
(1959) 08 MAD CK 0023
In the Madras High Court

Nambikkai Mari Ammal

APPELLANT

Vs

A. Rathna Padayachi

RESPONDENT

Date of Decision : 28-08-1959

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(2)(d), 55

Citation : (1963) 76 LW 241 : (1963) 1 MLJ 337

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

Bench : Division Bench

Judgement

S. Ramachandra Iyer, J.—This appeal arises from an order of remand made by the District Judge of West Tanjore, in A.S. No. 52 of 1954. The plaintiff's father took on lease on 26th June, 1928 for a period of three years certain agricultural lands in the village of Malayappanallur, Tanjore District, from the predecessor-in-title of the defendant. It was the plaintiff's case that subsequent to the expiry of the lease his father, and after the latter's death, the plaintiff continued in possession of the lands paying rent. On these allegations a suit was filed by the plaintiff (tenant) u/s 55 of the Madras Estates Land Act before the Deputy Collector Kumbakonam, for the issue of a patta in respect of the lands granted to him on lease on the ground that he had acquired a permanent right of occupancy in them by virtue of Section 6 of the Act. According to the plaintiff, Malayappanallur was an estate within the meaning of Section 3(2)(d) of the Act. The defendant-landholder contested the claim. The Deputy Collector dismissed the suit as in his opinion the village of Malayappanallur was not an estate within the meaning of Act I of 1908

2. An appeal was filed against the order of the Deputy Collector to the District Judge. The District Judge held that the village was an estate and remanded the suit for trial on the other issues which were left undecided by the Deputy Collector. There was an appeal to this Court against the order of the District Judge in C.M.A. No. 124 of 1955. On 15th December, 1956, the appeal was remanded to the District Court directing a fresh disposal. On remand, the District

Judge came to the same conclusion as he did before. The landholder has filed this appeal against the order of the District Judge.

3. The only question in this appeal is whether the village of Malayappanallur is an estate within the meaning of Section 3(2)(d) of the Madras Estates Land Act. The villages of Malayappanallur and Mathi were the subject-matter of a Sarvamanyam grant by Pratap Singh Raja Saheb on 22nd Razab Sabbas Sittvin Maya Alqf (1762 A.D.) in favour of 88 Brahmins in Lakshminarayanapuram and Bhavani Viswanathapuram villages. It was made at the instance of one Nava Viswanatha Pandit Dabir, who is said to have founded the two Agraharams. The grant is not available,

4. Exhibit A-6 is an extract from the Fair Inam Register relating to Malayappanallur village. That gives the total area of Malayappanallur village as 497-62 acres. There is a deduction of 7-98 acres as constituting minor inams existing at the time of the Inam Settlement. The grant was a personal one for the benefit of the holders. Column 13 gives the names of the original grantees thus:

Vide Col. 13, Case No. 1.--Register of the village of Mathi for the names of the original grantees. and the extents or shares granted to them.

5. The extract from the Fair Inam. Register relating to the Mathi village has not been filed in this case. But the learned Counsel appearing for the rival parties found it necessary to refer to it in view of the incorporation thereof in Column 13 of Exhibit A-6 and for properly appreciating the judgment of this Court in S.A. No. 1514 of 1950, to which we will have to refer later in the course of the judgment. With the consent of both the parties the Inam .Register Extract relating to Mathi village which has been marked as Exhibit A-8 in S.A. No. 1514 of 1950 was sent for and referred to. In that document the names of the original grantees are given. There were 88. persons. The interest of each of the grantees has been specified. The grantees were recorded as being given Varying shares in the village. The shares were 1/2, 3/8, 1/4 and even a lesser fraction. It is evident that the grantees were not given equal shares in the village. Column 12 in which general specification of the grant is given states:

Dafter Rokkas--two, original Sikka produced--three of these one bearing the date, specified in column (ii) was registered in 1809. The other two granted in the same year but on a different date do not appear to have been produced then. The first simply states that this village and Malayappa-nallur are granted as Sarvamanyam to the Brahmins of the Agraharams of Lakshminarayanapuram and Bhavani Viswanathapuram at the instance of Nava Viswanatha Pandit Dabir, the founder of the Agraharams. The other two Sikkas specify one of the names of Brahmins of one of the Agraharams and the other of those of the other to whom the grant was made with the extent of land granted to each individual. Even these two Sikkas do not give the entire extents of the two villages.... Column 21 which contains the remarks made by the Inam Commissioner states. " This is an

entire Sarvamanyam village along with this another village also namely Mathi was confirmed in Inam in. the same Sannad ".

