

(1927) 02 MAD CK 0013
In the Madras High Court

Maniappa Udayam and Others

APPELLANT

Vs

Sabapathi Asari and Another

RESPONDENT

Date of Decision : 16-02-1927

Acts Referred:

Citation : 105 Ind. Cas. 202

Hon'ble Judges : Wallace, J

Bench : Single Bench

Judgement

Wallace, J.—The original suit was for recovery of the plaint property, Survey Field No. 12/1, measuring about 2 1/2 acres. The plaintiffs"

claim was by virtue of a long possession and prescriptive title, the defendants" claim in virtue of a patta issued by Government. Either the land or

the assessment of the land constituted a blacksmith inam, but neither the plaintiffs nor the defendants belong to the family of the original holders of

the inam. On a decision as to which constituted the inam rests the decision of the case.

2. The first Court recorded a finding that the inam consisted of the assessment only. The lower Appellate Court accepted that finding in one part of

its judgment, para. 4, and in another part, para. 3, remarked that "that the land formed part of the blacksmith inam cannot be denied." It is argued

that in the latter sentence, the lower Appellate Court is using language loosely, but I am not able to accept that argument. The whole of the

discussion in para. 3 of its judgment is with reference to possession and enjoyment of the land and the conclusion is that plaintiffs and their

predecessors were in possession and enjoyment of the land for over 12 years prior to suit, having been let into possession because they were

doing blacksmith's service for the village so that the enjoyment of the land was by way of remuneration for the service. The reasonable deduction

from, such a letting into possession would be that the land itself was the inam. The findings of the lower Appellate Court, therefore, present some

inconsistency on this vital point.

3. It is argued that the lower Courts have not decided this issue on evidence, but ignoring the evidence about it, have decided it on a pure surmise

drawn from a consideration of the Board's Standing Orders. The lower Appellate Court simply accepts the argument of the trial Court on this

point the trial Court's argument is contained in para. 15 of the judgment, and it merely amounts to this, that since the Board's Standing Orders lay

down that when Government proposes to resume land which is an inam the order shall be passed not by the Collector but by the Board of

Revenue, and that since in this case the Collector passed the order, it must be taken that the Government did not intend to and did not resume the

land. The order of resumption is Ex. V, dated 23rd July, 1919. It is by the Collector and directs that "the resumed fields will be fully assessed and

the assessment...paid...to Urali Asari, (that is, the father of the second plaintiff) the senior member of the working incumbents," and that "Iyan paita

should issue in the names of the occupancy owner." I, think, the lower Courts have misunderstood the Board's Standing Orders by confining their

attention to Sub-section (3) of Order LV without considering the Sub-section (2). The latter lays down that in a case of inam land being resumed,

the Collector has first to resume the land and then may adopt one of two alternatives either direct the assessment to be credited to general

revenues or direct that it be paid to the working incumbent. The latter procedure is exactly that which has been adopted in Ex. V as I read it, and it

appears to me clear that the order Ex. V was passed under this section. It is true that Sub-section (3) does set out what is contained in para. 15 of

the trial Court's judgment; but it obviously means that in ordinary cases the Collector shall assume that the working incumbent is entitled only to the

assessment, and that only if he thinks the working incumbent ought to have the land also, thus ousting the persons in occupation he shall report to

the Board of Revenue for orders. That is, in a case of inam land the Collector can resume it and grant the assessment to the working incumbent

and the land to the persons in occupation; but if he wishes to oust the persons in occupation and put in the working incumbent, he must report the case to the Board. It is obvious from Ex. V that the Collector adopted the former procedure as set out in Sub-section (2). He gave the assessment to the working incumbent and issued Iyan patta to the occupancy owners and it appears in fact from Ex. IV (a) that the patta was issued to the defendants as occupancy owners. It appears to me, therefore, a clear case of resumption of the land and not merely of the assessment and that the lower Courts have committed a grave error of fact in this respect.

