

(1925) 02 MAD CK 0067
In the Madras High Court

(Buddala) Gangayya and Others

APPELLANT

Vs

Vennavalli Satyanarayana and Others

RESPONDENT

Date of Decision : 11-02-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : AIR 1925 Mad 1021 : (1925) 22 LW 120

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The facts of this Second Appeal may be briefly stated. One Varanasi Ramayya owned an Inam, measuring 2 acres 30 cents, in the suit village of Ramasingavaram. He sold half of it to P.W. 3, under Ex. A (14th December 1895). P.W. 3 sold half of his moiety (i.e., one-fourth) under Ex. C-1 to K. Lingamaraju, who then sold it to plaintiff, under Ex. B. P.W. 3 sold the other half of his main by also to plaintiff under Ex. C (21st April 1914). Thus whatever inam Ramayya had sold passed to the plaintiff. The suit is for recovery of that Inam.

2. There is some doubt and confusion, as to the identity of the inam. As will appear later on, the point is in my opinion, not material. But I may indicate the nature of the doubt, according to the Munsif's findings. The Subordinate Judge has given no finding. According to the District Munsif, it appears that the Survey number of the Inam, according to the old Survey, was No. 114. In the resettlement of the village in 1899 or 1900, S. No. 114 is shown as 236-A. The rest of the Survey No. 236 belongs to Government. The Munsif also says : "At the time of the Sub-Division, Survey field No. 236-A appears to have been shown as Survey field No. 236/A/544."

3. Some of the Survey records show interpolations and corrections and show that Survey No. 236/A/544 is South of S. No. 104; but it is possible that the corrections represent the proper state of things, though it is not clear. The plaintiff's suit is for recovery of the land south of S. No. 104.

4. The defendants plead this the land, south of S. No. 104, is, not 236/A/544, but 236 G and it belongs to Government. They plead no title of their own, not even a right to possession, under the authority of the true owner. In the written statement, they no doubt pleaded that Buddala people cultivated it and sold it to 10th defendant, but no sale-deed is produced. In fact, it was admitted before me that such part of the suit land, as was under the occupation of the defendants, was under their Sivajima cultivation, i.e., they are practically trespassers and have no right of any kind. When a person, who has no patta and is therefore not a ryot, trespasses on a land belonging to Government and cultivates it, the Government sometimes imposes an assessment (somewhat heavier than the usual settlement assessment). This is called Sivajima assessment. It amounts to a condoning of the act of trespass, but does not amount to a recognition of any right, nor any undertaking on the part of the Government to permit the occupation for the future, though as a matter of fact, the occupation may go on for years, and the trespass for that year be condoned for that year by the recovery of the assessment. (S.O. 15 paragraphs 23, 24 and 25). It is clear that defendants' rights, even as such trespassers, terminated with 1918 (See Ex. G).

5. Thus, the defendants have no substantial defence on the merits. When the original written statement was filed, at the most, it amounted to a plea of *jus tertii*, i.e., the right of Government. In 1920, the plaint was amended by making the Government a party and paragraph 7(1) was added. The defendants agreed to the amendment and did not oppose it. The result of the amendment was that the Government, whose title was pleaded by the defendant as *jus tertii* became a party to the suit and the Government does not support the other defendants and there is no *jus tertii* to be pleaded. A plea of *jus tertii* is no defence, unless the defendant can show that the act complained of was done by the authority of the true owner : *Narayana Row v. Dharmachar* [1903] 26 Mad. 514 citing *Graham v. Peat* 1 East 244 and *Chambers v. Donaldson* 11 East 65. The situation is that plaintiff and Government are the two rival owners of the suit land and parties to the suit, and it is a matter to be settled between them and no *jus tertii* is available for the other defendants. At this stage, the Government recognised that the plaintiff is the owner of the suit land and plaintiff and Government have filed a compromise petition to that effect, (vide page 3 of the pleadings). The Government having found that the plaintiff was the owner of an Inam and that they had recognised him to be the owner of an Inam (see Exs. D, E-1 and J), but that there is some dispute, as to its localisation, settled it, in the way they liked it best and found most convenient : (Ex. G.) I do not see how there is anything more to be pleaded by the other defendants, or to be decided by the Courts, after the settlement between the Government and plaintiff, the only two parties who are interested in the matter.

