

(1957) 02 AP CK 0011

In the Andhra Pradesh High Court

Case No : Appeals No's. 66 and 585 of 1952 and C.M.P No. 567 of 1957

C. Venkareddi and others

APPELLANT

Vs

C. Subbarami Reddi and others

RESPONDENT

Date of Decision : 15-02-1957

Acts Referred:

Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 10(2)

Citation : AIR 1958 AP 81

Hon'ble Judges : Umamaheswaram, J; Mohammad Ahmed Ansari, J

Bench : Division Bench

Advocate : M. Seshachalapathi and M.V. Srinivasa Rao, for the Appellant; M.S. Ramachandra Rao and M. Krishna Rao, for the Respondent

Judgement

Umamaheswaram, J.—The question that arises for consideration in both the appeals is whether the appellants are entitled to rights of occupancy in the suit lands situated in Muduthurivari Khandriga. O.S. No. 142 of 1950 on the file of the Subordinate Judge of Nellore was instituted by the inamdars for a declaration of their absolute title and enjoyment of the A schedule lands and for a permanent injunction restraining the defendants from interfering with the enjoyment and possession of plaintiffs 1 and 2 and for recovery of possession of the B schedule lands together with subsequent profits till delivery of possession and for other incidental reliefs. O. S No. 151 of 2850 was filed by the 1st defendant in O. S. No. 142 of 1950 as against the inamdars for a declaration that he was entitled to right of occupancy.

Both the suits were tried together by the Subordinate Judge of Nellore, and he held that Miduthurivari Khandriga was not an estate within the meaning of the Madras Estates Land Act as amended, hereinafter referred to as the Act and that the inamdars have proved beyond doubt that they were entitled to both the Malwaram anti Kudivaram rights, that the appellants have not established that they were entitled to permanent rights of occupancy in the suit lands and consequently decreed O. S. No. 142 of 1950 and dismissed the other suit. The

tenants have consequently preferred the above appeals.

2. The first question that arises for consideration in the appeals is whether the tenants have proved that grant was of a whole village so as to attract the terms of S. 3 (2) (d) of the Act as amended. It appears from the Inam Fair Register marked as Exhibit A-35 that Miduthurivari Khandriga formed part of a Government village called Patur in the Nellore District and was granted in inam long ago. According to columns 11 and 13, the names of the original grantor and the grantee are not known. Column 12 shows that the Collector confirmed the Khandriga to the person mentioned in Column 16 in 1824.

Column 21 proves beyond doubt that the grant was of a Khandriga and that it was approved and confirmed by the Inam Commissioner G. N. Taylor and Title Deed No. 2012 was issued in respect thereof As pointed out by Rajamannar C. J. in *JanaKlram v. Gopalam*, 1951-2 Mad LJ 272: 64 Mad LW 732: *Sishtla Janakirama Sastri and Another Vs. Jagani Gopalam and Others*, "it is well-established that any inam village in S. 3 (2) (d) of the Estates Land Act means "a whole village granted in Inam" and not anything less than a village, however big a part It may be of that village". The word "Khandriga" is of great significance, and it is derived from the Sanskrit word "Khandam" which means "a piece" or "a part".

In the decision reported in AIR 1932 238 (Privy Council) , the Judicial Committee accepted the meaning of the expression "Khandriga" given to it in Maclean's Manual of the Administration in the Madras Presidency, Volume III, as "a block of land granted as inam, less than a village but much larger than an ordinary inam". The Diglot Register marked as Exhibit A-20 and the village plan Exhibit A-21 attached thereto, clearly prove that Miduthurivari Khandriga is not situated as one plot but is comprised of several parcels of land in the parent village of Patur, admittedly, a Government village.

We have therefore no doubt whatsoever that the grant was not of a whole village so as to fall within the terms of S. 3 (2) (d) of the Act. The tenants are therefore not entitled to claim rights of occupancy under the Act. In this connection, we might mention that the Subordinate Judge has noted in paragraph 18 of his Judgment that the learned counsel for the 1st defendant did not press his argument that the suit lands formed part of an estate within the meaning of S. 3 (2) (d) of the Act. Even before this Court, no serious argument was addressed on this aspect.

