
(1920) 03 MAD CK 0050
In the Madras High Court

Nachiyappan alias Kirukan and Others	APPELLANT
Vs	
Alagappa Chetty and Others	RESPONDENT

Date of Decision : 09-03-1920

Acts Referred:

Citation : AIR 1921 Mad 107 : 62 Ind. Cas. 87 : (1921) 13 LW 172

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

Spencer, J.—These suits were brought in ejectment and arose out of a boundary dispute between the Mahajanams of Sarvamanyam village of Kalanivasal and the ryats of Sekkalakottai, a village in the Zemindari estate of Sivaganga. The plaintiff is the holder of a permanent cowle (Exhibit D), from the lessees of Sivaganga estate, over 150 kurukkams of land in this village. The defendants Nos. 1 to 3 are lessees of the Sivaganga estate under a lease from a former Zemindar which has now expired. They granted the plaintiff's cowle but have now no interest in these proceedings. Defendants Nob. 6 to 9 in the main appeal (Second Appeal No. 1759 of 1916) own the Dharmasanam village of Kalanivasal, by virtue of a copperplate grant of the year 1710 from the eighth Rajah of Ramnad. The defendants other than the fourth defendant are the eighth Karai Vallambaras of Kottaiyur who claim a title by a conveyance of 1883 from certain temple trustees, who themselves derived their title by transfer from the holder of a cowle, dated 1866, from Ranee Katma Nachiar, who was a Zemindarani of Sivaganga between 1863 and 1877 and had the survey of Eluvankottai Taluk made by Mr. Gompertz, a Deputy Commissioner of Survey. The rest of the defendants are persons who are alleged by the plaintiff to have trespassed on the suit lands, built houses and raised gardens under titles derived from one or other of the above parties. The Principle District Munsif of Sivaganga dismissed all the suits. The District Judge, finding that the lands in suit never formed part of Kalanivasal but all along belonged to Sekkalakottai and that possession followed title, decreed some of the suits in full, and others in p Article The points that arise for consideration in second appeal are

(1) Whether on the correct construction of (he original grant (Exhibit 1) by itself or as interpreted by the razinama of 1813, the suit lands are included in, or excluded from the inam village of Kalanivasal;

(2) Whether the Inam Commissioner's decision in 1865 is binding on the parties to this suit and decisive of the questions of title involved;

(3) Whether the decision of the Deputy Superintendent of Survey, Mr. Gompertz, in 1876 is conclusive against the Zemindar and the plaintiff who claims under him, and whether according to that decision the lands in dispute belong to Kalanivasal.

2. Exhibit I, in common with similar ancient grants, does not pretend to give a definite description of the boundary line confining the estate that was granted on every side. In 1710, land was of less value than it is now and boundaries were consequently more rough and ready than the needs of the present century demand. Certain boundaries are mentioned in Exhibit 1 as lying on each of the four sides of the inam. On the eastern and southern sides, which are the important boundaries for the purpose of the present dispute, only a single landmark is mentioned for each side. They are the Sekkalai Urani on the east, and the Karai of the Karaikudi Kanomi on the south. Both of these isolated landmarks can be located with some degree of certainty but on the way in which the line is drawn to connect them depends the whole question whether the lands in dispute fall inside or outside the inam. The District Judge was in error in drawing a straight line between the above said landmarks and in making deductions on the hypothesis that the line ran straight from one to the other. It should have been obvious to him, if he had reflected, that this procedure of drawing straight lines from point to point must result in the enclosed area ending in points in the direction of each of the four quarters of the compass, whereas the evidence of enjoyment shows that the boundary did not run in such straight lines. If the District Judge had drawn lines directly from west to east through the landmarks mentioned as points on the northern and southern boundaries, and lines directly from north to south through the landmarks on the eastern and western boundaries, he would probably have arrived nearer to a correct solution; but this procedure would result in the inclusion not only of the whole of the disputed area but also a large slice of what are admittedly Zemindari lands. The original copperplate thus contains no proof in favour of the plaintiff's contention that the suit lands were excluded from the grant.