There is a reference in this column to the Inam Register kept for the village of Mathi regarding the original extents, the excess and nature of the holdings. The Fair Inam Register relating to that village states that the two villages were held together in "33-11/16 shares or 15 each", and that the share held by each individual was. made up of equal portions in the two villages. Column 22 which recorded the decision of the Inam Commissioner stated that the whole village was confirmed as recommended in one title deed on a quit rent of Rs. 244. Reference is made to Title Deed No. 1805. The title deed however has not been produced in the case.

6. Before Malayappanallur can be held to be an estate, it has to be ascertained whether the grant referred to in Exhibit A-6 was of a whole inam village, that is the entire area of the village or at least if it was a grant of a named village, whether the area excluded from that grant had been previously granted on service, or other tenure or reserved for any other purpose within the Explanation I to Section 3(2)(d) As pointed out by the Supreme Court in *District Board, Tanjore v. Moor Mohamed* (1952) 2 M.L.J. 586 the grant must either comprise the whole area of a village or must be so expressed as tantamounts to the grant of a named village as a whole, even though in fact it did not comprise the whole of the village area by reason of certain service inams having been already granted. In order to come within the terms of Section 3(2)(d) of the Act, the grant should be a single one of the entire or named village coming within Explanation I thereof, although the number of grantees may be several. But at the same time it must be noticed that the provisions of the section will not be attracted where the grant was in substance a clubbing together of several grants of portions of the village, although all of them put together would constitute an entire or named village. Neither side has contended before us that the grant comprised the entire extent of the village. The learned Advocate for the respondent urged that the grant was that of a named village excluding certain minor inams, which should be held to have been previously granted, and that the village would be an estate by reason of Explanation I to Section 3(2)(d) of the Act.

7. The question whether the grant, even as a named village, was a single one or comprised a number of individual grants to the 88 grantees was not considered by the. lower Court. If the grant was not a joint one to all the 88 persons, or in other words, one made collectively to all the grantees, but several grants in specified shares, to the various grantees, it could not be held that the grant was one of the named village. Columns 12 and 13 of Exhibit A-6 show that the various grantees got unequal shares. in the village. Their shares have been specified in Column 13, which gives the names of the original grantees and the extents or shares granted to them. The entries would imply that the original grants were all of the specified fractions of the village and not that the grant was

a single one which the grantees later on divided between themselves. Column 12 refers to three Sikkas and the contents thereof. They were of the same year. Sikka I stated that the two villages were granted as Sarvamanyam to the Brahmins. The other two Sikkas specified the names of each of the grantees and the respective share to which they were entitled. In our opinion the three Sikkas being of the same year should be taken together for ascertaining the nature and scope of the grant. The learned Advocate for the respondent contended that the grants should be taken to be evidenced only by the first of the three Sikkas, and that the other two Sikkas should be taken as evidencing a subsequent partition between grantees as effected by Nava Viswanatha Dabir. There is nothing in the Fair Inam Register to warrant this contention. If that was really so the partition should have been equal amongst the grantees. Great reliance is placed upon the remarks in Column 21, that the village was an entire Sarvamanyam village, for the contention that the entire village was granted as inam. It is well known that the Inam Commission was primarily constituted in the interests of revenue of the State. The ultimate object of the Inam proceedings was to determine whether or not the lands claimed as inam were liable to or free of assessment. But during the investigation conducted with that object in view, elaborate enquiries were made for investigating into titles of the various properties that were claimed as tax free grants or inams. The Inam Commission was not so much concerned whether the particular grant was of the whole village or part of village, as its primary concern was to ascertain whether the whole village was granted albeit by several independent grants or whether any portion was excluded from the grant so as to be available for assessment of revenue. From that point of view of revenue it made no difference to the Inam Commission whether the village was given as a whole or only parts of the village were given, as in either case no part of the village would be assessable to revenue. It is true that in the course of investigation elaborate enquiries were made in regard to the origin and the extent of the grant. But that cannot mean that the object of the enquiry was to ascertain whether the grant of a village was joint or several amongst the grantees. Admittedly in the village of Malayappanallur there were certain minor inams. These inams and that granted in favour of the 88 Brahmins together covered the entire village. Therefore from the point of view of revenue it would be an entire Sarvamanyam village in respect of which there could be no assessment. Therefore no inference can be drawn from the statement in Column 21 of the Register that the entire village was a Sarvamanyam one. Viewed otherwise the description that the grant in favour of the 88 Brahmins was an entire village would be obviously wrong, as the grant did not actually comprise the entire village, the minor inams having taken about 7 acres of land. We cannot, therefore, draw any inference from the mere description that the grant was a single one of an entire Sarvamanyam village.