3. The next question that has to be considered is whether the Inamdars have proved that they are the owners of both the varams and that they are entitled to eject the appellants herein. The original grant is not available. So it is only from the course of conduct as evidenced by the several documents and the oral evidence that the question has to be decided. From the Inam Fair Register marked as Exhibit A-35 it appears that Miduthuri Ramalinga Sastrulu was in enjoyment of the inam at the time of the inam inquiry and that the Khandriga

was rented out for Rs. 140/- inclusive of the jodi. The earliest leases produced in the case are of the year 1874 and they are marked as Exhibits A-4 and A-5.

The sites were not included under Exhibit A-4 and were allowed to remain in the enjoyment of the inamdar. The fruit-bearing trees were directed to be looked after by the lessee and the produce therefrom was reserved to be enjoyed by the inamdar. Under Exhibit A-5, the inamdars retained the lands of an extent of about 4 acres known as Chavitithota and Kakaradibba for their enjoyment.

The Khandriga was sold by the inamdar to Puranam Varadacharyulu under a sale deed dated 14-3-1879 and he executed a registered lease dated 12-6-1882 for a period of nine years in favour of three lessees belonging to different families viz., B. Chandra Reddy, D. Pitchi Reddi and I Ramaswami Reddi. The rent that was reserved was a sum of Rs. 90/- and the assessment of Rs. 120/- was directed to be paid by the lessee to the Government. The lessor agreed to meet the expenses of the removal of the prickly-pear standing on the lands and the lessee undertook to cut the babul trees in beeti polam and bring the firewood to the residence of the lessor. The right of the inamdar in respect of the trees was recognised by the lessees.

4. On 28-11-1882, the Khandriga was sold by Puranam Varadacharyulu under Exhibit A-2 to Nelaturu Venkataramacharyulu, the grand-father of plaintiff's 2 and 3. The sale deed expressly conveyed -not only the lands but also other (sic) as astabhogamulu. Under Exhibit A (sic) two stone-built wells as also the fruit (sic) trees standing on the lands were expressly conveyed. Reference was made to a registered mortgage created by the inamdar for a sum of Rs. 2,000/- in favour of Volati Venkatachalam Chetti and Nalam Venkayya, residents of Nellore. It is also stated in the sale deed that the vendee should take possession of the lands after the expiry of the lease marked as Exhibit A-6 and enjoy the same "by causing cultivation, etc., to be carried on therein, as you please".

On 22-9-1880, on the expiry of the lease period under Exhibit A-6, the grand-father of plaintiffs 1 to 3 granted a registered muchilika marked as Exhibit A-7. It was in favour of not only the original three lessees but also two more. The makta or rent was raised from Rs. 90/- to Rs. 200/-. It contained an express stipulation that possession of the lands should be delivered on the expiry of the lease period. The lessees also undertook not to cut the fruit bearing trees and to safeguard the boundaries existing for the lands leased out to them. The next registered lease is Exhibit A-8 dated 29-5-1899 and it is in favour of a different set of tenants viz., Vangavaragu Venkata Reddi, his son Venkata Reddy and Kesava Reddi.

The rent that was stipulated under the document was a sum of Rs. 300/-. The lessees were directed to clear the prickly-pear at their own expense. It was provided that the lessees should not sub-lease the lands or transfer their leasehold interest without the consent of the lessor it was expressly stipulated that if they should instruct any houses on the aforesaid lands they should dismantle and

remove them at the end of the lease Period. On 10-6-1912, a lease Exhibit A-9, was executed by a different set of tenants agreeing to pay a higher rent. The conditions of lease were more or less the same as those contained in Exhibit A-8.

5. After the execution of Exhibit A-9. Venataramacharyulu died in 1914, and according to the evidence of the 5th plaintiff examined as P.W. there was division between his father and his uncle and the suit items fell to the share of his father Ramanujacharyulu. After the expiry of the case period under Exhibit A-9, i.e., in 1920, the under were leased out by Ramanujacharyulu to Vangavaragu Venkata Reddi, for a period of our years. The next lease deed dated 10-8-1924 as an unregistered one in favour of Isanaka anga Reddi and it is marked as Exhibit A-10. As is inadmissible in law for the purpose of providing the terms of the lease, we shall next refer (sic) the registered lease deed Exhibit A-30 dated (sic) 3-1925 executed in favour of Ranga Reddi.