6. The learned vakils for the defendants conceded before me that he cannot question the discretion of the lower Courts, in allowing the amendment and especially as his clients agreed to it and did not oppose it in the first Court. He contended that a plaint could not be allowed to be amended, so as to enable the

plaintiff to rely on a title, created after the filing of the plaint.

7. In the present case, no title has been created, since the date of the plaint. That the plaintiff was always the owner of an Inam and that there was an Inam in S. No. 236, not belonging to Government, admits of no doubt: (see Exs. D, E, E-1, G and J.) That the plaintiff is the owner of it admits of no doubt (Exs. A, B, C, C-1). The only question in this case was about the situation of the inam. The question of localisation of the inam has been settled by the Government, the owner of the rest of the land, who chose to accept such of the survey records as support the plaintiff. I do not see that this can be said to be a case of a title created after the filing of the plaint. Again, I do not see how the defendants can raise such a plea. They have no locus standi in this case. They have no ownership or right to possession, under the real owner (who is either plaintiff or Government). The plea of *jus tertii* cased to be such, after the Government was impleaded and supported the plaintiff. The principle that the possession is good against all but the true owner (which is merely another way of stating that a plea of *jus tertii* is a good defence) cannot avail the defendants as the third person is impleaded as a party and admitted the plaintiff's title to it. If the Government is transferred as a plaintiff, the defendants have no defence to urge.

8. Even apart from this, I do not think there is any general rule that an amendment cannot be allowed, so as to plead a title acquired after the date of the plaint. There was no amendment of the plaint in *Radhay Koer v. Ajodhya Das* [1908] 7 C.L.J. 262 and *Purkhith Panda v. Ananda Gaontia* [1908] 8 C.L.J. 116 and otherwise the cases are very dissimilar and do not held the defendants. In *Rai Charan v. Biswa Nath* [1914] 20 C.L.J. 107, there was a devolution during the pendency of the suit, and the principle that a Court may take notice of events, which have happened since the institution of the suit, to do complete justice between the parties was recognised. In the present case, the amendment by the addition of the Government as a party was made for the purpose of attaining finality; (see Order, dated 26th January 1921), and I have already shown that this is not at all a case where the plaintiff's title is acquired after the suit. *Abdul Bahaman v. Sarafat Ali* [1915] 22 C.L.J. 412, relied on by the Court below, is a case of execution sale and does not help us. In *Ramanadan Chetti v. Pulhkutti Servai* [1898] 21 Mad. 288, the amendment was asked, at a very late stage i.e., in Second Appeal and was refused. In this case, the amendment was sought, at the earliest possible stage, i.e., before the trial in the first Court was taken up and was granted. The vakil for the appellant relies on *Evans v. Bagshaw* [1870] 5 Ch. 340, affirming *Evans v. Bagshaw* [1870] 5 Ch. 340. The case in *Evans v. Bagshaw* [1870] 5 Ch. 340, was considered in *Doraisami Pillai Vs. Chinnia Goundan and Others*, where Wallis, C.J., observed : "There are no English decisions since the Judicature Act, that such a course is incompetent and on the other; hand, as observed in *Kisandas Rupchand v. Rachappa Vithoba* (1909) 33 Bom. 644, the discretion conferred under Order 6, Rule 17 of the CPC and Order 28, Rule 1 of the English Rules is very wide," and the amendment was allowed to stand. The same view was taken in *P. Thimmayya Vs. P. Siddappa*, and again by

Venkatasubba Rao, J., and myself in a recent judgment (S.A. No. 1061 of 1922), where it was observed that such an amendment ought to be allowed, in all cases where there is no question of change of jurisdiction, or great delay in making the application, or depriving the opposite party of a defence otherwise available, or the necessity of a fresh trial into facts. In the present case, if a fresh suit is filed, the defendants have absolutely no defence. The learned vakil for the appellants at first suggested that he may apply for a grant for the suit land on dharkhast, but when it was pointed that this is not a dharkhast case and the question is one of localisation of an inam, to which the plaintiff is admittedly entitled, he withdrew the suggestion and could not suggest any other defence.

9. It is also contended that the compromise between plaintiff and Government does not amount to a conveyance. But this point does not arise on the view I have taken of the facts of the case. The compromise has only the effect of localising the plaintiff's admitted inam and no more. Nor has *Dharanikanta Lahiri v. Gabar Ali Khon* [1913] 25 M.L.J. 95 any application to the facts of this case.

10. The Second Appeal is dismissed with costs. One set to be shared equally by Government and plaintiffs.