
(1964) 01 OHC CK 0007
In the Orissa High Court
Case No : Second Appeal No. 326 of 1962

A. Venkata Rao	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 07-01-1964

Acts Referred:

Citation : (1964) 30 CLT 336

Hon'ble Judges : Barman, J

Bench : Single Bench

Advocate : Y.S.N. Murty, for the Appellant; Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Barman, J.—The unsuccessful Plaintiff in the courts below is the Appellant. The suit out of which this appeal arises was filed by the Plaintiff for declaration that the village Koitada is not an estate as defined u/s 3(2)(d) of the Madras Estates Land Act as amended by Orissa Act 17 of 1947 and cannot be acquired by the State Government under the Orissa Estates Abolition Act, 1951.

2. The Plaintiff's case is this His ancestors were granted about 481 Bharanams of Inam in 1706 A.D. by the Maharaja of Digapahandi. The extent of the entire holding was originally 200 acres, that is to say 1000 Bharanams. Subsequent to this grant in 1706 A.D. the successors-in-title of the original grantee were given another 100 Bharanams in addition. On July 1, 1954 there was a notification by the Government of Orissa that the estate vested under the Estates Abolition Act. On July 27, 1954 a notice was served on the Plaintiff to deliver possession. On August 17, 1954 the Plaintiff filed a writ petition in this Court. In the said writ petition this Court made a stay order on August 19, 1954. Soon thereafter on December 4, 1954 there was an amendment of the definition of an "estate" by Orissa Act 17 of 1954 whereby an estate was meant to include part of an estate for the purpose of vesting. On December 10, 1956 the writ petition was dismissed by the High Court with the observation that the Plaintiff should

establish his right in a regular civil suit. On April 28, 1957 the present suit was filed by the Plaintiff for reliefs aforesaid. The defence taken on behalf of the State of Orissa is that the grant in 1706 A.D. (which was admitted) was of a whole and named village, so an estate within the meaning of Section 3(2)(d) of the Madras Estates Land Act; and therefore it vested.

3. The simple point in this appeal is whether or not the grant was of a whole and/or named village. The definition of an estate as given in the Orissa Estates Abolition Act was amended by Orissa Act 17 of 1954 which came into force on December 4, 1954. In the amended definition any inam grant will constitute an estate within the meaning of the Act. The suit having been filed on April 23, 1957, that is long after the amendment it cannot be said that the suit village is not an estate by the date of the suit. The Government notification in question was issued on July 1, 1954, that is to say, before the amending Act 17 of 1954 (which came into force on December 4, 1954) by which the definition of an "estate" was amended as aforesaid. The amending Act was not given retrospective effect. The Government therefore cannot have the benefit of the new definition of an "estate". Then the question arises whether the suit village is an "estate" within the meaning of Section 3(2)(d) of the Madras Estates Land Act, which so far as material for our purpose, reads as follows:

3(2) "Estate" means

x x x x

(d) any Inam village of which the grant has been made confirmed or recognised by the British 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.

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.

4. The question now is:

Was the grant in this case in respect of the entire village or a named village? The Plaintiff who asks the court for a declaration that the area covered by the inam title deed No. 400 dated October 28, 1862 ext. 11 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, 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 land does not form an estate must show that the other grants were made subsequent to the date of the inam grant of the named village.

5. In the present case, it is clear that it was a grant of a named village as appears from ext. 2 which is a certified copy of statement in respect, of the suit

village of the year 1785 and also from certified copy of Gudikattu account for the suit village for Fasli 1261 ext. 5. That apart, in the inam title deed in original dated October 28, 1862 ext. 11 the name of the village Koitada is mentioned. It is also evident from the Fair Inam Register 1802 ext. 10 that the whole named village was granted. In column 5 of the document the approximate area of Koitada village as mentioned is 200 acres. After survey the area was recorded as 165-89. In any event a named village was granted.

6. The original inam deed of 1706 A.D. which is the genesis of the Plaintiff's title has not been produced by the Plaintiff although it is the basis of his title. In the absence of the original inam deed, the Fair Inam Register (ext. 10) of 1862 is the only document which can be safely relied on. Their Lordships of the Privy Council have spoken highly of the entries in the Fair Inam Register as of great value. Their Lordships observed that the preparation of this register was a great act of State and its preparation, contents were the subject of much consideration under elaborately detailed reports and minutes; the Inam Commissioners through their officials made enquiry on the spot, heard evidence and examined documents, and with regard to each individual property the Government was put in possession not only of the conclusion come to as to whether the land was tax free, but of a statement of the history and tenure of the property itself. Their Lordships attach utmost importance, as part of the history of the property, to the information set forth in the inam register *Arunachallam v. Venkatachalapathi* AIR 1919 P.C. 62.

7. It is clear from inam register ext. 10 that all subsequent grants were by the grantee and not by the grantor. In any case it was for the Plaintiff to prove that the grants referred to in column 20 of the document were subsequent grants by the grantor himself or his successors-in-title. All doubts as to whether the grant was by the grantor or not, are dispelled by ext. 11 inam title deed. If the other grants were by the grantor then several title deeds would have been issued.

8. The learned lower appellate court has clearly dealt with these aspects by reference to the relevant documentary evidence on the point and rightly came to the conclusion that from the particulars as mentioned in ext. 10 and ext. 11 it can be properly inferred that the grant in this case was of a whole inam village. I agree with the reasoning on which the learned lower appellate court came to his conclusion.

9. It was submitted on behalf of the Plaintiff Appellant that the courts below had not considered certain documents, and that therefore the case should go back on remand for consideration of the said documents. In view, however, of my finding that the court below rightly came to the conclusion that the grant in this case was of a whole inam village mainly on the basis of ext. 10 and ext. 11 as discussed above, the points urged on behalf of the Plaintiff Appellant in support of remand lose their force.

10. I agree with the finding of the lower appellate court that it is an estate u/s

3(2)(d) of the Madras Estates Land Act and duly vested in the State Government by virtue of the said notification. In this view of the case the decision of the court below is upheld. This appeal is accordingly dismissed with costs.