There is an important clause in that document that if the Government should acquire the and the lessor alone was entitled to receive the compensation. It also contained a stipulation that the lessee should deliver possession in good condition on the expiry of the lease without reference any notice. On 30-10-1929, Chillakuru Balarami (sic)ddi, examined as P.W. 4, executed a registered (sic)uchilika Exhibit A-11 in favour of Ramanujacharyulu for a period of ten years. According, to evidence, Ramanujacharyulu actually delivered the lands to him, that be converted 40 acres in-wet, that Ramanujacharyulu paid him for clearly pricklypear and that after the expiry of the (sic)se he actually delivered the lands to the 1st defendant in pursuance of letter received from Ramanujacharyulu. Agreeing with the Court be low, we accept his evidence and hold that the 1st defendant was inducted into possession only in (sic) after the lease under Exhibit A-11 came to an end.

In this connection, it is also important to note that the 1st defendant himself stated in unequivocal terms in paragraph 4 of his plaint in O. B. 151 of 1960 that he was admitted into possession of the suit lands, from the commencement of fasil 1349. Chittamuru Venkatareddi the 1st defendant executed a registered lease deed dated 16-6-1939 along with Isanaka Ranga Reddi and after the expiry of that lease he alone executed Exhibit A-13, dated 7-7-1949 for a period of one year. Both the leases executed by him contained express clauses that he would deliver possession of the tends to the lessor at the expiry of the cowls without reference to notice. Most of the other clauses were similar to those contained in the earlier registered leases.

6. The suit lands were purchased by the plaintiffs 1 and 2 from the other plaintiffs to O.S. No. 142 of 1950 under Exhibit A-3 dated 14-7-1949 and the lands described in schedule A were delivered possession by the appellants who claimed a rebate of Rs. 200/- from the rent payable by them. Though the purchasers issued notices calling upon the appellants to deliver possession of B. Schedule lands under Exhibits A-17 and A-18 in December 1949, no reply was given thereto for nearly six months, i.e., till Exhibit A-19 dated 24-6-1950.

Plaintiffs 1 and 2 who did not obtain possession of B schedule lands had consequently to institute O. S. No. 142 of 1950 for that purpose.

7. The narration of the above facts establish beyond doubt that the inamdars were the owners of both the varams and were dealing with the lands as their own. The sale deeds executed by them recite that they were entitled to aslebhogam and that they had rights in the trees as also in the wells. The lease deeds prove that they were executed by different tenants and for varying rents. In all the leases, the rights of the inamdars to the trees were recognised. They also contained specific clauses to quit at the expiry of the lease period. In Exhibit A-30 there was also a condition that if the land was acquired by the Government, the compensation Should be payable only to the lessor.

It is beyond doubt that the Inamdars were changing tenants from time to time according to their sweet will and pleasure. The evidence of the previous tenants P. Ws. 3 and 4 is also to the same effect. The appellants themselves are not in a position to say how they are entitled to claim rights of occupancy when they were let into possession by the inamdars for the first time only in 1939. In this connection, it is important to set out the statements made by the 1st appellant in the course of his cross-examination, viz.

There is nothing to show that I have occupancy rights. I claim the same as in the adjacent villages, Gangavaram, etc Ryots have occupancy rights.

While there is evidence on behalf of the inamdars that they were selling, leasing, mortgaging and partitioning the suit lands, there is absolutely no evidence whatsoever on behalf Of the tenants that they ever dealt with the Kudivaram interest or exercised any proprietary rights to respect of the suit lands. There is no evidence that the tenants were in continuous and uninterrupted possession of the lands from generation to generation or that Kudivaram interest devolved from father to son the only instance of partition spoken to in the course of the evidence was the partition that was entered into between the 1st defendant and his co-lessee of the lands for and during the leasehold period. If the tenants had rights of occupancy, they would be entitled to the trees and the wells standing on the lands. The several clauses contained in the lease deeds clearly negative the right of occupancy set up by the appellants. We notice that even in the leases executed long prior to the passing of the Act, the tenants had voluntarily agreed to give up the lands on the expiry of the period provided under the leases.

It is also important to note that in one of the early leases it was specifically provided that the tenants should not transfer or sublease their leasehold interest. In our opinion, the cumulative effect of the facts set out above is to establish that the inamdars were entitled to both the varams in the suit lands, and we agree with the conclusion arrived at by the Subordinate Judge on this question.

