Varada Bhavanarayana Rao

Vs

State of Andhra Pradesh & Ors.

Civil Appeal No. 340 of 1961

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta)

25.03.1963

JUDGMENT

DAS GUPTA J. -

In the district of Vishakhapatnam in the State of Madras there is a village known by the name of Vandrada. The entire area of this village is now covered by 5 inam grants, by far the major portion being comprised in the inam held by the appellant, Varada Bhavanarayanarao. In 1864 the Inam Commissioner granted fresh inam title deeds in confirmation of the existing inam grants, the total area of the village was recorded as 768.60 acres. Out of this 66.12 acres were unassessed poramboke; 690.13 acres of dry and wet lands were included in a title deed which is numbered 1082; 9.25 acres were included in title deeds Nos. 940 and 941; two their title deeds Nos. 940 and 941 granted by the Inam Commissioner covered an area of 3.04 acres. The question in controversy in the present litigation is whether the inam created by the original grant in confirmation of which title deed No. 1082 was issued by the Inam Commissioner forms an "estate" to which the Madras Estates Land (Reduction of Rent) Act, 1947 (Act XXX of 1947) applies. This Act will be later referred to in this judgment as "the Reduction of Rent Act". It is necessary to mention here that s. 1 of this Act provides that it applies to all estates as defined in s. 3(2) of the Madras Estates Land Act, 1908. The relevant portion of s. 3(2) of the Madras Estates Land Act runs thus :-

> "(d) any inam village of which the grant has been made, confirmed or recognised by the Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees".
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> Explanation (1) : Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name, which have already been granted on service or other tenure or been reserved for communal purposes....."

The Special Officer appointed by the Government of Madras under s. 2 of the Rent Reduction Act decided that the inam lands in respect of which title deed 1082 had been issued and which now admittedly are held in inam by the appellant formed an "estate". Accordingly the officer, acting under the Act recommended fair and equitable rates of rent for the raiyati lands in this estate. On June 27, 1950, the Government of Madras published in the Gazette a notification fixing the rates of rents payable in respect of lands in the village in accordance with these recommendations. Aggrieved by this action of the Government the appellant moved the High Court of Madras under Art. 226 of the Constitution praying for a writ of Mandamus directing the State to forbear from

giving effect to the notification. The High Court held that the remedy of the petitioner was by way of a suit and dismissed the application, on an undertaking given by the Government that it would waive its right to the notice under s. 80 of the Code of Civil Procedure. It was after this that the appellant filed in the Court of the Subordinate Judge, Srikakulam, the suit out of which this appeal has arisen.

In his plaint the appellant averred that for the lands comprised under title deed No. 1082, there was neither the grant of a whole village nor of a named village. It was also stated by the appellant that the lands now covered by the single title deed of 1082 originally formed the subject-matter of several separate grants. The plaintiff further averred that out of the lands of the village not included in any of the earlier grants, further grants were made subsequently which were separately confirmed and separate title deeds - Title deeds Nos. 940, 941 and Nos. 179 and 180 - were issued in respect of them. It was mainly on the basis of these averments that the plaintiff contended that his lands covered by the title deed No. 1082 were not at all an estate and prayed for a declaration to this effect. The State of Madras was the main defendant in the suit and contested the plaintiff's claim. In its written statement the State pleaded that there was in respect of the suit land a single grant of a named village and that it was not true that from out of any reserved lands further grants were made subsequently. Accordingly, it was urged that the plaintiff's contention that these lands did not form an estate should be rejected. Similar pleas were raised also by defendants 2 to 31 who were impleaded as the tenants cultivating some of the lands covered by the title deed 1082.

The Trial Court held that as the original grant is shown by the entries in the Inam Fair Register to have been made to a number of persons and there were deduction for poramboke and for personal and service inams, and further because even though the original grant may have been under a single transaction the confirmation was not by one title deed, the suit lands did not constitute an estate as defined in s. 3(2)(d) of the Madras Estates Land Act.

On appeal by the State of Madras, the High Court of Madras came to a contrary conclusion. The High Court pointed out that the opinion of the Trial Judge that to constitute an estate the confirmation must be under one grant was unsupportable. In the opinion of the High Court the entries in the Inam Fair Register showed that the grant consisted of a named village and it was the inam as granted that was confirmed by the Inam Commissioner. The High Court also expressed its view that "the whole Inam Inquiry proceeded on the footing that it was the whole village, excepting the two minor inams, that was given in inam to Chatti Venkatacharlu etc." The High Court accordingly allowed the appeal and dismissed the suit with costs.

Against this decision of the High Court the present appeal has been filed by the plaintiff on a certificate granted by the High Court.

