T. R. Bhavani Shankar Joshi

Vs

Somasundara Moopanar

Civil Appeal No. 54 of 1952

(S. K. Das, M. Hidayatullah, J. C. Shah JJ)

24.04.1962

JUDGMENT

HIDAYATULLAH, J. –

In this appeal on a certificate, the appellant was the original Defendant No. 1 in a suit filed by the respondent under s. 55 of the Madras Estates Land Act, 1908, seeking a direction for the grant of a patta to him in regard to the suit land. The suit was decreed by the Revenue Divisional Officer, Kumbakonam, who fixed the rent at the rate of Rs. 1-8-0 per mah, the land being about 64 acres or 192 mahs.

This land originally belonged to what was known as the Tanjore Place Estate, and by a suit of 1919, it fell to the share of Ry. Sivaji Rajah Saheb of Tanjore (Palace). It came into the possession and ownership of the appellant by virtue of a sale on foot of a mortgage decree obtained by his father in a suit of 1926. The appellant obtained possession in 1963. While the suit was pending, the property was in the possession of four minors through their maternal uncle, who was appointed as their guardian by the District Court, West Tanjore. In 1932, the respondent took the suit property on lease from the guardian for 3 years, by a lease deed dated July 30, 1932. Under this lease, the respondent remained in possession and enjoyment of this property till June 30, 1935, cultivating it, as he alleged, under pannai cultivation. During the execution proceedings, however, a receiver was appointed, and on May 12, 1935, the receiver granted a lease for 3 years from July 1, 1935. After the appellant entered into possession, he executed on August 13, 1936, a fresh lease deed for two years (faslis 1346 and 1347) and till the suit, according to the respondents, he continued in uninterrupted possession and enjoyment of the property. The claim was made under the Madras Estates Land Act, 1908, as amended by the Third Amendment Act of 1936, under which occupancy rights vested in a person who was in direct and actual possession of the land on June 30, 1934. The respondent therefore, claimed the protection of the provisions of the Madras Estates Land Act, and thus to be entitled to a patta in occupancy right on payment of a fair rent suggestion Rs. 1-8-0 per mah as the fair rent.

The appellant contended that the land in question know as Pattiswaram Thattimal Padugai was included in a revenue village, Thenam Padugai Thattimal, and was neither an entire village nor an estate or part of an estate, and that thus the provisions of the Madras Estates Land Act did not apply to it, because the land in question was not ryoti land. It was also averred by the appellant that the respondent was mere farmer of revenue, that is to say, an intermediate lessee, who was not cultivating the suit land himself or in pannai or with the help of hired labour. Various other pleas were raised, but to them no reference is necessary, because the arguments in this Court were limited to the consideration of the findings on Issues 1 to 3 frame in the original suit. Those Issues were :

"(1) Is the village wherein the suit properties are situated an inam within the meaning of Act XVIII of 1936 ? Was it an Estate prior to the enactment of Act XVIII of 1936 or did it become an Estate under the provision of the Act ?

(2) Is the Plaintiff a mere lessee or farmer of rent or the actual cultivator of the suit lands ?

(3) Is the Plaintiff a ryot entitled to occupancy right under Act XVIII of 1936 for the reliefs claimed in the plaint ?"

The suit, as already stated, was decreed by the Revenue Divisional Officer. On appeal, the District Judge of West Tanjore, dismissed the appeal, but modified the rent to Rs. 4/- per mah as the proper and equitable rate of rent. On further appeal to the High Court, the judgement and decree of the District Judge were confirmed with the modification that the rent was determined at Rs. 7/- per mah and Rs. 1,350/- were fixed as a lump sum. There was a across-objection, which was also dismissed.