8. Sri. M. Seshachalapati, the learned advocate for the appellant contended that the burden of proof lay upon the inamdars to prove that they had both melvaram and kudivaram interest in the Suit lands and that as they have failed to prove the

same, the suit in ejectments ought to fail. He further argued that as the original grant was in favour of a brahmin, the inam must be presumed to be of the melvaram right only. In support of his contention, he relied upon the decisions of the Privy Council reported in AIR 1949 278 (Privy Council) and AIR 1929 115 (Privy Council) As pointed out by Sri Madhavan Nair in Lakshmana v. Venkateswarlu (C), at page 590 (of ILR Mad) : (at P. 285 of AIR).

it is settled law that in a suit for ejectment the burden of proof lies on the, plaintiff to show that he has a right to eject the defendant before the onus is shifted to the defendant to prove that he has a right of permanent occupancy.

As we find no difficulty in arriving at the conclusion that the inamdars were entitled to both the varams and that the appellants are liable to be ejected, the onus recedes into the background. Following the decision in Lakshmana v. Venkateswarlu (C), we hold that even in the case of a minor inam or a Khandriga, the inamdars who have instituted the suit for recovery of possession are bound in law to prove that both the varams were granted to them. The evidence analysed above establishes beyond doubt that the grant was of both the varams and that they are entitled to eject the appellants. If apart from the statute, the appellants who have been proved to have been let into possession of the lands claim that they have rights of occupancy, it is for them to, make out these rights.

As stated supra, the 1st appellant admitted that he was put in possession of the land only in 1939. It is also proved beyond doubt that the prior tenants having given up possession to the inamdars, the appellants were inducted into possession only in 1939. They have not adduced any evidence to prove how they obtained or acquired any rights of) does not lay down that a grant to a brahmin should be presumed to be only of the melvaram. Lord Atkin stated at p. 464 (of ILR Mad) (at p. 119 of AIR) that an inam granted to the learned brahmins apparently not resident in the village granted, but resident about two miles away by itself is by no means conclusive," that the grant was of melvaram.

In Suryanarayana v. Patanna, ILR 41 Mad 1012: AIR 1918 PC 169 (E), the Srotrien granted to a brahmin was held to consist of both the varams. In the instant case, it is not clear whether the grant was to a non-resident and a brahmin, as it is noted in the Inam fair Register, that the name of the original grantee is not known. Even assuming that by reading the entries in columns 14 and 15 in Exhibit A-35, the grant must be regarded to have been made to a brahmin, it does not appear that he was not residing in the village at the time of the grant and was therefore not in a position to cultivate the lands. There is also no force in the contention that as at the time of the inam inquiry, the Khandriga was actually rented for Rs. 140/- inclusive of the jodi, the tenants were entitled to rights of occupancy.

It is clear law that what has to be proved is that at the date of the grant there were tenants in the village holding lands with rights of occupancy by custom or

otherwise as pointed out by Sir John Edge at page 1020 (of ILR Mad): (at p. 172 of AIR) in ILR 41 Mad 1012: AIR 1918 PC 169 (E). Viscount Cave also rightly pointed out at p. 172 (of ILR Mad): (at pp. 112-113 of AIR) in Venkata Sastrulu v. Seetharamudu, ILR 45 Mad 166: AIR 1919 PC 111 (F), that it would be unsafe to build on the use of expressions such as mouje or mauza in documents of 1783 and 1803 an inference as to the existence in 1748 of tenants having permanent rights of occupancy.

As the grant under consideration was not described to be that of a mouje the meaning of the word "mouje" as approved by Lord Atkin at p. 463 (of ILR Mad): (at pp. 118-119 of AIR) in AIR 1929 115 (Privy Council) , has relevancy or bearing to the facts of this case. The mere fact that the inamdars granted a lease of the Khandriga lands at the time of the inquiry does not lead to the conclusion that the tenants had rights of occupancy. The same view was taken by a Bench of this Court in an unreported decision in Appeal No. 640 of 195(sic) (Andhra) (G), and the relevant observations are as follows:

For the purpose of fixing the quit rent, the inam was valued. The value to the inamdar was taken as the income derived by him from the land. The fact that the income from the land happens to be only the rent derived from the cultivating tenants is not decisive on the question that only the melvaram was granted. Even if both the varams were granted, the value the inamdar was only the rent the land was fetching.

We are therefore not prepared to accept the contention that as it is proved that there were tenants at the time of the inam inquiry and the as the lands were granted on lease by the inamdars the tenants must be held to have rights of occupancy.

