

(1922) 04 MAD CK 0019
In the Madras High Court

P. Subrahmanya Somayajulu and Others	APPELLANT
Vs	
Y. Seethayya and Others	RESPONDENT

Date of Decision : 05-04-1922

Acts Referred:

Citation : AIR 1923 Mad 1 : (1923) ILR (Mad) 92 : 70 Ind. Cas. 729 : (1922) 16 LW 462

Hon'ble Judges : Walter Schwabe, C.J.; Oldfield, J.; Coutts-Trotter, J

Bench : Full Bench

Judgement

Walter Schwabe, C.J.—The question to be decided in these appeals is whether the Civil Courts have jurisdiction to entertain the suits, the

subject of the appeals, or whether their jurisdiction is ousted by the Madras Estates Land Act. The suits are between the inhabitants of the village

of Arepalli and their immediate landlords, the agraharamdars of that village. If the agraharamdars are landlords within the meaning of Section 3(5)

of the Madras Estates Land Act of 1908, the Civil Courts have no jurisdiction by reason of Section 189:

Landholder"" means a person owning an estate or part thereof and includes every person entitled to collect the rents of the whole or any portion of the estate.

2. Whether this village is an ""estate"" or not depends on Section 3(2)(d) which includes in the definition:

Any village of which the land revenue alone has been granted in inam to a person not owning the kudiwaram thereof.

3. It has been established that, where a grant or inam is a grant of both the landlord's and the tenant's rights in the land or, as they are called, the

melwaram and the kudiwaram, the land is not an "estate;" but if the grant is of the landlord's rights or the melwaram alone, it is an "estate" so that

the question to be decided is whether the grant is of the land itself or only of the right to the revenue from the land. There is no question in this case

of the village being part of an estate and the question which has recently been decided by a Full Bench of this Court in A.A.O. No. 121 of 1920

since reported as Jarugumilli Brahmayya v. Challaighali Achiraju 70 Ind. Cas. 615 : 43 M.L.J. 229 : (1922) M.W.N. 280 : 31 M.L.T. 91 : A.I.R.

(1922) (M.) 373 : 45 M. 716 where it was held that a mirror inamdar who was granted both warams in respect of a small part of an estate was a

landholder does not arise because the village in question has not been shown to be part of an estate. I am conscious of the absurdity if that case

was rightly decided and the view which we are about to express in this case is right, for the result is that a minor inamdar of a few acres would be

a "landholder" while a major inamdar of a whole village would not. But such apparent inconsistencies are not surprising in view of the draftsmanship

of the Statute.

4. The first question to be decided is whether an, alleged copy of the grant itself which was made in the year 1689 is admissible in evidence to

prove the terms of the grant. The document, Exhibit I, purports to be a copy of two documents of a grant in the Telugu language with a schedule

annexed showing the boundaries, and of a Telugu translation of another document written in the Persian language, the translation being, it is stated,

written on the right hand margin of the document in Persian. The copy is dated 11th May 1858, and is signed by the three aghaharamdars at that

time and contains the statement over their signature that they "retain the original and that this copy is written and filed." At that date, litigation was

pending and I have no doubt that the meaning of that statement is that this is a true copy made for use in Court in that litigation. We have examined

the, records in that litigation and find that the grant was put in-evidence. The aghaharamdars who signed the statement, that it was a true copy are

all dead. Under the Evidence Act of 1872, Section 65, secondary evidence may be given of the contents of a document where the original has

been lost. Under "Section 90 when a document is produced from what the Court considers proper custody purporting to be more than 30 years

old the Court may presume that the signatures to the document are genuine, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed, and attested. This applies to copies as well as to originals. If the copy is proved to be a true copy it has been held that presumption in favour of the genuineness of the original can be made. It follows that this document is admissible as secondary evidence provided it can be proved that it is a true copy. There is a statement in it by these three deceased persons that it is a true copy and u/s 32(7) a statement made by a person who is dead contained in any document which relates to any such transaction as is mentioned in Section 13, Clause (a) is admissible as a relevant fact and u/s 13, Clause (a), where the question is as to the existence of any right, any transaction by which the right was created is a relevant fact. In my judgment the grant is a transaction by which the right now in question was created and the statement of the deceased persons is contained in a document which relates to that transaction. It follows that, in my judgment, the statement that this is a true copy is admissible. There is no reason for not accepting that statement and the document must be admitted as a true copy. That part of the document which purports to be a Telugu translation of the Persian stands on a somewhat different footing because, although it is proved that it is a true copy of the translation, there is no evidence that the translation is a correct translation and, therefore, in my judgment, the second of the two documents copied is of no value and cannot be taken into consideration.