In support of the appeal, Mr. Tatachari has contended that there were no materials on the record to show that the original grant was of a whole of the village or of a village by name. His next contention is that even if it be held against his client that the original grant that was ultimately confirmed by the title deed 1082 was of a named village the burden still lay on the defendants to show further that the portion of the village now covered by the minor grants (in respect of which the title deeds Nos. 940, 941 and title deed Nos. 179 and 180 were issued) had been granted prior to the date of that original grant. Learned Counsel contends that the defendants have failed to discharge this burden and so the plaintiff's case that these lands do not form an estate should be accepted.

The several questions of fact that arise in this case have to be decided on the meagre evidence

furnished by the Inam Fair Register of Vandrada village. For, as it usually happens in most of such cases neither the original grant which was confirmed by the title deed No. 1082 nor the originals of the other grants which were the basis of the other four title deeds are available. On an examination of the entries in the Inam Fair Register it appears that the inam grant which was conferred in 1864 by title deed No. 1082 was originally granted by Nabob Mofuz Khan in the year 1739. The area covered by this grant was estimated to be 40 garces in the year 1797. But a few years later - in an account of 1816 - the area was calculated as 100 garces. It is not possible to say on the basis of this statement of area that the entire area of the village was included in the original grant by the nawab. Clearly, therefore, the suit land does not form a whole inam village within the meaning of the main portion of cl. (d) which has been set out above. It can still be an estate however if it comes within the Explanation. The effect of the Explanation was succinctly put in a full Bench Judgment of the Madras High Court in Varadaraja-Swamivari Temple v. Krishnappa (I.L.R. (1958) Mad. 1023.), thus :

> "..... Where the grant in inam was of a named village; what was granted would constitute an estate even though the grantee did not have the benefit of the minor inams that lay within the geographical limits of that village, provided it was proved that the grant of the minor inams preceded in point of time the grant of the rest of the village as a named village."

In our opinion, the High Court was clearly right in its view that the original grant has been shown to be of a named village. Apart from the fact that the inam itself is described in Col. 8 of the Inam Register as Vandrada Shrotriem and Agrahar of Vandrada, we get a further fact from the entries in Col. 20 that Mr. Scott's Register of 1207 Fasli shows that the village Vandrada was originally granted in Inam to Chatti Venkatachari and others in A.D. 1739 for subsistence. This grant which was later confirmed by the title deed No. 1082 was thus clearly of a named village.

That alone is however not sufficient to make it an estate. It must further appear that the minor inams which covered part of the village, viz., Devadayan 9.25 acres and the personal inams for 3.04 acres had been granted prior to the grant of the rest of the village as a named village.

There is nothing on the record, however, to show the dates of the grants of the minor inams. It is therefore necessary to consider the question of burden of proof. The decision of this Court in Dist. Board, Tanjore v. Noor Mohd. (A.I.R. 1953 S.C. 446.), has generally been taken to lay down the law that when the question arises in any case before the courts whether certain lands constitute an "estate" the burden of proving that they constitute an estate is upon the party who sets up that contention. On a closer examination however it appears that this decision cannot be considered to be an authority for this proposition. The judgment of Mr. Justice Mahajan (as he then was) states "that it was conceded by Mr. Somayya, the learned Counsel for the respondent that the burden of proving that certain lands constitute an 'estate' is upon the party who sets up the contention." The judgment proceeded on the basis of this concession by Counsel and contains no discussion on the question and consequently no pronouncement. The other learned Judge, Mr. Justice Chandrasekhara Aiyar has also stated "that the respondent has not successfully discharged the onus that rests on him to show that Kunanjeri was an 'estate' within the meaning of the Act." His view that such onus did rest on the respondent was also apparently based on the concession made by Counsel. It will not be proper therefore to treat the judgment of this Court in Dist. Board Tanjore case (A.I.R. 1953 S.C. 446.), as a decision on the question of burden of proof in such cases.

It is now necessary to examine the principle involved in the question. On behalf of the respondent

