
(1949) 01 OHC CK 0004
In the Orissa High Court
Case No : Second Appeal No. 153 of 1944

Krishna Chandra Gajapati Narayan Deo	APPELLANT
Vs	
Rokkam Venkatapparao Dora	RESPONDENT

Date of Decision : 10-01-1949

Acts Referred:

Citation : AIR 1951 Ori 268

Hon'ble Judges : Narasimham, J; Jagannadhadas, J

Bench : Division Bench

Advocate : M.S. Rao, for the Appellant; P.V.B. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, J.—This is the pltf's second appeal against the order of the Dist. J. of Ganjam Pun reversing She decision of the Special Deputy Collector, Chicacole Division & dismissing the phtf's suit; for recovery of arrears of rent for the three Fasli years 1342 to 1844.

2. This litigation has had a chequered career. The pltf's suit was brought in 1936 & it was first dismissed by the then Deputy Collector on 27-10-1937 in S. S. NO. 782 of 1936. On appeal, the Dist. J. set aside the order of dismissal & remanded the suit for fresh disposal. The suit was then heard by a Special Deputy Collector who decreed the claim. On appeal, the learned Diat. J. revsd. the decision of the Special Deputy Collector & dismissed the suit. There upon, the pltf. preferred a second appeal to the Hon''ble H. C. who directed the rehearing of the appeal by the Dist. J. on the ground that the lower appellate Ct. misconcieved the scope of the previous litigation between the parties in the year 1902. After remand, the lower appellate Ct again dismissed the suit chiefly on the ground that the decision in O. S. No. 23 of 1902 operated as res judicata between the parties. This appeal is against that order of dismissal of the lower appellate Ct.

3. In the plaint it was stated that the lands for which the rent was claimed were lying in Gorrebanda village & that they were about 20 acres in extent. The

Zamidar (the pltf. applt.) claimed the lands as part of his jeroyati lands in village Gorrebanda. It is the admitted case of both the parties that a major portion of the lands in that village are the inam lands of the resp. for which he was paying Kattubadi of Rs. 55 per annum to the Zamindar. The resp's main defence was that the lands in dispute were also included in his inam lands in that village & that consequently the applt. was not entitled to any jeroyati rent apart from the Kattubadi of Rs. 65 per annum.

4. Sometime in 1934 the applt. applied to the Revenue authorities for the survey & preparation of record of rights of some jeroyati lands which (according to him) were lying unsurveyed in some villages of the estate. Along with that appln. (Ex. H), he gave a list of the lands (Ex. H 1) proposed to be surveyed, including in that list about 34.50 acres of land which were said to lie near Gurrebanda village. The survey of these lands was sanctioned by Govt. & it has been well proved that the survey authorities included the said lands in village Tham. mayapetta which is adjacent north of Gurrebanda. A notice under Schedule 3, Madras Survey & Boundaries Act, 1928 (Ex. H 3) was also issued by the survey authorities on 27-3-1936. It appears that while the survey operations were proceeding the resp. filed an objection urging that the said lands formed part of his inam lands. But on 29-5-1985 an intimation was given to him by the survey authorities (Ex. X a) to the effect that as the survey would be subsequently followed by a record of rights the question of title would be decided by the Record of Rights Officer. Apparently on receipt of this reassuring letter, the respt. did not pursue his objection & allowed the survey to be completed in the usual course. Subsequently, when the preparation of record of rights was in progress he filed an objection before the Settlement Officer claiming the lands as part of his inam lands in village Gurrebanda. This objection was disallowed by the Settlement Officer on 12-6-1988 (ex. t). It will be noticed that these proceedings took place while the present suit under appeal was pending. The final publication of the record of rights was, however, postponed pending the disposal of this litigation (vide EX. XII).

5. The learned trial Ct. came to a finding to the effect that the lands in dispute were part of the jeroyati lands of the Zamindar & not part of the inam lands of the resp. His finding was mainly based on some documents of the Zamindar showing realisation of jeroyati rent in Gurrebanda village from 1884 & also some documents Exs. E. 2 B-I, R. 2 & E-I) signed by the resp's father himself showing payment of rent for jeroyati lands as distinct from payment of Kattubadi for the inam lands. In setting aside this decision of the trial Ct. the learned Dist. J. has been mainly influenced by the decision of the H. Ct. in Appl. No. 182 of 1908 against the decision of the lower Ct. in O. S. No. 23 of 1902. He further observed that the pltf.-applt. had given discrepant statements as regards the area & identity of the lands & that the plaint was liable to be rejected on the ground of indistinctness.