5. The question then to be determined is, whether on the true construction of the grant and on the evidence relating to the subject-matter of the grant at its date, that is, 1689 (A.D.), the grant was of the land itself or only of the right to collect the revenue. If it were proved that there were raiyats with permanent occupancy rights on the land, at the date of the grant, it would be strong evidence that the grant was of the melwaram and

not of the land itself. Since the decision of the Privy Council in *Suryanarayana v. Patanna* 48 Ind. Cas. 689 : 41 M. 1012 : 9 L.W. 126 : 25

M.L.T. 30 : 23 C.W.N. 273 : 29 C.L.J. 153 : 1 U.P.L.R. (P.C.) 11 : 36 M.L.J. 585 : 21 Bom. L.R. 547 : (1919) M.W.N. 463: 45 I.A. 209

(P.C.) and *Upadrashta Venkata Sastrulu v. Divi Seetharamudu* 51 Ind. Cas. 304 : 43 M. 166 1L.W. 633 : 17 A.L.J. 725 : 37 M.L.J. 42 : 21

Bom. L.R. 925 : 26 M.L.T. 175 : 30 C.L.J. 441 : 24 C.W.N. 129 : 46 I.A. 123 : 2 U.P.L.R. (P.C.) 16) it must betaken that there is no

presumption that the grant of an agraharam inam convers only the melwaram, and since that decision it has been held by a Full Bench of this Court

in Muthu Goundan v. Perumal Iyen 63 Ind. Cas. 790 : 44 M. 588 : 13 L.W. 483 : 40 M.L.J. 429 : (1921) M.W.N. 263 : 29 M.L.T. 398.

6. Note: Vide, however Chidambara Sivaprakasa Pandara Sannadhigal v. Vetrma Reddi 68 Ind. Cas. 538 : 16 L.W. 102 : 31 M.L.T. 54 : 45 M.

586 : (1922) M.W.N. 749 : 43 M.L.J. 640 : A.I.R.(1922) (P.C.) 292 : 37 C.L.J. 199 : 27 C.W.N. 245 as regards the scope of presumption with

regard to an inam a later decision, that there Is a presumption in law in such casts that both the melwaram and kudiwaram are included.

7. The grant as translated by the Chief Interpreter is in the following terms:

In the year 1610 of the Era of Salivahana commencing Jaya year, namely, this Prabhava year on the 15th Siddah of Adhila Chaitra, the patta or

Deed of charity ("udana" gift of land) executed and given to Ponnappalle Annappa Garu who is devoted to the six duties (of a Brahmin) namely,

Yajana, Adhya, Yajana Adyayana, Adhyapaka, Dana and Danapratigraha by Kumaravolu Rajah, Puligadda, Mallarraraju Inddaraju, Perraju and

Muzumdar Papanna, Desasshas (natives) of Nizampatna. Where as we have on the holy occasion of Lunar Eclipse given to you, treating it as a

dedication to God Siva (as) Shrotriem the village called Are (mouza), Sircar Nizampatnamta (taluk) for 6 six pagodas, you shall be enjoying the

shrotriem in this manner from son to grandson and so on in succession and be happy. (Sanskrit Verse: Proper administration of a charity gift by

another person is twice meritorious as a charity gift by oneself).

8. Signature of Rajahs:

Sd. Mallapparaju

Sd. Perra.

Sd. Papanna

Sri NAGESWARA.

9. Memorandum of boundaries of the agraharam written and given to Ponnappalle Annappa who is devoted to the six duties of a Brahmin, namely,

Yajana, Adhyajana, Adhyayana, Adhyayapaka, Dana and Dana Patrighrahs by

Komaravolu Rajhas, namely, Puligadda Mullapparazu, Lekarazu

Perraju and Muzumdar Papanna Natives of Nizatn-patna on the 9th Adhika Chaitra Bahula of this Prabhava year, namely, the year 1610 of the

Era of Salivahana commencing Jaya year. Whereas we, fixing the shrotriem at 6 pagodas have given to you agrapharam in the village called

Arepalle, M. Niz Patnam Taluk the boundaries and limits shown therefor as follows:

Boundary on the north-west (by) Kudali (place of meeting) of the limits of the two villages of Cherukmalle and Arambakkam; on the north by

