

(1918) 12 MAD CK 0023
In the Madras High Court

Chockalinga Nayakan

APPELLANT

Vs

Arunachalam Chettiar and Others

RESPONDENT

Date of Decision : 05-12-1918

Acts Referred:

Citation : 52 Ind. Cas. 239

Hon'ble Judges : Seshagiri Aiyar, J;Phillips, J

Bench : Division Bench

Judgement

1. One Kolandaiswamy Devar obtained a lease for 30 years of the village in dispute from the Zamindar of Sivaganga in 1882. In 1886 he executed Exhibit I to the defendant. Exhibit F is the muchilika from the defendant to Kolandaisawmy. In March 1887 the suit village and other villages were permanently assigned to Kolandaisawmy by the Zemindar. The right of the assignee was purchased in Court-auction by the present plaintiff and he sues to recover arrears of rent from the defendant. The defendant pleaded that under Exhibit I he was bound to pay only the rent provided in the document and that plaintiff was not entitled to demand waram.

2. The main issue in the case was whether Exhibit I conferred a permanent right on the defendant. Both the Courts below were of opinion that it was not a permanent patta and that it was open to the plaintiff to revert to waram.

3. We are unable to agree with this con-elusion. The document on the face of it fixes a permanent rate of rent for all time to come. The words for ever and ever" occur in three places and are coupled further with words of inheritance, namely, the property shall descend to heirs. We are unable to hold that Exhibit I is merely a lease for a fixed period.

4. Mr. A. Krishnaswami Aiyar for the respondents referred to Boddington v. Robinson (1875) 10 Ex. 270 and contended that the nature of the estate possessed by the grantor is a conclusive test of the nature of the grant made to the grantee, That decision does not support this extreme contention. No doubt,

in considering the extent of the interest granted by a person, the nature of his right may be taken into account. Generally, if the language of the grant is ambiguous, such considerations may be of avail. But where the language is unambiguous and clear, we do not think in construing a grant the extent of the right possessed by the grantor should have any weight. Section 8 of the Transfer of Property Act was also relied on. That section lays down that the grantor must be deemed to have conveyed only what he was capable of conveying. It is not a canon of construction but a rule relating to the legal effect of a grant. The observations of the Judicial Committee in *Radhakant Lal v. Musammat Nazama Begum* 45 Ind. Cas. 806 : 23 M.L.T. 392 : (1918) M.W.N. 386 support this view. For these reasons we are of opinion that, *prima facie*, the terms of a document must be looked at to ascertain the nature of the estate granted by it and it is only where there is any doubt about its import that other considerations can be taken into account. In our opinion Exhibit I conveyed an absolute estate."

5. The further question is whether it is binding upon the plaintiff. On the one hand, Mr. T. M. Krishnaswami Aiyar for the defendant relied upon Section 43 of the Transfer of Property Act and upon Section 26 of the Estates Land Act. On the other hand, Mr. A. Krishnaswami Aiyar referred to the well known principle enunciated in *Patman v. Harland* (1881) 17 Ch. D. 353 by Jessel, M.R., that where a man has notice of the document, he must be deemed to have notice of the terms of the document and contended that as both parties were cognizant of all the facts, no question of estoppel either u/s 115 or Section 43 of the Transfer of Property Act can arise. Without expressing any opinion whether constructive notice of the contents of a document would disable a party from relying upon an actual representation, we think that further facts ought to be ascertained in this case before applying the law. In the first place, we must know whether the facts alleged in paragraph 7 of the written statement are true and also whether the defendant was otherwise actually aware of the nature of the estate which Kolandaiswamy had at the time of Exhibit I. Also before applying Section 26 of the Estates Land Act, Courts must know what was the state of the property at the time of Exhibit I and why a permanently low rate of rent was fixed at the time of the grant. It is only on the ascertainment of these facts that the law can be applied. The issues that must be tried are:

1. Whether the plaintiff made any representation as stated in paragraph 7 of the written statement?
2. Whether the defendant was aware that Kolandaiswamy had only a limited estate?
3. Under what circumstances and why a favourable rate of rent was fixed in Exhibit I?
4. Whether by operation of Section 26 of the Estates Land Act or by the principle of estoppel enunciated in Section 43 of the Transfer of Property Act, the plaintiff is precluded from reverting to *waram*?

6. As the determination of these issues would involve the taking of further evidence and as the case was disposed of on a preliminary point, we think, in the circumstances of the case, it is desirable that the decrees of both the Courts should be reversed and the case should be remanded to the Court of first instance for disposal in the light of the above observations. Parties may be permitted to file additional statements. The Court may also frame further issues, if necessary, and give further opportunities to the parties for adducing evidence. We order refund of Court-fee; costs to abide.