6. Mr. M. S. Rao on behalf of the applt. raised the following two important

questions of law: (i) The lower appellate Ct. completely misconceived the effect of the decision in O. S. No. 23 of 1902 & that the decision in that suit would not, in any way, affect the right of the pltf. to claim arrear rent for the lands in dispute, (ii) The lower appellate Ct. further erred in its interpretation of Schedule 3, Madras Survey & Boundaries Act, 1923 & that the said section operates as a complete bar to the resp's claim of the disputed lands as part of his inam lands of village Gurrebanda,

7. Point No. (i)-The plaint & the judgment of the H. Ct. in O. S. No. 23 of 1902 have been proved in this case (Exs. VIII, VIII a & XI) & they show unmistakably that in 1902 the then Maharaja of Paris khimedi instituted a suit against the father of the resp. for resumption of the inam lands in village Gurrebanda, In the Schedule attached to the plaint (Ex. VIII-a) it was clearly stated that the whole of village Gurrebanda excluding some Kheta Banjar lands were the inam lands. That suit was dismissed by the H. Ct. in 1907 (Ex XI), on the ground that the duties of the inamdar were of a public character partaking of the nature of police duties & that consequently the inam was not resumable. It is conceded by the learned advocates for both parties that so far as the inam lands of village Gurrebanda are concerned, this decision of the H. Ct. concludes the matter. The main point of controversy centres round the identity of the lands known as Kheta Banjar lands which were excluded from the scope of that litigation. On behalf of the resp. it is urged that the lands in dispute in the present litigation are part of the inam lands of the village whereas on behalf of the applt, it is urged that the disputed lands form part of the Kheta Banjar lands which were admittedly excluded from the scope of the previous litigation.

8. When the appeal was remanded by the H. Ct. to the lower appellate Ct. for rehearing, both parties were given adequate opportunities to lead further evidence regarding the identity of the lands in the present, suit with special reference to the lands which formed the subject matter of litigation in C. S. No. 23 of 1902. Additional documentary evidence was adduced by both parties. It will, therefore, be of mere academic interest to consider the question of burden of proof when a plea of res judicata is raised by one of the parties to a litigation, The resp. has given evidence on oath & stated that the suit lands formed part of his inam lands in village Gurrebanda. On behalf of the applt. the evidence (both oral & documentary) to show that the suit lands were included in Kheta Banjar lands is wholly unsatisfactory. [After reviewing the evidence the judgment continued:] Judging the evidence as a whole, I think the only reasonable inference is that it is not proved satisfactorily that the lands in dispute in the present litigation formed part of Kheta Banjar lands of village Gurrebanda. The pltf's right to realise rent in respect of the jeroyati lands which formed part of the village Gorrebanda can arise only if it be shown that those lands were not included in the inam lands of the village & his failure to prove this fact must be fatal to the whole suit.

9. Point No. (ii)___As already pointed out, the disputed lands have now been

surveyed as part of village Tammayapetta though there is undoubtedly some confusion as to the exact location or precise area of the disputed lands. The deft, himself clearly admitted in his objection before the Settlement Officer (ex. T) that the disputed lands have now been included in village Tammayapetta.

10. The next question is whether the decision of the Survey Officer under Schedule 3, Madras Survey & Boundaries Act, 1923, as notified in Ex. H-8, will have the effect of debarring the resp. from claiming the lands as his inam lands in view of his failure to institute a suit within the period prescribed by Schedule 4 of that Act. The effect of Schedule 3, Madras Survey & Boundaries Act, 1923 & the corresponding section of the older Act of 1897 have been the subject of several decisions of the Madras H. O. But for the purpose of this appeal, it is unnecessary to discuss them at great length. Mr. M. S. Rao on behalf of the applt. relies mainly on M.M. Ponnuswami and Others Vs. M. Mariappa Servai, whereas the learned advocate for the other side relies on the following observations in an F. B. decision reported in Sivaprasad v. Narasimhamurthy A. I. R. 1940 Mad. 187: I. L. R. (1940) Mad. 501 & a later decision of Byers J. reported in Nagarathnam Pillai v. Guruswami Pillai A. I. R 1943 Mad. 727: 211 I. C. 124:

"When it was a matter of a boundary dispute the survey officer had to decide where the boundary should lie & if he decided that the piece of land in dispute fell within the boundary of one of the opposing parties his order did affect the title to that particular piece of land. Where there was no boundary dispute, but in making the survey the survey officer found that two persons were claiming title to the same holding, he would for the purposes of the register have to decide whose name should be inserted therein as the owner, but this in itself did not mean that the Act empowered" the survey officer, or the appellate authority to decide who was in law entitled to the property under survey."

11. Strictly speaking, the F. B. decision in Sivaprasad v. Narasimhamurthy A. I. R. 1940 Mad. 187 : I. L. R. (1940) Mad. 601 will not be applicable to the facts of the present case because it dealt with the interpretation of the relevant provisions of the older Act of 1897 in which the existence of a boundary dispute was necessary for giving finality to the decision of the Survey Officer. But the observations of Leach C. J. quoted above have undoubtedly a wider import.

12. The question as to whether the determination of the boundary of a village (whether a boundary dispute existed or not) u/s 13, Madras Survey & Boundaries Act, 1923 will affect title to a piece of land lying within the said boundary would depend very much on the nature of the claim to that land & the questions that fell for decision before the Survey Officer. For instance, if the claim to a particular plot of land is itself based on the ground that it lies in a particular village belonging to one of the parties & the Survey Officer while determining the boundary holds that the plot lies in the adjacent village, such determination of the boundary unless set aside by a suit under Schedule 4 of that Act would undoubtedly conclude title in respect of that plot. But where the rival claim regarding title to a plot of land has nothing to do with the question as to whether

the plot lies within the boundary of one village or of the adjacent village, how can it be said that the determination of the boundary under Schedule 3 would affect title? In fact in the judgment of *Abdur Rahman J. Ponnswami v. Mariappa Servai* A. I. R. 1943 Mad. 420 this point was specially emphasised by the following observations:

"It may be that if the dispute merely related to they title of the plot in dispute as distinguished from a dispute as to its boundary, the order passed by the survey officer would not have become final."

This observation applies with full force to the present case. Neither the, claim of the Zamindar nor the claim of the inamdar reap, to the lands in dispute has anything to do with the question as to whether the said lands lie within Gorrebanda village or within Tammayapetta village. On the other hand, as early as 1881 the Zamindar stated that the lands lay in Gorrebanda village. Similarly in the litigation of 1902 also he clearly described Kheta Bhanjar lands as lying within the ambit of Gorrebanda village. In has appln. for survey in the year 1934 (Ex. H-1) he slightly changed his case & stated that the lands lay near Gorrebanda village. His right to realise jeroyati rent from the suit lands (according to him) arose from the fact that they were not included within the inam lands of the resp. & not from the fact that the lands have been surveyed now within the limits of [village Tammayapetta. Similarly the resp's claim regarding the lands in dispute has nothing to do with the boundaries of either Gorrebanda "village or Tammayapeita village. His case all along has been that the lands were included within his inam landa which in the litigation of 1902 were admitted by both parties to lie in Gorrebanda village. Therefore, I would hold that dispute between the parties regarding their respective title to the lands in dispute has nothing to do with the determination of the boundaries of either Tammayapetta or Gorrebanda & consequently the decision of the survey officer under Schedule 8 of the Act will not adversely affect the deft's. title (if any) merely because he failed to institute a suit to set aside the decision under Schedule 4 of that Act, In fact when the deft, objected at the time of survey the survey authorities themselves assured him that the question of title would be left open (vide Ex. x-a).

13. Therefore, though the lower appellate Ct. seems to have completely overlooked the nature of the objections raised by the pltf. as regards the effect of Schedule 3, Madras Survey & Boundaries Act, I am satisfied that section cannot operate as a bar.

14. There being no other point of law the second appeal fails & is dismissed with costs.

Jagannadhadas, J.

15. I agree.