The question in this appeal is whether the property in suit, being a part of the Tanjore Palace Estate, can be considered to be an "estate" within the meaning of the term in the Madras Estates Land Act. That it would be so if it was part of an inam was counsel for the appellant. He, however, contended that the manner in which the property reverted to the widows of the Rajah in 1862 after an act of State, did not show that the estate was freshly granted, but was restored to the widows who enjoyed both the warms, in the same way as the warms were enjoyed before. Much of the arguments in the case, therefore, was directed to establishing that in 1862 there was a "restoration" of the status quo ante rather than a fresh gaunt by the British Government. It is, therefore, necessary to recount, in brief, the facts landing up to the Government Order No. 336 of 1862. These facts have been given in considerable detail by the Privy Council in The Secretary of State in Council of India v. Kamachee Boye Sahaba [(1859) 7 M.I.A. 476], and they are also very well-known. The Rajah of Tanjore died in October, 1855, leaving no male heir to succeed him. He left behind him a large number of widows and two daughters. After his death, Mr. Forbes who was the Commissioner, under authority of Government, seized the properties of the Rajah, and took them under his charge. He, however, reported to the Government that the private properties of the Rajah and others would be returned after an enquiry into any claims that might be submitted. The senior widow, Kamachee Boye Sahaba, thereupon, filed a Bill on the Enquiry Side of the Supreme Court of Madras, and obtained a decree that the seizure of the private properties was wrong. On appeal by the Secretary of State in Council of India, the Privy Council reversed the decree, and ordered the dismissal of the Bill. Thereafter, a memorial was submitted to the Queen and Mr. Norton Senior went to England to interview the Government. As a result of his efforts, in 1862 the private properties were "relinquished" and "restored" by the Government Order No. 336 of 1862.

Numerous cases were decided in the Madras High Court, some went before the Privy Council, dealing with diverse items of the Tanjore Palace Estate. The argument which raised in this appeal, viz., that the Government Order was not a fresh grant but only led to the restoration of the properties is not a new one, and was raised in those cases. In Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba [(1868) 3 M.H.C.R. 424], the High Court held that the Government Order was a grant of grace and favour to persons who had forfeited all claims to the personal properties of the Rajah by the act of State and was not a revival of any antecedent right which they might have had but for the act of State. A similar view of the grant was taken also in a Full Bench case in Sundaram Iyer v. Ramachandra Iyer [(1917) I.L.R. 40 Mad. 389]. The Full Bench case was concerned only with the Mokhasa Ullikadai village, and the question later arose whether the decision should be limited to

that village in this estate or extended to others. Subsequently, in Abdul Rahim v. Swaminatha [I.L.R. [1955] Mad. 744] it was held that the decision applied also to other villages, which must be regarded as part of the Inam Estate, which was granted by the Government Order. Earlier still, the decision of the Full Bench was relied upon in several cases, to which reference has been made in Abdul Rahim v. Swaminatha [I.L.R. [1955] Mad. 744] as also in a recent case decided by the Madras High Court and reported in Chidambaram Chettiar v. Ramaswamy Odayar [[1957] 1 M.L.J. 72]. In the last maintained case is to be found a list of most of the decisions under which the Order was interpreted as a fresh. Indeed, the Privy Council in Srimant Chota Raja Saheb Mohitai v. Sundaram Ayyar [(1936) L.R. 63 I.A. 224] referred to the Government Order as grant and to the recipients of the property in 1862 as the grantees. There are, however, cases in which a contrary note was struck. In Maharajah of Kolhapur v. Sundaram Iyer [(1924) I.L.R. 48 Mad. 1], Spencer, O.C.J., appeared to doubt the decision of Scotland, C.J., in Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba [(1868) 3 M.H.C.R. 424] that there was a grant of grace and favour in 1862. A similar discordant not was struck in Sundaram v. Deva Sankara [A.I.R. 1918 Mad. 428]; but these cases have been subsequently explained or not accepted on this point. In the judgment under appeal, the Divisional Bench has also referred to this consistent view held about the Government Order, and it must, therefore, be assumed that for nearly 100 years the Madras High Court has held the view which was first expressed by Scotland, C.J. Apart from the fact that it would not be open to us to disturb titles by reversing this long line of decisions, we are of opinion that the arguments that have now been raised are not sound.