8. The learned Advocate for the respondents relied upon the decision of Panchapakesa Aiyar and Basheer Ahmed Sayeed, JJ., in S.A. No. 1514 of 1950. That appeal was concerned with a question similar to the one we are having but it

related to the Mathi village, which was the subject-matter of the same grant. The learned Judges held that the grant should be held to be a single gift of the villages of Malayappanallur and Mathi in favour of the Brahmins of Lakshminarayanapuram and Bhavani Viswanathapuram. They observed that the grant should be held to be only by the first of the three Sikkas produced before the Inam Commissioner and that the other two were only an explanatory addenda, later in point of time and that therefore they could not be used so as to nullify the joint nature of the grant under the First Sikka. With great respect to the learned Judges we are unable to agree with that conclusion. We are of opinion that the three Sikkas should be considered together. The two subsequent Sikkas came into existence soon after the first one and should be held to evidence the latter part of a single transaction. This appears to be the view which the Inam Commissioner took as Column 13 specifically says "names of the original grantees with extents or shares granted to them" Even accepting the view that the Sikkas 2 and 3 were merely explanatory addenda to the first, it would follow that Sikkas 2 and 3 only particularised or explained the subject of the original grant under the First Sikka. The fact that soon after the grant it was interpreted as conveying definite or specified shares in the village to the respective grantees would show that the grant itself was of specified shares. In Broom's Legal Maxims, at page 463, it is observed that

there is no better way of interpreting ancient words or construing ancient grants, deeds and charters than by usage and the uniform course of modern authorities fully establishes the rule that however general the words of an ancient grant may be it has to be construed by the evidence of the manner in which a thing granted has always been possessed and used. For, so the parties thereto must be supposed to have intended.

The interpretation of the grant which was made by the two later Sikkas of the same year can therefore be safely taken as the interpretation of the grant itself. We cannot accept the contention urged on behalf of the respondent, that the grant was a collective one at the beginning but was later on distributed by Nava Viswanatha Dabir between the Brahmins in unequal shares. It is a general rule of construction that where a grant is made jointly to several persons, the presumption is that they take as tenants-in-common, and that each of them would be entitled to an equal share in the property unless there is an indication to the contrary. If really the grant was a joint one in favour of 88 Brahmins it is hardly likely that they would have submitted to Nava Viswanatha Pandit Dabir distributing amongst them the lands in unequal shares. The learned Judges in S.A. No. 1514 of 1950 held that the rule that equality is equity is a principle peculiar to English Law and has no application to the construction of gifts under the Hindu Law. The question in our opinion is not so much as to the application of any artificial or equitable rule but one for the ascertainment of the intention of a grantor. It is a familiar rule of construction of documents in this country that unless one finds some indication in the grant or the document itself the prima facie rule of construction is that grantees take as tenants-in-common; it is also a

rule of construction that where a property is owned by several as co-tenants they take equally unless there is evidence to the contrary. A joint grant without more would have vested in the various grantees a right to equal shares inter se. When therefore we find that the shares are not equal, the grant should be held to be several, as it would be difficult to conceive of 88 persons with unequal shares having been granted or even taken jointly. We are of opinion that Exhibit A-6 evidences a multiple grant in favour of 88 Brahmins. A similar question arose in A.S. Nos. 18 of 1954 and 408 and 409 of 1955. In that case the terms of the grant which was available stated "Thottam is divided into 90 shares and given as a gift to persons who are listed below." It was found that the shares of each of the grantees varied. That circumstance was held to negative that the grant was joint amongst the grantees, as the entire body of the grantees was not treated as one. We are in respectful agreement with the principles of construction adopted in that case. It would follow that Malayappanallur will not be an estate within the meaning of Section 3(2)(d) of the Madras Estates Land Act, as the grants made to several persons could not be consolidated so as to form a whole village for the purpose of that provision.