Kudali of the limits of the villages of Cherukmalle Gunvapalle and Ponnappalle roughly along the patta gatiu (old ridge); on the north-east (by) the

limits of Nadimpalle and Razavolu; on the east by Chakirevugunta (Dhobypond) lying roughly along the channel forming the boundary of Dhulipudy

roughly from the middle of the Vada (wharf) along the limits of Razavolu; on the south-east (by Kudali) of the limits of Nagaram and Dhulipudy: on

the south roughly (by Kudali) of Basulapalam and Pudivada through Peddaputtalu from the middle of the Vada roughly south of Thurakkalaguntalu

along the middle of Chittapaggiakatta south of Chavutavulu: on the south-west (by) Jamalagunta from the middle of Nallavadu, and on the west

(by) roughly the north-western limit of Daggulamadugu through Chavuta Bibbala through the middle of Vada, through the middle of Kudali and

along the old bridge and boundary, limit of Arambakkam. Whereas we have given to you according to these boundaries you shall enjoy the

agrapharam paying the shrotriem from son to grandson and so on in succession and be happy.

10. It is argued on behalf of respondents that the terms of the grant show that it was of the melwaram only and the matters relied upon in support

of the contention are four. The first, on which most reliance is placed, is the use of the letter M. which occurs twice, once in the grant itself and

once in the schedule, the words being ""the village called Arepalli M. ""It is argued that the letter M is an abbreviation for a word mauza or mouja.

This word is derived from the Arabic and literally means defined and hence "a defined place", "a village" and ""an inhabited village."" It is then

argued that this shows that in 1689, the date of the grant, there were raiyats cultivating the land who had occupancy rights, from which it follows

that what was granted was a right to collect the rent from this village and not a right to the land or the village itself. This meaning of the word was

given to it by Sadasiva Aiyar, J., in *Upadrasla Venkata Sastrulu v. Devi Sitaramudu* 24 Ind. Cas. 224 : 38 M. 891 : 26 M.L.J. 585 where,

referring to. another village granted in inam in 1748, he says, that ""the village was then a mouja village, that is a village in which there were peasant

proprietors owning cultivable lands even then."" That case went up to the Privy Council and the decision was reversed and their Lordships dealt

with the matter in these words in *Upadrashta Venkata Sastrulu v. Divi Seetharamudu* 51 Ind. Cas. 304 : 43 M. 166 : 10 L.W. 633 : 17 A.L.J.

725 : 37 M.L.J. 42 : 21 Bom. L.R. 925 : 26 M.L.T. 175 : 30 C.L.J. 441 : 24 C.W.N. 129 : 46 I.A. 123 : 2 U.P.L.R. (P.C.) : ""Reliance was

placed on the fact that in the register of 1802, Billipadu is called a mauja (or mauza) these expressions indicating, it is suggested, that the village

was the home of proprietary inhabitants * * * * * But it does not appear to their Lordships that it would be safe to build on the use of the

expressions of this character in 1783 and 1802 an inference as to the existence in 1748 of tenants having permanent rights of occupancy.

11. So, as far as authority goes, this interpretation of the word rests only on the passage I have quoted from the judgment of Sadasiva Aiyar, J. I

do not find that evidence was given in that case as to the meaning of the word. But Wilson's Glossary of 1855 was referred to as it has been in this

case, where he at page 360, gives the meaning as "a village, understanding by ""that term, one or more clusters of habitations and all the lands

belonging to the proprietary inhabitants." He states, too, that it is defined in ""Directions to Settlement Officers"" to be ""a parcel or parcels of lands

having a separate name in the Revenue Records and of known limits."" We are referred to Maclean's. Manual of Administration, Volume III, page

522, but this is merely a verbatim copy of Wilson's, definitions referred to above. I do not think that, on the material before us, it is possible to say

that this word necessarily imports the meaning that there were occupancy raiyats on the land. There is no evidence at alb before us of how this

word was used in 1689 and if it be a fact that, at the time that Mr. Wilson compiled his Glossary, it had come to have that meaning, that would not,

in my judgment, be sufficient evidence of its meaning in 1689 to enable us to act upon it. It is, to my mind, reading, much, too much into the

meaning of the word which simply means defined and so, a defined place or village.

