
(1964) 01 MAD CK 0052
In the Madras High Court
Case No : S.T. App. No. 5 of 1958

M.L.S. Valliammal Achi and others

APPELLANT

Vs

P. Vellachami and others

RESPONDENT

Date of Decision : 08-01-1964

Acts Referred:

Citation : (1964) 01 MAD CK 0052

Hon'ble Judges : Ramachandra Iyer, C.J; Ramakrishnan, J

Bench : Division Bench

Advocate : K. Parasaran, for the Appellant; N.C. Srinivasan and V. Ramaswami, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandra Iyer, C.J.—This is an appeal under S. 7 of Act XXX of 1956, filed by the landholders against the decision of the Special Tribunal at Madurai, functioning under that enactment, which held the village of Kothakudi in Mangulam taluk in Madurai District to be an inam estate. The proceedings leading up to the present appeal has a chequered history. Soon after the enactment of the Abolition Act (Madras Act XXVI of 1948), the Assistant Settlement Officer, Manamadurai, who took action suo motu, held the village to be an inam estate. There was an appeal from that decision to the Estates Abolition Tribunal at Madurai, which, by its order dated 16th January, 1951, found that the village was not an inam estate. That order was, however, set aside four years later at the instance of certain ryots in the village, who complained that they had no notice of the proceedings. Fresh evidence was allowed to be let in and the matter was ultimately remanded to the Assistant Settlement Officer for fresh consideration. He held that the inam grant being of an entire village, it would be an "estate" under the provisions of the Madras Estates Land Act but that it would not be an inam estate under S. 2 (7) of the Abolition Act, as, in his view, the land itself had been granted to the inamdar. The ryots appealed. In the meanwhile, Madras Act XXX of 1956 came into force. Conformably to it, the

appeal was treated as an original application, and, after following the prescribed procedure, the Special Tribunal, on a consideration of the entire evidence, came to the conclusion that the village was an inam estate. This conclusion has been challenged by the landholders on two grounds: (1) that the village of Kothakudi, at the time of the grant, was only a part of the larger village Sramam and that therefore it will not be an "estate" and much less an inam estate; (ii) even if the grant is to be regarded as comprising the entire village, inasmuch as the grant was of the land itself, it cannot be an inam estate. Fortunately, a copy of the original deed of grant is available and it has been marked as Ex. B. 5. That shows that in the year 1802, the Raja of Ramnad made a gift of the village, comprising an area of about acres 43-77 cents, after deducting poramboke, to one Sivarama Vadhiyar on the day of the Lunar Eclipse that year. The grant is in Tamil and the subject matter of the grant runs thus:

The four boundaries of Kothakudi Ushalankulam, situate in the village residential area of Mangala Nadu, are as follows: Lying to the east of Mudikkarai limits punja, Puravu and the tank channel of the village, west of the village tank eastern bund water belt and inner sluice, and the northern channel, south of the drainchannel of the field of Pudukulam and the border stone of the water belt area of Kothakudi and the pathway of the village of Kalli and north of the inner sluice in the water belt area of the southern bund of the village tank and the Tethamaram and the Melakal kadukombu; comprised within these four boundaries, the Kothakudi Ozhalan Kulam and Chinna Kothakudi and the inner oorani, attached to it and Sithiyadi Oorani, together with the nanja and punja lands, the fruit-bearing and timber trees, high level and low level lands, natham, chei, thalai and fishery rights in the tanks, the trees and the wells etc., and all the rights over the Kudi, Padai, Pallu, Parai and all Samudhayam rights with the eight kinds of enjoyment and ten kinds of possession such as treasures, treasure troves, water, trees, stones etc., with powers of alienation by way of gift, exchange, sale, etc, shall be held and enjoyed permanently.....

2. The document describes itself as Bhoodhanam. The name of the village as well as the boundaries thereof appear to indicate that the grant must have been of a whole village. But it has been argued that as the subject matter of the grant is described as lying to the east of punjai puravu, the grant must have been only of a part of the village. The word "Puravu" only means "vicinity" and we cannot see how the use of that word can, in any way, indicate that the grant was only of a part of the village.

3. But the more substantial contention in the case relates to the question whether the grant was of both the warams in the lands or only of the melwaram rights in cultivated lands. That the lands had been brought under cultivation even before the date of the grant is plain from the fact that there is reference in the document to cultivated lands as well as kudis or cultivating tenants. The terms of the grant are no doubt wide, and, but for the reference to the kudis, they can be regarded as comprehensive enough to include the right to the soil of the lands in

the village. There is no kind of reservation in the grant to indicate that anything but the full rights in the land had been granted to the grantee. The document is styled as Bhoodhanam, a word which is indicative of the fact that the grant was of the land and not of the melwaram alone. See Subramania Iyer v. Onnappa Goundan 39 M.L.J. 629=12 L.W. 576 and Bapiah v. Venkataratnam 65 L.W. 172. Further the extent of the grant is described as conveying to the grantee "Ashtabogham and Dhasaswamyams". In Wilson's Glossary, the term "Ashtabhogam" has been defined thus:

Enjoyment of the whole, or the eight products of an estate; or the land cultivated, Siddi; the produce of such land, Sadhya; uncultivable or rocky land and its products, as minerals etc., Pashana; property deposited on the land, Nikshepa; treasure-trove, Nidhi; waters and their produce, Jalamirtam; actual privileges, Akshini; prospective rights and privileges, Agami.

4. The word "Dhasaswayam" refers to the ten kinds of rights to property with water, mineral, trees, etc. These words generally indicate that full ownership in the soil of the land itself had been conferred on the grantee. In the recent decision of Jagadisan and Srinivasan, JJ., in S.T.A. No. 151 of 1958 it was held that the use of the word "Bhoodhanam" is a grant, in the absence of any indication therein about the existence of a ryot on the land must be construed as an assignment of both the warams in the land. In the document in that case, there was no reference to the existence of "kudi" which we find in the present grant.

5. The word "kudiyam" means a cultivating tenant. Reference to that word in the grant now under consideration would show that there were ryots on the land, for under the Common Law of India the right of the ryot to possession of a land arose from occupancy. That is to say, once he occupied the land and brought it under cultivation, the ruler was thereafter entitled only to the Rajabhagam, while the occupier obtained the beneficial interest, subject to the payment of Rajabhagam, in the land. That was known as "kudiwaram". Such an occupier was never regarded as a tenant of the ruler. If a grant was made subsequent to the occupation by a cultivator, what the grantor had in the land thereafter was the right to receive Rajabhagam and not the entire interest. Therefore any grant of that land with a right to possession thereof, would convey to the grantee only such rights as the grantor had.

6. Mr. Parasaran appearing for the appellants has placed considerable reliance upon the words "Bhoodhanam" as well as "Ashtabhogam and Dhasaswayam" in the document, and argued that if really there had been occupancy ryots on the land, those words could not have been used by the grantor in the deed of gift. While it can be conceded that the contention has force, we are of opinion that it cannot be accepted here; for, to do so would be to ignore the existence of kudis on the property. It may be that at the time of the grant, a small portion of the cultivated or cultivable area was in the occupation of kudis and the rest of it was at the complete disposal of the grantor; it could not be an inaccurate description,

under those circumstances, for the grant to have been described as one of the lands with all rights in the soil, for the grantee would have undoubtedly such rights in lands not occupied by the tenants. We are, therefore, of opinion that the view taken by the Tribunal that the original grant was of the zamindar's share in regard to some of the lands in the village, while in regard to others it was of the land itself, is correct. The village will, therefore, be an "inam estate". The appeal fails and is dismissed with costs.