3. The razinama of 1813 purported to be an arrangement between the Vallambars of Kottaiyur and the Dharmasanam Mahajanams of Kalanivasal. It was written on a cadjan document which the Inam Commissioner rejected as not genuine. The Zemindar was not a party to it and although there is a statement in Exhibit 4 that four stones were planted to demarcate the boundary, it is clear from the judgment of the District Munsif, who himself made a local inspection, that the identity of those stones cannot be ascertained at the present day. The statement made by the inamdars of Kalanivasal in 1862 at the inam enquiry held

by Mr. Taylor, which refers to the decision of 1813 and, as the District Judge observes, re-affirmed that decision, whatever its terms were, described the eastern boundary as "running west of the western ridge of Umbalam Kollai of Perichi Urani and running south to the north east of Kolluthunni Kaduvetty Sekkattayan Punjai and thence south-east to the Karaikudi road running south to north".

4. In translating and applying this description, the District Judge has omitted the words "south-east" and he differs from the Munsif, who went over the ground, on the question whether the Karaikudi road is that running from Karaikudi to Kanadukathan or the cart track from Karaikudi to Kottaiyur. The location of the Sekkattayan Punja is also a matter of considerable difficulty. The result is that the plaintiff's title is not established by Exhibit J, or by what followed that grant.

5. The second question relates to the effect of the entries in the Inam Register. The compilation of the Inam Register has been described by the Privy Council in *Arunachellam Chetty v. Venkatachalapathi Guruswamigal* 53 Ind. Cas. 298 as a great act of State and the statements contained therein as carrying great weight on questions of history and tenure of lands. But when the matter in issue is a matter of the boundary between an inamdar and his neighbour, it is clearly laid down by Madras Act VIII of 1869 that the title-deed shall not be deemed to affect the interests of any person other than the inam-holder.

6. Accordingly all title-deeds, including that issued to the predecessors of these inamdar defendants, which id Exhibit LXXXVIII, mention the area but not the boundaries of the inam. So it was held in *Cherukuri Venhanna v. Mantravathi Lakshmi Narayana Sastrulu* 2 M.H.C.R. 327 and *Vissappa v. Ramajogi* 2 M.H.C.R. 341 that the Inam Commnissioner's decision was not conclusive evidence of the title of the person to whom he granted a certificate. Whatever value the decision of the Inam Deputy Collector, Sudarsana Row, might have possessed as an award of an officer upon a dispute in which both the parties in controversy submitted their claims to him for adjudication, it is of no practical value as settling the boundaries between the two villages, Kalanivasal and Sekkalakottai, because he recognised the claim of Kalanivasal to two plots B and G, which lay east of the eastern boundary of that village as aligned by him.

7. On the third point, I feel no doubt that the District Judge was wrong in discarding Mr, Gompertz's award as void and made without jurisdiction.

8. The decision was one passed by a Survey Officer acting under the authority of Act XXVIII of 1860, and u/s 25 of that Act, it became final if not appealed against by instituting a suit in a Civil Court within two months. The fact that the funds for the survey of the Zemindari were furnished from the coffers of the estate will not, as the Judge supposes, reduce the authority of an officer who is empowered by Government to act under the Act to the level of a private surveyor employed by the Zemindarini. It is idle for the Zemindar or those claiming under him to pretend ignorance of the decision when Mr. Gompertz undertook the work

