what have been called " minorinams" has been considered by the High Court of Madras in a series of decisions. In 1912, in*Appalanarasimhulu v. Sanyasi,* it was held by SundaraAyyar and SadasivaAyyar JJ. that though a minor inam was not an "estate" within the Act the inamdars were landholders because there is no reason why the holder of an under-tenure should not be held to be a person entitled to collect rents of a portion of the estate out of which the under-tenure is carved.

13. The learned Judges considered that if the tenure-holder is not bound to make any payment to the zamindar for his tenure he will then be a person owning a part of the estate.

14. In *Gadadhar Das v. Suryanarayana,* Wallis C. J. dissented from the conclusion that a minor inamdar was a "landholder". He was of opinion that so long as the zamindar reserves an interest to himself, as by way of rent, no matter how insignificant it be, he continues to be the owner. He considered that in the definition of "rent" in sub section (11) the words "in his estate" could not apply to an inamdar and excluded such a person from the extended meaning given by the clause which refers to persons entitled to collect the rent of a portion of an estate. SadasivaAyyar J. however held the inamdar to be a landholder on both of the grounds already mentioned. As to the first ground, he laid stress on the fact that in the case of an entire village clause (e) of Section 3(2) treats a permanent under-tenure as an estate and its holder as owner of the estate. He considered that there was already a catena of decisions in the High Court that a minor inamdar was a landholder. When this case came before three Judges on Letters Patent Appeal, Ayling J. took the view that it may be conceded at once that so long as the zamindar reserves to himself a quit-rent the inamdar cannot be regarded as the owner of the lands in the ordinary legal meaning of the term.

15. But on the second ground he thought it clear that when the inamdar'a grant was only of the melvaram it was a transfer by the owner of the right to collect the rent of a portion of the estate. Where however the grant was of both varams he had more difficulty but came to the same conclusion:

> When we say that the grant was of both varams we merely mean that the rights of the grantee in respect of the land were not limited by the necessity of respecting the right of any person possessed of the kudivaram at the time of the grant.

16. Coutts-Trotter J. proceeded entirely upon the second ground observing that he was unable to gather from the language of this Act any general intention with regard to the position of minor inamdars. KumaraswamiSastri J. held that a minor inamdar was not a landholder where the grant to him was of both the varams. He thought that if the grantee was himself the occupancy ryot at the time of the grant, it could not divest him of that character and convert his sub-tenants into occupancy ryots; while if the land was at the time in the absolute disposal of the grantor, the object of the grant was to allow the grantee to occupy and enjoy the lands on favourable terms and not to create minor landholders. In such cases he considered the grantee could not be regarded as

collecting rents from himself by virtue of the grant of the melvaram. The result of the Letters Patent Appeal was that by a majority of two Judges to one the minor inamdar was held to be a landholder. The matter came before a Full Bench in *Brahmayya v. Achiraju,* where thepatta had been held to be a grant in inam and not a mere lease on favourable terms to a jirayati tenant. The question was framed as follows:

> Where a zamindar makes a post-settlement inam grant of a portion of a village with both varams on a permanent kattubadi, is the grantee a land-holder within the meaning of Section 8(5), Madras' Estates Land Act ?

17. Schwabe C. J. thought that such an inamdar was not owner of a part of the estate and was not entitled to collect rent by virtue of any transfer. The provision as to persons entitled to collect rent was in his opinion intended for purchasers of part of an estate, mortgagees, or farmers of an estate and did not apply to an inamdar collecting rent under leases granted by himself. Oldfield J. found the considerations upon each side to be evenly balanced and the question difficult. He thought the liability of the inamdar for quit rent need not be regarded as inconsistent with the character of landholder under the Act but that in any case a grantee of both varams of a part of a village was a person entitled to "collect the rent by virtue of a transfer from the owner," and that this very general language could not be read subject to an unexpressed restriction. Phillips J. held that the word "owner" was applicable to the inamdar notwithstanding the reservation of an annual payment and that the grantee of both varams was entitled to collect rents which would previously have been payable to the grantor. Devadoss J. relied much on the definition of "estate" as excluding mere parts of villages :

> The word estate does not mean land but all the rights, liabilities and duties attaching to or incident to certain classes of tenure as defined by Section 3(2). The words "part of an estate" have been put into the definition of landholder so as to include the transferee of a portion of the estate either by operation of law or by act of parties. An inamdar is not a transferee of the whole or any portion of the estate.