It is contended that the act of State begun in 1856 by Mr. Forbes was not really over till 1862, and during the period, enquiries were made for the return of the private properties of the Rajah, and thus the act of State did not extinguish the original title, but it was restored without there being a fresh grant. The Government Order of 1862 was read to us to show that it was not worded as grant but a communique by which the decision to relinquish and restore the properties was conveyed. It is also argued that in the despatches, Mr. Forbes had himself said that enquiries would be made about the private properties of the Rajah, which would be scrupulously returned, and thus even at that time there was no intention to complete, so to speak, the act of State against the private properties.

The first question to decide is whether the act of State was directed against only the raj properties or against the private properties as well. Here, the decision of the Privy Council in Kamachee Boye Sahaba's case [(1859) 7 M.I.A. 476] repels the argument of the appellant completely. Kamachee Boye Sahaba filed a Bill for the return of the private properties, and the Privy Council held that as the seizure was made by the British Government acting as a Sovereign power through its delegate, the East India Company, it was an act of State, into the propriety of which the municipal courts had no jurisdiction to enquire. It pointed out that the enquiry which was to be made was not in relation to the private properties of the Rajah but in connection with certain other properties which, though belonging to third parties, were hold by the Rajah. It observed, however, in respect of all the properties that were seized, as follows :

> "..... if the Company, in the exercise of their Sovereign power, have thought fit to seize the whole property of the late Rajah, private as well as public, does that circumstance give any jurisdiction over their acts to the Court at Madras ?"

and it answered that no difference was made between the private and public properties, and the Madras Supreme Court had no jurisdiction over the seizure of either. It also mentioned that the letter of Mr. Forbes, that the private properties of the Rajah would be returned after an enquiry, was wrongly construed. It pointed out (and we think quite correctly) that the distinction made in the

letter between private and public properties applied not to the properties of the Rajah but to such properties which might have been seized by the officers as in the possession of, or apparently belonging the Rajah while, in fact, they belonged to or were subject to the claims of other persons. It was these claims which were to be investigated, and Privy Council observed :

> "All claims which might be advanced to any part of the property seized, by institutions or individuals were to be carefully investigated, and all to which a claim might be substantiated would be restored to the owner."

It then concluded that whatever the meaning of the letter is showed that the Government intended to seize all the property which actually was seized whether public or private, and the seizure as a whole was an act of State.

The act of State having thus materialised against all the properties public or private, of the Rajah, no title could be said to have remained outstanding in any one. The Privy Council pointed out also that the heirs such as there were could only look to the bounty of the British Government and had no claim or right in law. In this state of affairs, it is impossible to construe the Government Order as anything but a fresh grant. It is stated that it is not worded as a grant, because it uses the words "relinquished" and "restored" and also it does not set out any terms or conditions on which the property was to be held; nor does it give a list of the properties so granted. As regards the list of properties, it has always been felt that there must have been one, though it does not appear to have been produced in a court of law. If the properties were sorted out, it is inconceivable that the Government Order would not specify also the properties to be returned, and such a list must have accompanied it. The document in question creates, its own conditions, and indicates the line of succession. The root of title of the family was thus the Government Order, and it has been so observed in Chidambaram Chettiar v. Ramaswamy Odayar [(1957) 1 M.L.J. 72].