at the instance of the proprietrix, and when, as noticed by the District Munsif, there is evidence that decisions were being regularly communicated to the Zemindarini's agent and when the decision itself contains a note by the Deputy Superintendent that the boundaries was shown to the parties. Although Mr. Gompertz was asked by the Zamindarini in Exhibit TTT not to demarcate alienated villages, it is clear that she wished to have the external boundaries of her own estate villages surveyed, and this is such a boundary. It is unprofitable to speculate at this distance of time whether the evidence was recorded by Mr. Gompertz himself or whether his subordinate surveyor took some of it. The award is on the record and it speaks for itself. The Judge does not explain his reasons for thinking that the award is at variance with the sketch and is "vague, ambiguous and unworkable." The District Munsif was able to follow the line given in Mr. Gompertz's sketch (Exhibit II) on the ground, as he says in his judgment that there are definite marks to guide one in relaying it with tolerable certainty. From a comparison of Exhibit II, which shows the boundary line as running for some distance along the Karaikudi channel, with the Commissioner's map, Exhibit XV, the correct course would appear to be to join the points B1, B2, B3, B4, B5, in the latter map, and the correctness of this is confirmed by the Commissioner's note that B1 was the spot where a demarcation stone was said to have once existed.

9. But the District Munsif, on going over the ground, found that starting from the Peyadi stone, which is one of the boundary marks mentioned on the southern boundary in the inamdar's statements of Fasli 1272 (Exhibit LXVII), and aligning it with the theodolite stone in the corner of the Nandavanam on the bank of the Karaikudi Kanmoi, he got the same angle with the meridian as that given in Mr. Gompertz's sketch for the line running from said Kanmoi to the west of Sekkalai Urani. Having found that Exhibit II is binding on the parties, we cannot, in dealing with these second appeals, go into any of the questions of fact which affect the application of that decision to the features of the ground in dispute.

10. I think that all the second appeals, except Second Appeals Nos. 1770, 1772 and 1774, should be allowed with costs of the Mahajanam defendants throughout and that those three appeals, which relate to sites east of Mr. Gompertz's boundary line, as defined by the District Munsif, should be dismissed with plaintiff's costs throughout, accepting the District Judge's finding in these cases that the defendants failed to prove adverse possession for the statutory period, and that the memoranda of objections should be dismissed without costs. Second Appeal No. 1760 will be allowed in part and dismissed in part, each party bearing his own costs.

Sadasiva Aiyar, J.

11. I agree with the judgment just now pronounced by my learned brother. As the case was strenuously argued on both sides for several days, I shall add something in my own words.

12. Mr. Gompertz in Exhibit II clearly decided and purported to decide a boundary dispute between the owners of the two villages of Dharmasanam Kalanivasal and Ayan Sekkalakottai, in pursuance of Section 25 of Act XXVIII of 1860. (See column 6 of Exhibit II where that section is quoted and columns 2, 5, and 7 which are headed "date of decision," abstract of evidence and grounds of decision," and "decision.") The argument of Mr. L.A. Govindaraghava Aiyar that it is not a decision was based on the fact that the words "report of boundary dispute" occur in the beginning of Exhibit II. I am unable to accept this contention. It might be also a report of the dispute, but it is undoubtedly and mainly the decision on the dispute. (The report of a case contains usually the decision also.) The contention (accepted by the District Judge) that the Zemindarini was not a party to the dispute, is wholly against the documentary evidence, whose genuineness was not disputed. The District Judge has clearly misconstrued that evidence, when he concluded that the rights and interests of the Zemindarini in the boundary case between her Ayan village of Sekkalakottai and the Dharmasanam village of Kalanivasal were not in dispute before the Survey Officer. The two villages themselves are mentioned in Exhibit II as the principal parties to the case. Seven persons of the Dharmasanam village are mentioned as subsidiary parties representing all the interests in the lands of the Dharmasanam village, while four Karaigars of the Sekkalakottai and the Zemindarini's karnam are mentioned as subsidiary parties on the other side, representing evidently all the interests in the lands of the other village. We should consider the substance of these old transactions and judgment (more than 40 years old) and should not indulge in meticulous criticisms based on the mere letter, in arriving at the legal effect of the Survey Officer's decision.