18. He further considered that where the grant is of vacant land the inamdar is not to be considered as having the right to collect rent but as having the kudivaram right himself plus a portion of the melvaram, and does not lose the character of ryot. VenkatasubbaRao J. regarded the definitions of "estate" and "landholder" as inconsistent but thought it more in consonance with the intention of the Legislature to regard minor inamdars as landholders. He considered that they were owners of part of

an estate notwithstanding liability for kattubadi and that they came within the language of sub section (5) as persons entitled to collect rents.

19. By this decision of three Judges against two, after long debate and much difference of opinion it was established by authority of the highest Court of the Province in March 1922, that the minor post settlement inamdar holding under a grant of both varams on a permanent kattubadi is a "landholder" under the Act of 1908. This decision was confirmatory of a course of decisions that had been given since 1912 and earlier though not without some dissent. For a considerable number of years, tenants under such inamdars have been entitled to rely upon the special protection granted by the Act to ryots and their Lordships would be loath to disturb titles taken or dealt with on that footing. They do not conceal from themselves that neither of the two grounds above- mentioned is free from difficulty. They discard all argument from the presumed general intention of the Act as treacherous and inconclusive. But they cannot agree that "part of the estate" or "portion of the estate" does not refer to the land itself by the word "estate," nor do they feel any confidence in the doctrine that so long as the zamindar reserves any interest, however insignificant, a permanent grantee from him cannot be the owner. It may be that the words "or part thereof" were given a place in the definition of landholder without full appreciation of their effect in connexion with the definition of "estate": but there is no presumption to that effect: the words cannot be ignored : and good reason must be found in the Act itself for restricting their prima facie meaning.

20. Their Lordships, as to the second ground, notice that not only does the definition of "estate" employ the word "estate" but the definition of "landholder" employs the word "rents" and the definition of "rent" employs the word "landholder". They feel more difficulty than was felt by the majority of the learned Judges in Madras in regarding the extension, given to the meaning of the word "landholder" by the clause as to collection of rents, as applicable to an inamdar. But on either ground they are satisfied that the Full Bench decision of 1922 represents a careful and reasonable solution of a stubborn ambiguity in the Act, and that it ought not now to be overruled having regard to the time which has elapsed and to the character of the interests affected thereby. They are wholly unable to distinguish the present case so as to regard the reasoning of the majority of the Full Bench as inapplicable thereto, nor can they hold that Exhibit C is a mere jirayatipatta on favourable terms. The plaintiffs' title, if it be made out, is to a permanent under-tenure of a portion of a village on a small annual payment by whatever name the payment may be described. In their Lordships'

judgment they claim an interest which must be held to clothe them with the character of landowner and to put the cultivating tenants under them in the position of ryots, to whom Sections 6 and 9 apply.

21. The plaintiffs' claim to eject the first three respondents must therefore fail.

22. It was contended that even so the High Court ought not to have dismissed the suit without deciding the dispute as to title between the plaintiffs and respondents 4 and 5. Their Lordships, however, are not prepared to remand the case for a decision on this point. Having regard to their pleading the plaintiffs have no right to such an order since they impleaded respondents 4 and 5 without asking for any declaration as to title against them and merely as persons who might object to the relief sought against the first three respondents. The matter is one to be decided now upon the balance of convenience to the parties on both sides and their Lordships see nothing to induce them on this point to interfere with the decree of the High Court which has left the question of title open. Their Lordships will humbly advise His Majesty that this appeal should be dismissed. The appellants will pay one set of costs to the first three respondents and another to respondent 5.

Appeal dismissed.

Cases Referred.

(1916) 3 AIR Mad 619=17 IC 120=38 Mad 33

(1921) 8 AIR Mad 547=64 IC 317=44 Mad 677=41 MLJ 97 (FB)

(1922) 9 AIR Mad 373=70 IC 615=45 Mad 716=43 MLJ 229 (FB).