

Narra Seetharamayya Varma and Others

Vs

Kosaraju Venka Girayya By Lrs and Others

Civil Appeals Nos. 1086-1088 of 1970

(D. A. Desai, O. Chinnappa Reddy JJ)

08.04.1983

JUDGMENT

CHINNAPPA REDDY, J.-

1. The question for consideration in each one of these appeals is whether the land of the extent of Ac. 1.71 in R. S. No. 169/1 of Uruturu village was 'ryoti land' in an 'estate' within the meaning of these expressions in the Madras Estates Land Act. The answer to the question depends on the answer to the question whether Uruturu village was an estate within the meaning of Section 3 (2) (d) of the Madras Estates Land Act. The question arises this way. The respondents sued to recover rent alleged to be due to them from the appellants in respect of this land. If the land was ryoti land within an estate, the civil court would have no jurisdiction to entertain the suits; only a revenue court would have jurisdiction to entertain them. If the land is not ryoti land in an estate, the civil court would have jurisdiction to entertain the suits. After a long time drawn out litigation in the course of which parties to the actions made two earlier excursions to the High Court, the High Court of Andhra Pradesh, reversing the judgment of the lower appellate court, decreed the suits for rent holding the land was not ryoti land in an estate. The ryoti have appealed to this court under Article 136 of the Constitution.

2. It is pertinent to mention here that Uruturu has also been notified as an inam estate and taken over under the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 on January 10, 1961. The effect of the notification has also to be considered, but it may not be necessary to do so in the view that we propose to take.

3. As we said, the High Court in second appeal reversed the judgment of the lower appellate court. The lower appellate court, on a consideration of the documentary evidence and the facts and circumstances of the case, found that Uruturu was an estate within the meaning of Section 3 (2) (d) of the Estates Land Act as amended by Act 35 of 1956. The lower appellate court placed particular reliance upon an earlier judgment of the Madras High Court in respect of the very village Uruturu. In that case, the High Court had held that Uruturu village was an estate within the meaning of Section 3 (2) (d) of the Estates Land Act. The High Court, in that case, had the great advantage of having before it the original grant which unfortunately is no longer available. The lower appellate court also referred to the amendment of Section 3 (2) (d) by Act 35 of 1956 which clarified the position. Due notice was taken of the circumstances that the burden was upon the plaintiffs to prove that the grantor had reserved some interest in the land and granted the minor inam subsequent to the grant of the named village. To our mind, there was no justification for the High Court to interfere in second appeal even if it was inclined to take a different view of the evidence. In fact, we do not consider that a different view than that taken by the lower appellate court was possible. We notice

that the High Court completely lost sight of the burden of proof and proceeded as if the burden was on the defendants to establish that Uruturu was an estate within the meaning of Section 3 (2) (d) of the Estates Land Act and that the grantor had reserved no interest in the land at the time of the original grant. The burden was wrongly placed upon the defendants by the High Court and even if it was rightly placed on the defendants, we are satisfied that the burden was adequately discharged.

4. On the question of burden of proof, it is sufficient if we refer to Aluru Kondayya v. Singaraju Rama Rao, where this court approved the view taken by the Andhra Pradesh High Court in Nelluru Sundararamareddy v. State of A. P., and State of A. P. v. Korukonda Bhattary Appalacharyulu and the Madras High Court in Kakarlapudi Janikiramaraju v. Gedda Appalaswami and Varadarajaswamivari Temple v. Sri Krishnappa Govinda. The view taken was that the explanation to Section 3 (2) (d) raised a presumption where a grant was expressed to be of a named village, that the area which formed the subject-matter of the grant should be deemed to be an estate and it was for the party contending that the grant in question fell outside the definition of Section 3 (2) (d) of the Act to prove that case either by showing that the minor inams not comprised in the grants were created contemporaneously with or subsequent to the grant of the village by the original grantor. The court said,

...the language used by the Legislature in enacting Explanation (1) to Section 3 (2) (d) expressly directs a presumption to be raised. That presumption arises when it is proved that 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. Raising of the presumption is not subject to any other condition. The Legislature has by the non obstante clause affirmed that such presumption shall be raised even if it appears that in the grant are not include certain lands in the village which have before the grant of the named village been granted on service or other tenure or have been reserved for communal purposes.

5. The position was also further clarified by Explanation (1-A) to Section 3 (2) (d) which was introduced by amending Act 35 of 1956 to the effect :

An inam village, hamlet or khandriga in an inam village granted in an inam, shall be deemed to be an estate, even though it was confirmed or recognised on different dates, or by different title deeds or in favour of different persons.

This Explanation makes it clear that if the grant was of a named village, it will be deemed to be an estate, notwithstanding the existence of minor inams which were confirmed or recognised by different title deeds, even in favour of different persons.

6. The High Court has clearly misinterpreted the entries in the Oake's Inam Register of 1797 AD. In the first column, the entry is 'Uruturu' and against the second column (the nature of the inam), the entry is 'Agraharam'. The names of grantor and grantee are mentioned in columns 4 and 5 and in column 10, the extent of land is mentioned as 37.12 khatties. The High Court wrongly thought that the entry in column 10 was 37.75 acres. Khatties were local measures in popular use in those days and if only the High Court had referred to the earlier judgment of the court which had been placed before it, it would have discovered that the extent of land was mentioned in khatties and not acres. The comment of the High Court that it was difficult to hold that the grant which consisted only 37.75 acres could ever be thought of as grant of a whole a village, was therefore misplaced. The entries in the Oake's register clearly show that Uruturu Agraharam which was of the extent of 37.3/4

khatties and bearing a kattubadi of 30 varahas had been granted to Anantacharyulu by Nizam-ul-mulk by a sanad of Fasli 1142. The grant was clearly of a named village and without doubt it was an 'estate' within the meaning of Section 3 (2) (d) of the Estate Land Act. There is no evidence as to when the minor inam was granted before the grant of the village, whether it was granted by the original grantor subsequent to the grant of the village or whether it was granted before the grant of the village or whether it was carved out of the original grant itself subsequent to the date of the original grant. The burden of establishing that Uruturu inam village was not an 'estate' within the meaning of Section 3 (2) (d) was on the plaintiffs and the burden has not been discharged. As already mentioned by us, the Madras High Court, on an earlier occasion, had come to the conclusion, with the meaning of Section 3 (2) (d) of the Estate Land Act. We have also referred to the fact that the village has also been notified as an 'estate' under the Madras Estates (Abolition and Conversion into Ryotwari) Act. We have no option, but to allow the appeals, set aside the judgment of the High Court and restore that of the lower appellate court. As the respondent have not chosen to contest the appeals, we do not award any costs.

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