13. The District Judge, ignoring Section 114 of the Evidence Act and the illustration (e) thereto, which says "that judicial and official acts" may be presumed to "have been regularly performed," on no evidence worth the name presumed, as regards a decision more than 40 years old, that Mr. Gompertz committed all kinds of irregularities in arriving at his decision and hence his decision was of no legal validity. I am unable to agree with this conclusion of the Judge. Decisions of English Courts as regards the distinction between Courts of Record and other Courts have very little relevancy, in considering the validity of judicial and official acts of Indian Courts and officers.

14. It was next urged that the Old Survey Act XXVIII of 1860, under which Mr. Gompertz purported to act, did not give him jurisdiction to settle the boundary disputes between the Dharmasanam village and the Zemindari village and that it is only Madras Act IV of 1897, which repealed Act XXVIII 1860, which for the first time invested the Survey Officer with such powers, (See Section 17 of Act V of 1897.) I am unable to accept this contention either.

15. Mr. L.A. Govindaraghava Aiyar relied on the statement of objects and reasons at the end of the Bill which afterwards became Act IV of 1897. (See Fort St. George Gazette, Supplement, dated 26th January 1897.) Mr. Forbes, who was in

charge of the Bill, stated as follows:--"Advantage has at the same time been taken of the present opportunity to extend the application of the law relating to survey and the settlement of boundary disputes to lands in the interior of permanently settled or other estates. This power has been held to be non-existent under the present law, and it is especially desirable that the provisions of this law should be applicable to lands comprised in estates under the management of the Court of Wards. The want of this power has, in many instances, caused considerable inconvenience to the efficient administration of such estates and while the main object of the present extension is to render it possible to include the estates of incapacitated owners, it is thought desirable also to empower Government to undertake the survey of any Zemindari tract on the application of the proprietor or for other recorded reasons. Where the proprietor himself desires the survey he is rendered liable to defray the costs, but in other cases it is provided that the cost shall be borne by Government unless otherwise laid down in any other enactment." I do not think that the above opinion of Mr. Forbes supports Mr. L.A. Govindaraghava Aiyar's contention. (I need hardly say that even if it does, it is clearly not binding on us.) The fact that when Survey Officers were governed by the old Act of 1860, the Government usually entered into an agreement with the proprietor of an estate (which was surveyed at his request) regarding the cost of the survey operations conducted for his benefit has no relevancy in the decision of the question, whether the Survey Officer had jurisdiction under Act XXVIII of 1860 to settle the boundary line between two villages, especially in a case where the boundary line is not intended to demarcate the boundary between lands in the interior of an estate. The jurisdiction is conferred on the officer by Section 2 of the Act, which is as follows: "It shall be lawful for any Revenue Settlement Officer, whenever he may be of opinion that such demarcation is necessary for the prevention, or adjustments of disputes or conducting a survey or settlement of land revenue, to fix the boundaries of estates or villages, &," The preamble, no doubt, refers to "the identification of lands assessed to, or exempted from public revenue" as one of the reasons for the enactment: but it also mentions the better definition and security of landed property and "the prevention of encroachments and disputes" as other reasons. The only prerequisite, therefore, for the exercise of jurisdiction is that the officer should be of opinion that such demarcation is necessary, for the prevention of disputes, etc. Even if Mr. Forbes is right, the boundary mark in this case was not intended to draw the line between two lands in the interior of an estate; but the exterior boundary of the Dharmasanam village, which is outside the estate and is not part of the estate. Mr. Gompertz's Survey did not purport to settle any dispute between such interiorly situated lands, that is, he did not demarcate any boundary line whose length lay within the interior of the permanently settled estate. The old Act required an application from the proprietor, to enable the Survey Officer to demarcate interior boundaries in an estate. Section 17(1)(b) of the new Act enabled the local Government (and under Clause (2), the Board of Revenue with delegated powers from the local Government) to make the survey, even without such an application. Again, while