9. Even apart from that conclusion, we are of opinion that the respondent has failed to prove that the grant in the present case was of a named village in which certain minor inams had been granted previous thereto. Exhibits A-6 (a), A-6 (b) and A-6 (c) are extracts from the Fair Inam Register in regard to the minor inams. Exhibit A-6 (a) relates to an extent of one acre and 29 cents. It is stated in Column 21 that it was not known whether it was granted by the grantees of the major grant or before the village itself was granted in Inam. Reference is made to the fact that the minor inam was mentioned in a document of the Tamil year Vikruthi (that will be about 1769 to 1770 A.D.) and that in the Karaiyedus between the 88 Brahmins the land was not included. The learned Judges who decided S.A. No. 1514 of 1950 proceeded on the basis that the major grant was made in the year 1790. This cannot be correct. The grant was made by Pratab Singh Raja who died in 1763. The Inam Register extract Exhibit A-6 gives also the date of the grant. That is stated to be 1762 A.D. according to the Gregorian Calendar by the learned District Judge. That appears probable. That being so, the fact that the minor inams existed and was mentioned in a document of the year 1769 cannot prove that the minor grant was earlier than the major grant. Exhibit A-6 (b) is the extract from the Fair Inam Register in regard to an extent of 64 cents, which was the subject-matter of a grant to a religious endowment. In column 21, it is stated that the grant appears to have been originally made by the Mirasdars to the village pagodas out of their poramboke lands. From this entry it can be held that the grant of 64 cents was made for the temple by the Brahmin grantees under the major grant. Exhibit A-6 (c) relates to the extent of 6 acres and 6 cents of land which was given as a charitable grant for the expenses of the water pandal in the village road leading to Nachiargudi. Under Column 21 it is stated that it was not known when and by whom it was granted and whether the minor inam existed before the major grant and that it was not

included in the Karaiyedu of the village.

10. The learned Judges who decided S.A. No. 1514 of 1950 held that the minor inams should have been granted before the major grant by reason of the entries in the Fair Inam Register and the circumstance that the minor Inams were not included in the Karaiyedu of the village. In the Fair Inam Register relating to Mathi village, with which alone S.A. No. 1514 of 1950 was concerned, there is a specific reference to the fact that the minor inams were "said to have existed even before the village itself was conferred on the Brahmins as inam. "This statement in the Fair Inam Register will go a long way to prove that the minor inams were given previous to the major grant in that village. But there is no such recital in Exhibit A-6 (a) or A-6 (c) which relates to Malayappanallur. On the other hand, it is stated therein that it was not known when the minor inams were granted. It would follow that the considerations which weighed with the learned Judges in deciding S.A. No. 1514 of 1950 will not apply to the present case. Nor do we consider that the circumstance that the minor inams were not included in the periodical redistribution of the lands at the time of Karaiyedu would have any significance in the case. The non-inclusion of such lands in the Karaiyedu would be consistent with the lands having been reserved by the Rajah and given to the minor inamdars at a later date. The learned Judges held that the minor inams could not have been granted by the 88 Brahmin grantees under the major inam. That may be so. From that it cannot necessarily follow that the grants of the minor inams were anterior to the major inam. It is possible to conceive one of four alternatives in regard to the grant of minor inams: (1) the minor inams might have been granted by the Rajah before the major inam, (2) the minor inams might have been granted simultaneously with the major inam, (3) the minor inams might have been reserved by the Rajah at the time of making the major grant and later granted to the minor inamdars, (4) the minor inams might have been granted by the inamdars under the major grant. The fact that the minor inams could not have been granted by the major inamdars cannot therefore mean that the grant should have been anterior to the major grant. It might have been simultaneous or it might have been reserved at the time of the original grant and granted later. In either case the grant would not be one coming within the terms of Explanation I to Section 3(2)(d). In such a case the burden of proving that the grant was made by the Rajah before the major grant would be upon the plaintiff. This he has failed to discharge. It follows that it cannot be held that the village of Malayappanallur is an estate within the meaning of Section 3(a)(d) of the Madras Estates Land Act. The plaintiff would not be entitled to maintain the application u/s 55 of the Estates Land Act. The appeal succeeds and is allowed with costs throughout.