State, Mr. Ram Reddy contended that a consideration of the scheme of legislation in introducing Explanation (1) to s. 3(2)(d) shows that the legislature intended the Court to presume that when a grant as an inam was expressed to be of a named village the area covered by the grant formed an estate, but that it was open to a party to rebut this presumption by showing that the excluded lands of the village had been granted by the grantor of the major inam after the date of the major grant. It appears that long before this Explanation was added to s. 3(2)(d), the Madras High Court (Wallis C.J. and Srinivasa Ayyangar J.) held in Narayanaswami Nayadu v. Subramanyam ((1915) I.L.R. 39 Mad. 683.), that as in all the documents the temple was described as the owner of the whole village, the burden was upon the plaintiff to show that the grant was only of the revenue of a portion of the lands in the village and as this burden had not been discharged Venkatapuram Agraharam was an estate even though there were minor inams in the village. This decision was given in 1915 and was followed in the Madras High Court till 1943 when in Adema v. Satyadhyana Thirtha Swamivaru ([1943] 2 M.L.J. 289.), another Bench held that unless every bit of land in the village was included in the grant, the grant could not be of the whole village and the land granted could not have formed an estate. This later view was followed the same year in Suri Reddy v. Agnihotrudu ([1943] 2 M.L.J. 528.). It was after this that the present Explanation 1 to s. 3(2)(d) was added by the Madras Estates Land (Amendment) Act II of 1945. There was a provision by which the amendment was to be deemed to have effect as from the date when the Madras Estates Land (Third Amendment) Act, 1936, bringing in sub-cl. (d) of cl. 2 of s. 3 in its present form came into force. Mr. Ram Reddy argues that the intention of the amending Act 1945 was to restore fully the view taken in Narayanaswami's Case ((1915) I.L.R. 39 Mad. 683.), and that under the definition of an inam village as explained by the amendment a named village would be presumed to be an inam village, and so an "estate" notwithstanding the existence of certain minor inams. The presumption could however be rebutted by showing that these minor inams were created by the grantor of the major inam subsequent to the creation of the major inam. The argument is undoubtedly attractive. It also finds support from the observations of Subba Rao J. In Janakiramaraju v. Appalaswami (I.L.R. (1954) Mad. 980.), where the learned Judge stated that the amendment introduced by the Explanation was intended to restore the well settled law disturbed by the decision in Ademma's case ([1943] 2 M.L.J. 289.). There are other observations in the judgment in Janakiramaraju's case (I.L.R. (1954) Mad. 980.), which appear to support even more clearly Mr. Ram Reddy's argument that as soon as it was found that the inam grant was of a named village a rebuttable presumption will arise that it formed an estate. On closer examination of the question however we find that it would be reading too much into the Explanation to think that the legislature wanted to create such a presumption. There are a number of reasons which make us hestitate to accept the view that such a presumption was created. The first of these is that when adding the Explanation in 1945 the legislature did not think fit to make any change in s. 23 of the Act, under which it shall be presumed where it became necessary in any suit or proceeding to determine whether an inam village or a separated part of an inam village was or was not an estate within the meaning of the Act as it stood before the commencement of the Madras Estates Land (Third Amendment) Act, 1936, that such village was an estate. If when adding the Explanation to s. 3(2)(d) in 1945 the legislature had intended to bring into existence a presumption as suggested by Mr. Ram Reddy, nothing was easier than to give effect to such intention by omitting from s. 23 the words "as it stood before the commencement of the Madras Estates Land (Third Amendment) Act, 1936" or by adding express terms that "where the grant was expressed to be of a named village the presumption will be that it is an estate until the contrary is shown".

Another reason which makes it difficult for us to accept Mr. Reddy's argument is the actual language used in Explanation ((1915) I.L.R. 39 Mad. 683.). The last portion of the Explanation clearly

indicates that the conclusion that the area is an "estate" can be drawn even where the whole of the village is not included in the grant, only if it appears that the portion not included had already been gifted and was therefore lost to the tenure. The addition of the last clause in the Explanation brings out the fact that the legislature did not intend to go quite as far as the High Court had gone in the case of Narayanaswami Nayudu ((1915) I.L.R. 39 Mad. 683.).

On a consideration of a history of the language used in the Explanation and also the circumstances in which the Explanation came to be added, we have come to the conclusion that the legislature being well aware of the difficulties of proving whether the minor grants had been granted prior to or subsequent to the grant of a named village, decided to leave the matter easy as between the contending parties and created no presumption either way.

That being the position, the question on which of the contending parties the burden of proof would lie has to be decided on the relevant provisions of the Evidence Act. Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Section 102 provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the burden of proof of that fact shall lie on any particular person.

Applying these principles, we find that the plaintiff who asks the Court for a declaration that the area covered by the title deed 1082 is not an estate must prove that it is not an "estate." If no evidence were given on either side the plaintiff would fail. For, we have found that there is no presumption in law either that the area in question is an estate or that it is not an estate. It follows from this that the plaintiff who is to prove that the suit lands do not form an estate must show that the minor inams were granted subsequent to the date of the inam grant of the named village. The plaintiff has clearly failed to discharge this burden.

We have therefore come to the conclusion, though for reasons different from what found favour with the High Court, that the plaintiff's suit has been rightly dismissed.

The appeal is accordingly dismissed. No order as to costs in this Court.

Appeal dismissed.

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