

(1946) 01 MAD CK 0040
In the Madras High Court

Kadagalla Venkanna

APPELLANT

Vs

Indukuri Lakshmipathi Raju and Others

RESPONDENT

Date of Decision : 28-01-1946

Acts Referred:

Citation : (1946) 59 LW 255 : (1946) 1 MLJ 300

Hon'ble Judges : Alfred Henry Lionel Leach, O.C.J.

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, O.C.J.

1. The plaintiff obtained a money decree against certain aghahamdars. On the 7th January, 1941, at a Court sale held in execution of the decree he purchased 13.65 acres of land owned by the judgment-debtors under an inam granted in 1755. The first defendant was in possession of the land as the tenant and the Court could only give the plaintiff symbolical possession. This was given on the 30th April, 1942. The plaintiff filed the suit out of which the appeal arises on the 2nd October, 1943, to recover possession from the first defendant and defendants 2 to 4 who are his sub-tenants. The plaintiff alleged that he had obtained physical possession of the land from the first defendant and thereafter had granted to him a tenancy for one year from the beginning of May, 1942, on the condition that the first defendant vacated at the end of the year. The first defendant was to pay by way of rent three-fourths of the produce of the two crops raised on the land. He asked for a declaration of his title to the land, for the ejectment of the defendants, for the payment of Rs. 2,476 as arrears of rent for the year 1942-43, for mesne profits at the same rate and for the payment of Rs. 305 as damages for waste. The Subordinate Judge granted the plaintiff the declaration of title and a decree for possession; but he dismissed the further claims of the plaintiff. He disbelieved entirely the story of the oral lease. The first defendant died after the trial and his son has filed the appeal as his legal representative. He maintains that the Subordinate Judge erred in granting a decree for possession. The plaintiff has filed a memorandum of cross-objections

which has been limited to the finding of the Subordinate Judge that the first defendant was not in arrears of rent and to the order with regard to costs.

2. It is common ground that unless the case falls within the Madras Estates Land (Amendment) Act, 1945, the decree for possession must stand. That Act inserted in Section 3 (a) (d) the following explanation:

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.

Before the passing of this Act the law was that unless the evidence showed that the grant was of the whole village, it was not an estate within the meaning of the Madras Estates Land Act. In *Tulabandu Ademma Vs. Sreemath Satyadhyana Thirtha Swamivaru* represented by the general power of attorney agent, Markapuram Srinivasacharlu and Others, , this Court held that where previous inams had been granted, the grant of the remaining lands in the village would not constitute a grant of the, whole village so as to make the land granted an estate. The object of the amending Act of 1945 was to ensure that where the grant was expressed to be of a village the lands granted would constitute an estate, notwithstanding that they did not include lands which had been already granted on service or other tenure or reserved for communal purposes. Subsection (2) of Section 2 gave the Act retrospective effect from the date on which the Madras Estates Land (Third Amendment) Act, 1936, came into force which was the 20th October, 1936.

3. In this case it is clear that the grant on which the first defendant relies did not cover the whole of the lands of the village. There were certain lands, to which we shall refer later, which were granted as service inams and certain lands described as waste lands, including the site of the village, which had not been the subject of any grant. The first defendant says that these facts do not affect his position because an examination of the inam register shows that the grant purported to be of the whole village. This interpretation of the inam register is not accepted by the plaintiff, who says that the record shows that two years after the grant of 1755 the zamindar made a grant of other lands in the village. The original grant has been lost and the only evidence with regard to it are the entries in the inam register. This shows that the total area of the village in 1859 when the Inam Commission was functioning was 669.74 acres, of which 47578 acres were the subject of the agra-haram. grant on which the first defendant relies; 90.45 acres constituted " waste including site of village "; 69.03 acres were held under bhattavritti and devadayam inams and 34.48 acres had been allotted as " village service inams."

4. The register is headed " register of inams in the village of Ghintalapalli Agra-haram in the taluk of Pentapad in the district of Kistna." The entry in column 8 ("

description of inam ") is as follows : " Agraharam granted for the personal benefit of the holder." The agraharam granted here admittedly refers to the 475.78 acres. The word agraharam does not necessarily mean the whole of a village. According to Wilson's Glossary it means a village, or a part of one, occupied by Brahmans and held either rent free under special grants, or at a reduced rate of assessment.

5. For the first defendant much reliance has been placed on the entry in column 22 (" decision of the Inam Commissioner or his assistants "). This entry says " Sanad does not specify the extent of the agraharam or the description of the land as to dry or wet." It is suggested that the word " agraharam " here implies the grant of the whole village; but in view of the fact that there were still left 193.96 acres it is impossible to hold that the word " agraharam " comprised the whole village. This does not, however, mean that the grant could not fall within the Act of 1945. It would fall within that Act if the 90.45 acres described as " waste including the site of the village " had been set aside by the zamindar for communal purposes, but the first defendant is here in a difficulty. There is no evidence of this and the inam register shows that in 1757, that is two years later, the zamindar granted 7.98 acres to another person, one Varanasi Ramaswami, for his personal benefit. On the evidence before the Court the only conclusion open is that the 7.98 acres came out of the lands reserved by the zamindar. As we have indicated the inam register shows that there were waste lands not the subject of grant and " waste " does not necessarily mean land incapable of cultivation. The inam statement mentions that the karnam had to point out where the 7.98 acres lay.

6. The learned Counsel for the first defendant has advanced numerous theories for which the record provides no support. We can only have regard to the fact that after the grant on which he relies there was a grant by the Zamindar of other land, which can only mean that the earlier grant was not of the whole village. In these circumstances the Act of 1945 does not help him. His appeal must be dismissed with costs of the plaintiff.

7. Turning now to the memorandum of cross-objections, the finding of the Subordinate Judge that the plaintiff had not put the first defendant in possession of the lands and that the alleged lease was not true is accepted. The Subordinate Judge describes the evidence given by the plaintiff's witnesses on this matter as " a mass of sickening perjury." If the plaintiff is capable of putting forward such a false story, he is capable of denying the payment to him of rent. On the 29th March, 1943, the plaintiff wrote to the first defendant making the claims which he subsequently embodied in his plaint. The first defendant sent a prompt reply in which he denied the various allegations made against him and stated that he held two receipts for the payment of rent written in the handwriting of the plaintiff himself and signed by him. He gave the dates of the receipts. This letter was allowed to go unanswered and the suit was not filed until some six months later. The receipts were produced in Court at an early stage of the proceedings.

The necessity for a prompt payment of rent must have been well in the mind of the first defendant because if he fell in arrears he would lose his tenancy. If he intended to put forward false receipts it is not likely that he would have produced receipts purported to have been written throughout by the plaintiff. Moreover, on one of them there are two stamps and over each appears a signature.

8. On behalf of the plaintiff criticism is made of the fact that only one of the attesting witnesses who signed the first receipt and neither of the attesting witnesses. to the signature on the second receipt has been called. The first defendant and one of the attesting witnesses to the first receipt gave evidence. In addition, persons who carted the rental paddy for the plaintiff gave evidence. This evidence has been believed and we find no sufficient reason for disbelieving it, which means that the finding that the first defendant paid his rent must stand.

9. The Subordinate Judge ordered each side to pay its own costs. It is said that he should have allowed the plaintiff costs on the value of the land as he obtained a decree for possession. We consider that the Subordinate Judge exercised a wise discretion in ordering the parties to pay their own costs. The plaintiff had failed with regard to an important part of his case and had supported it by false evidence.

10. The memorandum of cross-objections is dismissed with costs in favour of the first defendant.