12. Secondly, it is argued that the use of the word shrotriem shows that the grant was of the melwaram rights only. This word is derived from

srotriya, meaning a Brahmin well read in the Vedas and literally means nothing more than the grant of a land to such a person. It is used in this

document in two senses, firstly, as describing the rights that were granted, and, secondly, as meaning the rent to be paid to the grantor, in this case

6 pagodas. Here, again, reliance is placed on Wilson's Glossary. At page 490 he gives shrotriem as meaning lands or a village held at a favourable

rate, properly an assignment of land or revenue to a Brahmin learned in the Vedas and he adds, "a shrotriem grant gives no right over the lands and

the grantee cannot interfere with the occupants as long as they pay the established rent. It is to be observed that he begins by saying that it is a

grant of land or of revenue, and I have little doubt that the term was used of any grant to a Brahmin in inam, whether the grant was of land or of

revenue. It is true that in the latter part he qualifies his statement by the statement that "it gives no right over the lands" But it is to be remembered

that this was written at a time when it was the accepted view of the Courts in this Presidency that in a shrotriem grant, there was a presumption that

the melwaram only was granted and I have little doubt that Mr. Wilson was merely stating what he understood the law to be. The view of the law

as I have pointed out has been decided by the Privy Council to be erroneous. In the Land Systems of British India" by Baden-Powell, Volume III,

page 140, the following passage occurs:

Only in the case of grants to Brahmins, called shrotriem, I understand that the land was not necessarily held by the grantee. Such grants in fact are

assignment of revenue, and whether the land was unoccupied and was acquired with the grant, it is a question of fact in each case." and at page 79:

All native Governments were in the habit of rewarding favourites providing for the support of mosques, temples, religious schools, shrines, and for

alms giving and the Maintenance of Brahmin and Muhammadan Shrines, etc., by granting the revenue on the land, whether they granted the land

itself or not.

13. And at page 80 it is stated that

The inam commission dealt with all kinds of grants whether they included the right in the land: or only the Government Revenue they were

shrotriems and agraharams, grants to certain classes of Brahmins which did not give more than the revenue, leaving the land in its original

occupancy unless it could be shown that the occupancy was also granted.

14. In these passages it would appear that the author, in stating that the shrotriem or agraharam grant could be either of revenue or of the land,

states what was then supposed to be the rule that the grant was to be presumed to be of the melwaram only unless the contrary was proved.

15. It is to be observed that in *Upadrashta Venkata Sastrulu v. Divi Seelharamudu* 51 Ind. Cas. 304 : 43 M. 166 : 10 L.W. 633 : 17 A.L.J. 725 :

37 M.L.J. 42 : 21 Bom. L.R. 925 : 26 M.L.T. 175 : 30 C.L.J. 441 : 24 C.W.N. 129 : 46 I.A. 123 : 2 U.P.L.R. (P.C.) the grant was an

agraharam grant in inam to Brahmins: in *Ponnuswamy Padayachi v. Karupudayan* 24 Ind. Cas. 217 : 38 M. 843 : 26 M.L.J. 285 : 1 L.W. 218 :

15 M.L.T. 299 the grant was a shrotriem grant: in *Muthu Goundan. v. Perumal Iyen* 63 Ind. Cas. 790 : 44 M. 588 : 13 L.W. 483 : 40 M.L.J. 429

: (1921) M.W.N. 263 : 29 M.L.T. 398 (F.B.) the grant was a moniyam grant to a temple, and in all these cases it was held that the grant was of

both warams. In *Secretary of State for India in Council v. Srinivasa Chariar* 60 Ind. Cas. 230 : 44 M. 421 : 13 L.W. 592 : 40 M.L.J. 262 : (1921)

M.W.N. 111 : 29 M.L.T. 181 : 19 A.L.J. 201 : 33 C.L.J. 280 : 25 C.W.N. 818 where a village was granted as a shrotriem inam, their lordships

of the Privy. Council held that such a grant could be either an assignment of revenue or a grant of the land. In my judgment, it is fully established

that shrotriem grant may be either of the land itself or of the revenue only. The use of this word, therefore, is of no importance.

16. The third matter relied upon is, that the grant being a shrotriem grant was to Brahmins learned in the Vedas and it is suggested that it was

unlikely that such Brahmins would cultivate the lands themselves, The same contention might have been made in the cases referred to above.

Ultimately, the suggestion was limited to non-resident Brahmins. But all the information before us is that the Brahmins to whom the original grant

was made lived about two miles from Arepalii and the argument in my judgment is of no value.

