
(1928) 08 MAD CK 0025
In the Madras High Court

Maharaja Kishen Prasad Bahadur, K.C.I. E., G.C.I. E., by
Agent Chunduru Janaki Ramayya

APPELLANT

Vs

Kottakota Dalayya and Others

RESPONDENT

Date of Decision : 10-08-1928

Acts Referred:

Madras Estates Land Act, 1908 — Section 8

Citation : 116 Ind. Cas. 133

Hon'ble Judges : Wallace, J

Bench : Single Bench

Judgement

Wallace, J.—The consideration of the first issue on jurisdiction is not satisfactory in either of the lower Courts. Plaintiff brought his suit in the

Civil Court. Defendants contended that it should have been brought in the Revenue Court. The onus of proving facts to oust the ordinary Civil

Court jurisdiction lay on defendants, and the issue was rightly framed. What defendants had to prove was that the inam was a grant of melvaram

only to a person not holding the kudivaram at the time of the grant. The first Court has wrongly thrown on plaintiff the onus of proving that at the

time of the grant the grantee did not own the kudivaram. The lower Appellate Court while recognising the onus of proof has not given any finding

that plaintiff was not the owner of the kudivaram, and has further in its discussion made statements unwarranted by law or from the record. Thus in

para. 6 it appears to hold that there is a presumption in law that the grantee of an inam was granted the melvaram only. There is no such

presumption. Again it remarks in various places that the tenants exercised rights of sale, mortgage etc., which were recognised by the estate. There

is no evidence that these were known to and recognised by the estate. The suit

will have to go back for a proper finding on this matter.

2. Plaintiff has also raised another matter which as it also touches on the question of jurisdiction will have to be decided. It appears from the

evidence of P.W. No. 3 and Ex. B, that he relinquished the whole or a part of the plaint land in 1915. Plaintiff contends that in consequence of this

relinquishment the land has by force of Section 8 (exception) of the Madras Estates Land Act ceased to be part of the estate. Defendants contend

that the relinquishment was collusive and intended to defraud them, and the 3rd defendant contends that in any case it cannot affect his rights in the

land. This matter will also have to be dealt with.

3. I call on the lower Appellate Court to submit a fresh finding in the light of the above remarks on the first issue. Fresh evidence may be adduced

on both sides. Time six weeks after re-opening of the lower Appellate Court after the vacation, For objections ten days.

4. In compliance with the order contained in the above judgment the District Judge of Vizagapatam submitted the following

Finding

5. The high Court has directed me to submit a finding on the issue. "Has this Court no jurisdiction to try this suit?", and as the plaintiff had invoked

the exception to s.8 of the Madras Estates Land Act I have been directed to deal also with the question whether the relinquishment (Ex. B) was

collusive and, therefore, not binding on the 3rd defendant.

6. The broad features of the evidence may be stated as follows: Though the plaintiff's predecessor-in-title had an opportunity in the sites of the last

century on such an important occasion as such enfranchisement of his villages to obtain a copy of the original grant to Fazubeghan he did not do so,

with the result that there is no evidence worth the name of the nature of the original grant. The circumstances that the grant was made between

1724 and 1769 to a Hyderabad Vazir, in respect of distant villages of long standing apparently for past services and to enable him to keep up his

dignity might indicate that the original grant was only to a person not holding the kudivaram thereof; but in view of the decision of their Lordships of

the Privy Council in Chidambara Sivaprakasa Pandara Sannadhigal v. Veerama Reddi 68 Ind. Cas. 538 : 45 M. 588 : 16 L.W. 102 : 31 M.L.T.

54 : (1922) M.W.N. 749 : 1922 43 M.L.J. 640; AIR 1922 P.C. 292 : 37 Cri.L.J.

199 : 27 C.W.N. 245 : 49 I.A. 286 and in view in particular of

the remand order, I consider myself precluded from throwing the burden to any the least extent on the plaintiff. While the increase, in the rent roll

during a century are not of such a character that they conclusively point to the absence of occupancy rights, the circumstances that there have been

alienation to the knowledge of the agents of the plaintiff is explicable, not on the footing of the existence of occupying rights, but merely on the

footing of the prevalence of unusually low rates and of the hope that the plaintiff will not enhance the rate and of the confidence that he will not evict

so long as his rate is paid. When in this state of the evidence the burden is on the 3rd defendant to prove that the grant was of the melvaram only to

a person not owning the kudivaram at the time of the grant, full weight must be given to the circumstance that in the litigation of 1900 and 1903, it

has been twice held that some ryots of Thamninaichupeta have no occupancy rights. The 3rd defendant has not sustained his burden. I, therefore,

find that the Civil Court has jurisdiction to try the suit.

Judgment

7. 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.

8. 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 findings on point 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 decision 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 Dasi v. Ganada Sundari Dasi* 26 Ind. Cas. 275 : 20 Cri.L.J. 213 : 19 C.W.N. 81. No other case cited before me seems to assist a decision of this point. In *Behari Lal v. Baldeo Narain* 48 Ind. Cas. 14 : 40 A. 674 : 16 A.L.J. 717 the point at issue was a point of law. In *Bhargava & Co. v. Jagan Nath Bhagwan Das* 51. Ind. Cas. 331 : 41 A. 602 : 17 A.L.J. 718 : 1 U.P.L.R. 120 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 Mal Vs. Chand Mal*, 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 me to 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.

9. As to the second ground the lower Court dose in certain passages appear to regard the order of remand of this Court as in some curious way restraining its liberty of decision and find same difficulty in appreciating its point of view, for example, it regards it as probable since the grant was 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 probability 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 the 3rd defendant. That being so, I do not

know why the lower Court was concerned because it could not throw the burden to the least extent on the plaintiff. (Paragraph 11) it appears to

me to have been troubling itself unnecessarily. If the 3rd defendant 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 the 3rd defendant has not discharged the onus of

proof and, therefore the Civil Court has jurisdiction.

10. 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 No. 3, which

is open to proof that the 3rd defendant, although the village is not an estate, nevertheless has occupancy right. Costs up to date will abide the

result.