the old Act made no provision for the recovery of the costs of survey from the estate and hence an agreement had to be entered into with the proprietor, Section 19 of the new Act enables the Government to recover the cost, as if it were an arrear of land revenue, even without an agreement, provided there was an application in writing. The Act of 1897 thus gave certain further powers to the Government, but I am unable to see that that circumstance obliges us to interpret Section 2 of the Act, as not conferring jurisdiction on a Survey Officer to demarcate any boundary lines, if, in his opinion, it would prevent disputes, notwithstanding that the words of the section in their natural sense expressly give such jurisdiction, especially where as in this case he was asked to do so, by an interested party. The Survey Officer's jurisdiction being thus established, Section 25 of the Act applies and no suit having been brought within two months to have his decision set aside, it became final. I am unable to agree with the learned District Judge that instead of presuming the regularity of the decision, the defendants should prove positively after this length of time that the Survey Officer conformed with all the preliminary formalities, such as calling upon the owners of the lands, etc., (see Section 3 of the Act, etc.) before he gave his decision. I agree with my learned brother that the Survey Officer's decision demarcated the boundary, as laid down by the District Munsif in Exhibit I, namely, from the Nandavanam theodolite stone B to the point B3, which was the south-eastern corner of the old Punja land mentioned in Exhibit II, and then proceeded northwards.

16. The District Munsif, however, for reasons which I cannot follow, held that the decision, Exhibit II, was binding on neither side. I differ from both the District Munsif and the District Judge on this point and I accept that decision as conclusive against both parties. I might add that if the Survey Officer's decision is ignored and we were entitled to go into the evidence, I would be inclined to find, on a construction of the boundaries given in 1862-63 in the inam statement, Exhibit LXVII, as those agreed upon in the 1813 razine, that the Dharmasanam boundary went up to the Kottaiyur-Karaikkudi big path, on the east, near B1 and included all the sites in dispute. The word "south east" has been omitted by the District Judge in setting out the boundaries according to Exhibit LXVII, and his finding that the big path mentioned in it as the eastern boundary and as running north to south is not the Kottaiyur path; but the far western big road is wholly against the description of the boundaries found in the document.

17. The result is that these suits, which relate to the sites west of the line B-B3 in the Court plan, Exhibit I, have to be dismissed, and the second appeals in those suits have to be allowed with costs of the Mahajanam defendants throughout. The decrees in the plaintiff's favour in the suits which relate to the sites marked 16, 18 and 20 in the plan, which sites lie east of the above line, are confirmed, and those second appeals, namely, Nos. 1770, 1772 and 1774, are dismissed with costs of the plaintiff and Second Appeal No. 1760 is allowed in part (as regards the site, west of the line) and dismissed as regards the portions east of the line. The parties will bear their own costs in this case throughout.

18. Before dismissing these second appeals, I omitted to notice one contention of the appellants, namely, that the plaintiff's lessors (the Sivaganga estate lessees) having lost title by the expiry of their lease term during the pendency of these second appeals, the plaintiff also lost title during the course of the second appeals and these second appeals also have, therefore, to be allowed. We have, in second appeal, to deal mainly with the correctness of the lower Appellate Court's decision when it was pronounced, and we have been further told that the sub lease to plaintiff has been ratified by the Zemindar's managers. This contention is, therefore, rejected.

19. Memoranda of objections have been filed by the plaintiff in all the cases but pressed in four cases, namely, Nos. 1769, 1762, 1782 and 1787. In these it is contended that decrees for mesne profits should have been given and that the tenants ought not to have been allowed to remove the fixtures in some cases. There can be no doubt that the tenants put up the fixtures in the bona fide belief that they were entitled to enjoy the sites in perpetuity. Farther the plaintiff's title itself to the sites has been found against in these cases. The memoranda of objections filed by the plaintiff have to be dismissed, on this short ground that the plaintiff can have no right to the fixtures or to claim mesne profits when he was not entitled to the sites themselves, or on the ground that the defendants had bona fide belief in their title. In the suits out of which the four second appeals already mentioned arose, the lower Court's discretion, either to order future mesne profits or to refer the plaintiff to separate suits, has not been shown to be wrongly exercised and the memoranda in them are also dismissed and no order is made as to costs in the memoranda of objections.