9. Before concluding our Judgment, it is necessary to refer to a recent decision of the Court reported in Singaraju Rama Rao and Others Vs. Nellore Linga Reddy and Others (of Andhra WR): (at P. 641 of AIR) the requirements needed to establish occupancy right and the circumstances which negative the existence of occupancy rights are summed up in the following words:

Long possession, fixed rent, assertion of title as occupancy ryots or tenants in mortgages and sales and partitions, and acting on the footing that for a long time the tenants owned the permanent rights of occupancy, may point to the conclusion that they had acquired permanent rights of occupancy apart from the Act. In contrast with that, the frequent changes of tenants, the increase in rents, the pulling out one tenant from one hand and putting another, admission by tenants, not illiterate and ignorant, of the rights of the landholder not only in muchilikas or pattas but on other documents, may all be taken into consideration in arriving at the conclusion whether the land-holder or the tenant was the owner of occupancy rights. The circumstances, which negative their existence of occupancy rights in the tenant may warrant the conclusion that the landholder was the owner of that right. Similarly circumstances which negative the

existence of the kudivaram right in the land-holder may establish the right of the other.

Applying those observations and considering the evidence in its entirety as also the conduct of parties, we have no doubt that the Court below rightly decreed the inamdars' suit O. S. No. 142 of 1950 and dismissed the tenant's suit O. S. No. 151 of 1950.

10. During the course of the arguments, the appellants filed C. M. P. No. 567 of 1957 for permission to raise an additional ground that in view of the enactment of Andhra Act XVIII of 1956, the appellants cannot be deprived of the possession of the suit lands till 1-6-1959. It is therefore necessary to consider how far the appellants are entitled to relief under the said Act. Section 10 (2) of the Andhra Tenancy Act (XVIII of 1956) runs as follows:

Notwithstanding anything contained in sub-section (1), all tenancies subsisting on the date of promulgation of the Andhra Cultivating Tenants' Protection Ordinance, 1956 (Andhra Ordinance I of 1956), and protected by that Ordinance, and all subsequent tenancy agreements entered into up to the commencement of this Act, shall continue for a period of three years from the 1st June 1956 or until the expiry of the lease in the normal course, whichever is later, on the same terms and conditions as before, but subject to the determination of fair rent in case of dispute.

The lease executed by the 1st appellant in 1949 was only for a period of one year. It cannot therefore be contended that the tenancy was subsisting on the date of the promulgation of the Andhra Ordinance I of 1956. According to sub-section (2) of S. 10, two conditions have to be fulfilled before the benefit thereunder can be invoked viz., (1) that the tenancy should be subsisting as on the date of the promulgation of the Ordinance and (2) the tenancy should be protected by the ordinance. The contention of the learned Advocate for the appellants was that the word "and" should be construed as meaning "or".

Reading the Act as a whole, we do not find possible to read the conjunction "and" as meaning "or". We are of the opinion that the legislature deliberately used the expression "and" and that both the conditions laid down in sub-s. (2) of S. 10 should be satisfied if the tenant is to sustain the benefit conferred thereunder. In this view, it is unnecessary to consider whether the appellants were entitled to protection under S. 3 of the Ordinance. But, as the contention was put forward, we will briefly indicate our opinion hereon.

11. Under the terms of S. 3 (1) of Ordinance I of 1956, no cultivating tenant was liable to be evicted from his holding or any part thereof during the continuance of the Ordinance, by or at the instance of his landlord, whether in execution of a decree or order of a competent Civil Court or otherwise. Sub-s. (2) provided that nothing contained in the ordinance shall affect the continuance of any suit instituted before the 1st January 1956, for eviction of a cultivating tenant from a holding or part thereof, or of any other proceeding arising out of such suit

including a proceeding relating to the execution of a decree or order passed in such suit.

As sub-s. (2) which is in the nature of a proviso to sub-s. (I), does not in specific terms enact that the tenant is liable to be evicted in execution proceedings arising out of a suit instituted before 1st of January 1956 but only provides that the proceedings may be continued, we are unable to uphold the contention of the inamdars that the tenants were not protected by the ordinance. We are clearly of opinion that even on the footing that the tenant was entitled to invoke the benefits of the ordinance, he is still not protected under the terms of Andhra Act XVIII of 1956 as the tenancy was not subsisting on the date of the Act. While we permit the appellants to raise the additional ground as prayed for, we hold that they are not entitled to any benefit under the said Act.

12. In the result, the appeals fail and are dismissed with costs.