4. This view is strengthened by a consideration of the fact that both the plaintiff's witnesses and the defendant's witnesses agree that the land is the inam. The 1st plaintiff as P.W. No. 1 himself says. "The suit land was originally blacksmith Manibam...Urali Asari was performing the blacksmith work in the village and as such was in enjoyment of the suit land" and in cross-examination, he said, "The blacksmith Manibam consisted of 1/8th cawnie of nunja and 2 1/2 acres of punja". His evidence is in substance repeated by P.W. No. 2, 1st defendant as D.W. No. 1 and D.Ws. Nos. 2 and Section It is significant also that in a suit in 1912 (the judgment is filed as Ex. C), before the date of resumption, against Urali Asari and the 1st plaintiff by the present 1st defendant, the present plaintiff definitely contended that the Civil Court had no jurisdiction because the suit land was unenfranchised blacksmith inam land and raised a definite issue on that point, claiming ancestral mirasi right of doing blacksmith service in the village. The plaintiffs in argument here have sought to explain away that plea as having some reference to the Pensions Act XXIII of 1871, but I do not see how that affects the categorical nature of the statement that the suit land was inam land. No doubt now the plaintiffs change their song and in paragraph 7 of the plaint say that the *teerwa* on the suit property was originally the remuneration for the blacksmith *miras*; but then they also say in the plaint that the suit property was for over 70 years in the exclusive possession of the plaintiffs' family. Now, the finding of the first Court is, and it appears to be perfectly correct, that Urali Asari did not come into possession of the land until the death of Annamalai Asari, the last representative of the original blacksmith's family, with whom the plaintiffs had no connection, and that the villagers let Urali Asari and his brother

the 1st plaintiff, into possession because they took up the blacksmith work. This again strengthens the view that the land and not merely the assessment was the remuneration for the service. The lower Courts have ignored all this positive evidence in the case and have held merely on an erroneous inference from the Board's Standing Orders and Ex. V that the land is not a remuneration for the service. This fundamental error vitiates their findings and I am not able, therefore, to accept these findings. I find in reversal of these findings that the suit inam consisted of the land and that it was the land which was resumed by the Collector under Ex. V.

5. That being so, Government had by the resumption the right to instal whom it pleased in the occupancy right of the land, and a grant of patta to the defendants followed. That prima facie put an end to any claim which the plaintiffs had to the occupancy right in the land. If Government, at the time of resumption, ousted them and entered into possession, any prescriptive title which they may have acquired before the date short of a prescriptive title against Government, will not avail them to defeat the right of a party who has been granted patta by Government in pursuance of Government's right to confer the land on resumption on whom it pleased.

6. This has been laid down by this High Court in several cases by Phillips and Odgers, JJ., in Guntupalli Ramakrishnayya Vs. Guntupalli Pitchayya and Others, by Devadoss, J., in Avasarala Venkata Rao and Others Vs. Avasarala Manga Rao and Others, , by Odgers, J., in Krishna Sastri and Others Vs. Singaravelu Mudaliar and Others, and myself in Mantripragada Gourikantam and Others Vs. Mantripragada Ramamurthy and Others, which was confirmed on Letters Patent Appeal. The plaintiffs refer me to Gunga Gobind Mundul v. Collector of the 24-Pergunnahs 11 M.I.A. 345

: 7 W.R.P.C. 21 : 1 Suth P.C.J. 676 : 2 Sar. P.C.J. 284 : 20 E.R. 131, but I do not find that case in point as there it was held that Government had no right to the land but only a right to the assessment; nor was it in a case in which Government had exercised its undoubted right to resume a service inam. Plaintiffs have also pointed out that in (Ayyagari) Venkata, Suryanarayana Vs. Makka Venku Naidu and Others, in this Court the correctness of a portion of my view in Mantripragada Gourikantam and Others Vs. Mantripragada Ramamurthy and Others, , was doubted. But even in that judgment, in the order of reference by Ramesam, J., he lays down

that the Privy Council have now held that enfranchisement constitutes a fresh grant and that if the Crown takes physical possession and hands it over to a grantee, a long prior possession by a previous occupant, short of 60 years will not avail, and the same view was adopted in the judgment itself. Now here there is no doubt, since it is part of the plaintiffs' own case and has been found by the trial Court and almost goes without saying from the action of the Tahsildar who, in obedience to the Collector's order to issue patta to the occupancy owners, issued patta to the defendants, that plaintiffs' possession had come to an end before or about the time of the resumption, and that the defendants, did get into possession in pursuance of the patta issued to them on the resumption. So this judgment also does not avail the plaintiffs.

7. Plaintiffs have not contended that they perfected a prescriptive title against Government prior to the resumption, nor could they maintain that in face of the finding that they got into possession only on the death of Annamalai Asari some 30 years ago.

8. I must, therefore, hold that the plaintiffs have no right to eject the defendants. I reverse the decision of the lower Courts and dismiss the plaintiffs' suit with costs in all Courts.