

(1928) 08 MAD CK 0032
In the Madras High Court

Kishen Prasad Bahadur

APPELLANT

Vs

Kottakota Dalayya and Others

RESPONDENT

Date of Decision : 10-08-1928

Acts Referred:

Citation : AIR 1929 Mad 259

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—This civil revision petition comes up for disposal on a finding after remand. The original suit was in ejectment and was brought in the civil Court. The respondents, who were the defendants, maintained that the land from which they are sought to be ejected was part of an estate under the Madras Estates Land Act and that, therefore, the civil Court had no jurisdiction. Both the lower Courts upheld that plea. As the contention was that the plaintiffs held the village on inam tenure, the defendants who sought to oust the jurisdiction of the ordinary civil Court, had to prove that fact, and in order to prove that fact had to establish that the grant was of land revenue alone to a person not owning the kudivaram. The lower appellate Court—while finding that the grant was "of land revenue alone omitted to find whether the grantee owned the kudivaram. I, therefore, remanded the case to the lower appellate Court for a finding on that point. A finding has now been submitted that the defendants have not discharged the onus of proof on that point and that the civil Court, therefore, has jurisdiction.

2. The respondents seek to attack that finding first on the merits and secondly because the lower appellate Court would have given a decision in their favour had it not felt itself hampered by the wording of the order of remand. As to the first ground, I am quite clear that it is not open in a civil revision petition to parties to attack the finding on points of fact. It is contended that the question of jurisdiction rests on the finding on points of fact and that since the question of jurisdiction can be agitated in revision the questions of fact on which it rests may be similarly agitated. It is possible that in some cases the decisions on the

question of jurisdiction may be so inseparable from the decision on the question of fact that both really come to the same thing, but such is not the case here. The question whether the grant was to a person not holding the kudivaram is a pure question of fact to be decided as such and into such a question of fact this Court will not go in revision. It is obviously a point into which this Court would not go even in second appeal, from the final decision in this suit; and I am quite clear that this Court will not extend its interference in revision to matters in which it would not interfere even in second appeal. This principle is clearly set out in *Rashmoni v. Ganada Sundari* [1914] Cri.L.J. 213. No other case cited before me seems to assist a decision of this point. In *Behari Lal v. Baldeo Narain* [1918] 40 All. 674, the point at issue was a point of law. In *Bhargava & Co. v. Jagannath Bhagawan Das* [1882] 41 All. 602, the decision on the question of jurisdiction, which was the point before the Bench, rested on no evidence at all. The Privy Council decision in *Umed Hal v. Chand Mal* AIR 1926 P.C. 142, was passed on a point of law. It is significant in itself that the learned vakil for the respondents has not been able to point to me any case in which this Court in revision has gone into the merits of a finding on a point of fact, even when the decision on that point was a factor in deciding the question of jurisdiction. The finding on the merits must, therefore, be accepted.

3. As to the second ground, the lower Court does in certain passages appear to regard the order of remand of this Court as in some curious way restraining its liberty of decision and I find some difficulty in appreciating its points of view. For example, it regards it as probable since the grant of a jaghir, that the grantee had no kudivaram interest at the time of the grant. In one passage in para. 6 of its judgment it seems to regard this fact or probabilities as a piece of evidence in-favour of the defendants on whom the* onus of proof lay. But in the final summing up, the Judge holds clearly and definitely that that evidence is not sufficient to discharge the burden of proof which lay on defendant 3. That being so, I do not know why the lower Court was concerned because it could not throw the burden to the least on the plaintiff, (para. 11). It appears to me to have been troubling itself unnecessarily. If defendant 3, has not discharged the onus of proof it does not matter whether the plaintiff did or did not adduce any evidence whatever. I accept the finding of the lower appellate Court that defendant. 3 has not discharged the onus of proof and, therefore, the civil Court has jurisdiction.

4. The case will have to go back to the first Court for trial of the remaining, issues. This decision of course in no way decides issue 3, which is open to proof that defendant 3, although the village is not an estate, nevertheless has occupancy right. Costs upto date will abide the result.