
(1898) 08 MAD CK 0013
In the Madras High Court

Mrs. J. Foulkes

APPELLANT

Vs

Muthusami Goundan

RESPONDENT

Date of Decision : 23-08-1898

Acts Referred:

Citation : (1899) ILR (Mad) 503 : (1898) 8 MLJ 207

Hon'ble Judges : Subrahmania Aiyar, J; Moore, J

Bench : Full Bench

Judgement

Subrahmania Aiyar, J.—The first question for determination is whether under Exhibit A, the pattah, dated the 16th November 1841, granted

by the appellant's father, the late Mr. George Frederick Fischer, the then owner of the Salem Mittah, to the late Narahari Iyen, a raiyat that held

certain lands in the mittah, which are now in the possession of the respondent claiming through Narahari Iyen's son, Ramakrishnaien, the annual

assessment in respect of those lands, fixed at Rs. 40, instead of Rs. 103-0-5 payable till that time, was fixed in perpetuity. After setting forth

certain details, immaterial for our present purpose, the pattah concludes thus: ""The remainder is Rs. 103-0-5. Cowle therefore is Rs. 40; this sum

of forty rupees you shall pay perpetually (saswathamai is the vernacular word) every year as per kist in the Mittah cutchery and obtain receipt.

The learned Vakil for the appellant, in support of his argument that the pattah should not be construed as fixing the assessment at Rs. 40 for ever,

relied on Rajaram v. Narasinga, I.L.R., 15 M., 109 where the meaning of the word "sdswatham," the adverbial form of which occurs in Exhibit A,

had to be considered and where Parker and Shephard, JJ. held that no hereditary estate was granted under the instrument then in question, though

it contained as qualifying the term Izara the words "" kayam saswatham""-- words which, in the opinion of the learned Judges, were not

distinguishable from the similar expression in vogue in the North of India, viz., "" Istemarari Mukarari"" which was treated by the Judicial Committee

in *Tulshi Pershad Singh v. Ram Narain Singh* I.L.R., 12 G., 117 as not conveying per se a hereditary estate. I do not, however, think that Parker

and Shephard, JJ., intended to lay down a rule, as to the meaning of the word "" saswatham"" and its derivatives, to be applied in all cases. The

decision must be taken with reference to the facts there. And the conduct of the parties, noticed in the concluding part of the judgment of Parker,

J., would seem to have rendered almost inevitable the conclusion that the estate in that case was not hereditary. It is also necessary to point out

that in considering the applicability of the above Privy Council decision to cases like the present, we ought not to overlook the important fact that

the phrase ""Istemarari Mukarari"", though lexicographically importing perpetuity, has, as stated by their Lordships themselves in the case referred

to, acquired a restricted customary meaning in that part of the country I.L.R., 12 C.. 129 ; whereas the word, saswathamai"", with which we are

now concerned, has acquired no such secondary signification here. It is quite true, as urged for the appellant, that when land or even an interest in

the land is intended to be transferred hereditarily, it is usual to indicate the intention by the use of the words ""from son to grandson"", ""from

generation to generation"", or the like. In the present instance, however, there was no transfer of land or an interest in land, but only an agreement as

to the rate at which assessment was to be paid in respect of lands, in which the party bound to pay the assessment admittedly already possessed a

heritable estate. In such an agreement, words, usually employed in grants intended to convey an estate of inheritance, would not be used, but the

more appropriate term ""saswathamai"" found, in Exhibit A, or other similar phrase would be employed to show that the arrangement was intended

to be perpetual. And as there is nothing in the language of the rest of the document to warrant a different construction, we must give to the word in

question its natural and ordinary meaning and hold that the pattah fixes the assessment at Rs. 40 permanently and for ever, and that the

respondent's right under Exhibit A to object to the appellant claiming more than Rs. 44 is not affected in any way by Exhibit I, inasmuch as the

latter document is not shown to have been executed under circumstances which make it binding upon Ramakrishnaien, who was then a minor.

2. It was next urged on behalf of the appellant that as the rate so fixed was less than what was payable upon the lands till the date of the pattah,

and also less than that payable upon neighbouring lands of similar quality and description, and as such reduction in the assessment was not granted

for any of the special purposes mentioned in the second proviso to Section 11 of the Rent Recovery Act, VIII of 1865, the pattah should, as

against the appellant as the late Mr. Fischer's successor and the present proprietor of the mittah, be held to be invalid under that proviso. But this

contention is obviously unsustainable for the simple reason that the pattah had been executed long before the proviso relied on was enacted. It is

scarcely necessary to observe that a Statute ought not be construed retrospectively, unless in the words of Erle, C.J., quoted with approval very

recently by the Judicial Committee in *Young v. Adams* 1898, App Cas 476) "" the intention of the Legislature that it should be so construed is

expressed in plain and unambiguous language, because it manifestly shocks one's sense of justice that an act legal at the time of doing it should be

made unlawful by some new enactment."" And it is hardly necessary to add that there is absolutely nothing in the Rent Recovery Act to show that

retrospective operation was intended to be given to the proviso in question. I would therefore dismiss the second appeal with costs.

Moore, J.

3. I concur.