

(1924) 12 MAD CK 0019
In the Madras High Court

Chennapragada Narayanamurthy	APPELLANT
Vs	
The Secretary of State for India in Council	RESPONDENT

Date of Decision : 12-12-1924

Acts Referred:

Citation : AIR 1925 Mad 963 : 90 Ind. Cas. 555 : (1925) 22 LW 482 : (1925) 48 MLJ 682

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The order of the Sub-Collector, Ex. E-1, was passed on the appeal of Melam Surayya and two others. The written

statement of the defendant which was carelessly drafted produces the impression that the order was passed on revision. The appeal of Surayya

and others was filed on 14th November, 1916. and, though it was more than 30 days from the date of the Tahsildar's order (10th October,

1916), the appellants stated that they heard of the order on 16th October, 1916, and so claimed that their appeal was within time. Mr. Lancashire

called for a report on 18th April, 1917. I think it must be taken that he excused the delay, or, otherwise, he would not have called for a report and

might have rejected the appeals as out of time. The Subordinate judge is not clear as to whether the order of the Sub-Collector was passed on

appeal or on revision. I have now sent for all the originals of Exs. C, D, E, etc., and am satisfied that the order was on appeal. The second appeal

fails so far as the land is concerned.

2. As to the claim for the assessment Rs. 2-2-6, the Subordinate judge is obviously in error. This does not relate to a case nor to damages for

proceedings taken under the Revenue Recovery Act. It is for money had and received. No land having been ultimately granted to plaintiff, there was no assessment to pay. One is surprised that the Government filed a memorandum of objections in respect of this amount and wished to retain the money, as revenue, relating to a grant which has been cancelled. Anyhow I hold that this portion of the claim is not barred, and allow the appeal.

3. The plaintiff next claims that he is entitled to damages. He says that, relying on the grant by the Tahsildar on 10th October, 1916, seeing that assessment was collected from him on 4th December, 1916, he began to put the land to good use. He was expected to do so and he was entitled to do so. Half the fasli being nearly over, he must be diligent in putting the land to some use if his payment of assessment was not to turn out to be a mere waste of money. I cannot agree with the view of the Subordinate Judge that merely because one knows or is bound to know that the order of the Tahsildar is subject to appeal or revision, he is not entitled to damages. Ayling, J.'s judgment in *Devaramani Bhogappa v. Pedda Bhivaka Gour* (1915) MWN 148 shows that a grantee, if he begins to make improvements after the grant is entitled to the value of the improvements. This is also clear from the judgment of Benson, J. in *Muthuveera Vandayan v. Secretary of State for India in Council* ILR (1906) M 461 which prevailed and which was confirmed in *L. P. A. in Muthuveera Vandayan v. Secretary of State for India in Council* ILR (1906) M 270, White, C. J. was for giving a higher relief and did not differ on this matter.

4. The amount of damages has not been found by the lower appellate Court and I can find it here to avoid a calling for a further finding.

5. The plaintiff has given no particulars of loss in the plaint. Nor did the defendant insist on having the particulars. The defendant merely put the plaintiff to proof. Issues were framed and on the second issue plaintiff adduced his evidence. He swore to spending Rs. 30 for casuarina plants.

There is no cross-examination by the defendant. His fourth witness says he levelled the land and might have spent Rs. 25 or Rs. 30. I believe the

plaintiff and this witness but I take only the lower figure. In this case there is nothing to show that the plaintiff was aware of the appeal petitions of

Melam Surayya on 14th November, 1916 or on 2nd March, 1917 or of the order

of Sub-Collector on 18th April, 1917. Up to then, he had no reason to think that his title was in jeopardy. Having got an order on 10th October, 1916, and paid his assessment on 4th December, 1916, he proceeded to put the land to use. The fact that the order of the Tahsildar, dated 10th October, 1916 was obtained by the help of the Karnam has no bearing on the question of bona fides in making the improvements. I therefore find that the plaintiff effected his improvements bona fide within the meaning of Section 51 of the Transfer of Property Act, i. e. in the belief that he was absolutely entitled to the land at the time. He was, as a matter of fact, so entitled and this is all that Section 51 means [vide *Moitheensa Rowther v. Apsa Bivi* ILR (1911) M 194 : 21 MLJ 969 *Narayana Aiyar v. Sankaranarayana Aiyar* (1914) 1 LW 369 and *American Baptist Foreign Mission Society v. Ammalanadhuni Pattabhiramayya* (1918) 48 IC 859.

6. I therefore award a decree to the plaintiff for Rs. 25 for damages.

7. The appellant will receive proportionate costs on the portion he has succeeded and pay proportionate costs on the portion in respect of which he has failed, throughout.