

(1946) 12 MAD CK 0017
In the Madras High Court

Molugu Lakshminarasimhacharyulu

APPELLANT

Vs

Marisetti Ratnam and Another

RESPONDENT

Date of Decision : 19-12-1946

Acts Referred:

Citation : AIR 1948 Mad 195

Hon'ble Judges : Leach, C.J

Bench : Division Bench

Judgement

Leach, C.J.—Until 1936, a grant by a landholder of land constituted an estate within the meaning of the Madras Estates Land Act, 1908,

only if it was a grant of the melwaram and in favour of a person who was not the owner of the kudivaram. The Madras Estates Land (Third

Amendment) Act, 1936, made an important alteration in the law. It provided that if the grant was of a whole village, the land comprised in it would

constitute an estate. It did not matter whether it was a grant of both the warams or of only one varam, nor did it matter who was the owner of the

kudivaram. In *Ademma v. Satyadhyana Thirtha Swamivaru* AIR 1943 Mad 187 a Division Bench, of which one of us was a member, held that a

grant could not be regarded as a grant of the whole village when there were already minor inams and a portion of the village had been reserved by

the landlord. The decision was followed in other cases. This resulted in the Legislature amending the Act further. By the Madras Estates Land

(Amendment) Act, 1945, an explanation was added to Sub-section (d) of Clause (2) of Section 3 of the Act and numbered Explanation (1). It

reads as follows:

Where a grant as an inam is expressed to be of a named village, the area which

forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes.

It was provided that the amendment should be deemed to have had effect from 31st October 1936, the date on which the Madras Estates Land (Third Amendment) Act, 1936, came into force.

2. By reason of the amendment made in 1945, it is now the law that a grant constitutes an estate if it is expressed to be of a named village, irrespective of whether some of the lands in the village are already held under inam or servicegrants or whether there has been a reservation of part of the village for communal purposes. The test is whether the grant purports to be of a particular village.

3. We will now proceed to state the nature of the five appeals before us. They arise out of suits filed by the appellant in the Court of the District

Munsif of Bhimavaram for the ejectment of the respondents from lands which they had occupied as his tenants. The respondents pleaded that the

civil Court had no jurisdiction because the lands formed part of an estate within the meaning of the Madras Estates Land Act. The suits were

instituted before the amendment of the Act in 1945 and the plaintiff averred that the grant under which he held the lands was not a grant of a whole

village. The District Munsif found for the plaintiff on the ground that parts of the village were held under earlier grants and that the poromboke was

reserved to the grantor. He relied on the decision in *Ademma v. Satyadhyana Thirtha Swamivaru* AIR 1943 Mad 187. The decrees for ejectment

passed by the District Munsif were confirmed by the Subordinate Judge of Narasapur on appeal. The defendants then appealed to this Court.

Their appeals were heard by Somayya J. after the passing of the Madras Estates Land (Amendment) Act, 1945. The learned Judge carefully

considered all the relevant documents and found that the grant was of a named village and therefore the defendants were entitled to rights of

permanent occupancy. The learned Judge also held that the grant covered the poromboke. The landholders have now appealed under Clause 15,

Letters Patent, leave having been granted.

4. The finding of the Subordinate Judge that the grant was not a grant of a whole

village is not binding on this Court, because it is not a finding of fact. It is a finding based on the Subordinate Judge's interpretation of certain documents. In A.K. Sherfuddin Vs. Kairoon Bi and Others, this Court held that an inference to be drawn from entries in registers was a question of law. Somayya J. had the right to form his own opinion as to the effect of the entries in the inam registers and to construe the grant. We are in the same position and we agree with the judgment under appeal.

5. The lands in suit are within the village of Muggala in the West Godavari district. The inam register of 1859 refers to the village as the village of Muggala Agraharam." It mentions that the grant was made in Fasli 1155 (1745-46) and that the name of the grantee could not be read because part of the document had been destroyed. The Inam Commission found that the grant included the poromboke. and that after the grant had been made there had been alienations of small portions of the land. This involved the issue of four pattas, one to the srantee and three to alienees in respect of the portions held by them.

6. In earlier registers the village had been referred to as "Muggala Agraharam." In the register kept by the Collector for the year 1851 three comparatively small plots of land were treated as minor inams, but obviously this was a mistake. The entries in the inam register compiled by the Inam Commission in 1859 make it quite clear that no minor inams had been granted, but there had been alienations of small portions of the land originally granted. In the register of 1851 relating to fees paid to village officers, the village is described as "an Agraharam village in a lump sum. Extracts from the inam register for 1853 have also been put in in evidence and the village is there referred to as "Muggala Agraharam." The annual settlement account for the year 1855-56 also indicates that the grant was of the village of Muggala and included the poromboke. Certain forms were not filled up because it was not necessary to do so, the village being a "Bilmuktha Agraharam.

7. While recognising that the entries in these registers and accounts are against the appellants, Mr. Somasundaram, who has appeared on their behalf, says that they should be disregarded and attention paid only to the terms of the grant issued on 29th November 1859 as the result of the Inam Commission's inquiry. Clause 1 of the deed reads as follows:

On behalf of the Governor-in-Council of Madras, I acknowledge your title to Agraharam in the village of Muggala, taluk of Kaikaloor. district of

Maanlipatam, claimed to be of acres three hundred and sixty two (362.73) of dry land and four acres (4.67) of wet land exclusive of poromboke.

In the first place, stress is laid on the word "in." It is said that if the Agraharam is in the village it cannot comprise the whole of it. In the second

place it is said that the words "exclusive of poromboke" mean that the poromboke was reserved by the grantor. The grant must be read in

conjunction with the findings of the Inam Commission embodied in the inam register of 1859. When that is done, we have no doubt that the grant

was intended to cover the whole of the village. It would certainly be going very far to hold that the word "in" in itself implies the grant of a part only

of the village. Somayya J. considered that the words "exclusive of poromboke" had the same meaning as "besides poromboke." In AIR 1945 165

(Privy Council) the Privy Council agreeing with this Court held that the words "besides poromboke" indicated not merely the lands which were

cultivated at the time when the grant was made but also all other rights which the grantor had.

8. The use of the word "exclusive" in the document under discussion may be inapt; but bearing in mind that the Inam Commission confirmed the

inclusion of the poromboke in the grant, the words "exclusive of poromboke" should not, in our opinion, be read as reserving the poromboke.

Even if they could be so read, the position would still be the same because the grant was of a "named village." Being a grant of a named village, the

lands covered by it constitute an estate within the meaning of the Madras Estates Land Act. The appeals are dismissed with costs.