The next question raised is that the documentary evidence produced in the case does not disclose the grant of an entire inam village. Reference in this connection is made to the Government Order, in which in addition to the villages there is a mention of certain lands. It is argued that the suit land is neither a Mokhasa village nor a part of one, that it is one of three blocks which are separated from one another by rivers and distances, that there are no residential houses in any of the three blocks, and lastly that the mane of the village has changed from time to time, as is evidenced by the muchalikas of 1875, 1882 and 1904 (Exs. D-8, D-9 and D-10). The case of the respondent was that the Mokhasa village, Pattiswaram Padugai, was a whole inam village, and it was governed by Madras Estates Land Act, 1908, that the respondent was in direct and actual possession on June 30, 1934, and therefore within the protection of that Act. The case of the appellant was that Pattiswaram Padugai was not a whole inam but village was included in Thenam Padugai which was a revenue village, and since Pattiswaram Padugai was not an entire village, it was neither an estate nor a part of an estate. All the three Courts have held in favour of the respondent. The question is whether the decision proceeds on no evidence. The evidence in this behalf is oral as well as documentary. P.W. 2 Venkatarama Ayyangar, claimed to be the karnam of Thenam and Pattiswaram Padugai for 24 years. He stated that Pattiswaram Padugai was a separate village with separate account and was included in the Vattam of Thenam Padugai. Rajagopala Ayyanger (P.W. 4) who was the in-charge karnam of Pattiswaram Padugai, his father being the karnam, claimed knowledge of the conditions for 20 years. He stated that though Thenam Padugai Pattiswaram Padugai and Vellapillaiyarpettai were included in the Thenam Padugai vattam and not contiguous, there were separate accounts for each village. He proved Ex. P-19 (No. 12 account) and Ex-P-19 (a) (No. 12 part II account) relating to this village. Then, there is the revenue record, Ex. P-3, which, though not strictly a record of rights,

is an official document of great value. It is described as Irrigation Memoir No. 7, Tenam Padugai Thattimal village, Kumbakoman Taluk Tanjore District. In that, it is stated as follows :

> "Tenampadugai Tattimal is an unsettled mokhasa village lying 4 miles south-west of Kumbakonan in the Cauvery Delta. It consist of three bits, the first bit lying between the Kodamurutti and the Mudikondan rivers and the second bit between the Mudikondan and the Tirumalairajan rivers and the third bit near Sundarperumalkovil Railway station. The second bit is locally know as Pattiswaram Padugai while the third as vellapilliarpettai.
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> "The village is governed by the provisions of the Madras Estate Land Act I of 1908."

This document of the year 1935 shows that the three blocks together constituted a Mokhasa village of Thenam Padugai Thattimal. Mokhasa village has been defined in Wilson's Glossary as "a village or land assigned to an individual either rent-free or at a low quit rent on condition of service." This definition was accepted by the Judicial committee in Venkata Narasimha Appa Rao Bahadur v. Sobhanadri Appa Rao Bahadur [[1905] I.L.R. 29 Mad. 52, 55]. Further, in the land revenue receipts, Exs. P-10, P-11, P-12 and P-22, and in the quit rent receipt which have been filed, the village is described as a whole village and even the appellant in Exs. P-15 and P-9 described the Pattiswaram Thattimal Padugai as a village attached to Mokhasa Thenampadugai Vattam.

In view of this evidence, it is quite clear that the finding concurrently reached in the High Court and the two Court below is based on evidence. It was contended that this evidence is of modern times and what is to be proved is the existence of an inam village in 1862, when private properties of the Rajah were returned to his widows. There is no doubt that the evidence does not go to that early date, but the documents take it back to 1873. And there is nothing to show to the contrary. In this state of the evidence, we do not think that the High Court was in error in holding that this land is a part of an inam village, and has been so eversince 1862. The fact that there are no house and that the suit land is situated in three different blocks does not militate against the evidence, which has been produced on behalf of the respondent. Nor do we think that the change of name can count, if the identity of the land is properly established. It was also contended in the case in the Court of First Instance that the plaintiff was a farmer of revenue and an intermediary, because he had leased out the lands in his true, and further that the lands were the private lands of the appellants, in which the respondent could not claim any occupancy rights. These two please appear to have been abandoned by the time the case reached the High Court, and were not pressed upon us.

In our opinion, the judgment under appeal is right in all the circumstances of the case.

The appeal thus fails, and is dismissed with costs.

Appeal dismissed.

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