17. Lastly, it was proved that the grantors were Deshapandyas and it is contended that this shows that it was of Revenue alone, as it is suggested

that Deshapandyas were farmers of revenue only and could not or, at any rate, were most unlikely to have land to grant. This must depend upon

the position of Deshapandyas in 1680, and there is nothing inherently impossible or even improbable in their either being or acting as if they were

the owners of the soil. We have had our attention called on this matter to the Manual of Kistna District of 1843, page 343, to the Appendix to the

5th Report from the Select Committee on the East India Company's affairs, Volume III, page. 24 and Wilson's Glossary, page 132. It would

appear that these Deshapandyas were originally Hindu Revenue Officers under Muhammadan Rulers acting as Accountants and Registrars of the

District and being under a Deshmukh. They were originally paid commission on the revenue collected or by a grant of land. These Deshapandyas

after a time became as powerful as Deshmukhs. Both, provided they produced the necessary revenue, were left without interference by the Ruler.

The office soon became hereditary. Gradually they obtained the position of territorial magnates in their districts, somewhat resembling the feudal

barons of early English History. It is to be observed that the history of the zemindars is much the same. They, too, originally were collectors of

revenue but became in effect the owners of the territory. Before long these Hindu hereditary officers began to call themselves zemindars and to act

as if they were independent Princes. It follows that there is nothing to show that in 1689 it was impossible or even improbable that these particular

Deshapandyas either in fact owned this village or acted as if they owned it.

18. Another word in Exhibit I is relied upon by the other side as showing that the land itself was granted. This is the word "Bhudana" meaning a gift

of land. That the word was used. I have no doubt, although it appears in Exhibit I as "Udana" with a space before it. We have been satisfied to at

this U is not used at the beginning of a word but only after and attached to a consonant and that the only consonant that could be used in this

connection is Bh. The space is, no doubt, explained by the fact that it is a copy and an accurate copy of the original grant in which the initial letter

had somehow become defaced. But, unfortunately, no inference can be drawn from the use of this word. It would appear from Wilson's Glossary,

page 82, that the word is used either of a gift of land or of a gift of the revenue of the land. I have, therefore, come to the conclusion that we get no

assistance at all from the words of the grant and that they are equally consistent with the grant of the revenue or of the land itself. That being so, if

the matter stood there, it would be sufficient to say that, on the decision of the Privy Council in *Suryanarayana v. Patanna* 48 Ind. Cas. 689 : 41

M. 1012 : 9 L.W. 126 : 25 M.L.T. 30 : 23 C.W.N. 273 : 29 C.L.J. 153 : 1 U.P.L.R. (P.C.) : 36 M.L.J. 585 : 21 Bom. L.R. 547 : (1919)

M.W.N. 463: 45 I.A. 209 (P.C.) there is no presumption that the grant was of revenue only and on the decision in *Muthu Goundan v. Perumal*

Iyen 63 Ind. Cas. 790 : 44 M. 588 : 13 L.W. 483 : 40 M.L.J. 429 : (1921) M.W.N. 263 : 29 M.L.T. 398 that there is a presumption that the

grant is of both warams. I can find nothing in the evidence adduced in the case to negative that presumption. On the contrary, I think there is cogent

evidence apart altogether from the presumption in favour of holding this grant to have been of both warams. The evidence has been fully and most

carefully analysed in This case on the issue submitted to him by Mr. M.O. Tirumalachari, Principal District Munsif of Tenali. I attach most

importance to the Inam Register Exhibit G to Exhibit V series ranging from 1750. Dumbalas or authorities from the Rulers of the country, to

agraharamdars to harvest and thrash the crops and appropriate the produce and to the documents in the litigations of 1864 Exhibits F and F 2.

There is no record of the actual cultivators of the land claiming permanent occupancy rights till about 1885 and it is clear that the claims were

disputed when made. It is also clear that in many instances of fairly recent date, the agraharamdars were treating the land as their own, mortgaging

it, selling it, and letting it on terms quite inconsistent with any one else having permanent occupancy rights. I see no reason for dissenting from the

findings of facts of the Principal District Munsif and I hold that the grant of this agraharam village was a grant of both the kudiwaram and melwaram

and that, consequently, it is not an "estate" within the Madras Estates Land. Act and that the Civil Courts have jurisdiction to try these cases.

19. The appeals are, therefore, allowed, the suits being remanded for admission of the plaintiffs in the District Munsif's Court and disposed

according to law. Costs in this Court and the District Court will be paid by the defendants-respondents. Costs to date in the District Munsif's

Court will be in his discretion and be provided for in the decree to be passed.

Oldfield, J.

20. I agree.

Coutts-Trotter, J.

21. I agree.