

(1922) 04 BOM CK 0014
In the Bombay High Court

P. Subramanya Somayajulu and Another	APPELLANT
Vs	
Y. Seethayya and Others	RESPONDENT

Date of Decision : 05-04-1922

Acts Referred:

Citation : (1923) ILR (Bom) 92

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

Bench : Full Bench

Judgement

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 Estate Land Act. The suits are between the inhabitants the village of Arepalli and their immediate landlords, the aghaharamdars of that village. If the aghaharamdars are landholders 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. Whether this village is an "estate" or not depends on Section 3 (2) which includes in the definition "any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram there of"

2. It has been established that, where a grant in 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 kudivaram, 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 was recently decided by a Full Bench of this Court in *Brahmayya v. Achiraju* I.L.R. (1922) Mad. 716. where it was held that a minor inamdar who was granted both varams 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.

3. 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 signatures 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. u/s 90 when a document is produced from what the Court considers proper custody and purports 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 the 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, Clause (7), a statement of a relevant fact, made by a person who is dead, contained in any document, which relates to any such transaction as is mentioned in Section 13(a), which, where the question is as to the existence of any right, includes 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 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, the second of the two documents copied is of no value and cannot be taken into consideration.

4. The question then to be determined is, whether on the true consideration of

the grant and on the evidence relating to the subject-matter of the grant at its date, that is 1689, the grant was of the land itself or only of the right to collect the revenue. If it were proved that there were ryots 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* ILR (1918) Mad. 1012 and *Venkata Sastrulu v. Seetharamudu* ILR (1920) Mad. 166 it must be taken that there is no presumption that the grant of an agraharam in inam conveys only the melwaram, and since that decision it has been held by a Full Bench of this Court, in *Muthu Goundan v. Perumal Iyen* ILR (1821) Mad. 588 that there is a presumption in law in such cases that both the melwaram and kudivaram are included.

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

6. In the year 1610 of the era of Salivahana commencing Jaya year namely this Prabhava year on the 15th Suddah of Adhika Chaitra, the Patta or deed of charity "dana" gift of land executed and given to Ponnappallenappa Garu who is devoted to the six duties (of a Brahman), namely, Yajana, Adhya-jana, Adhyayana, Adhyapaka, Dana and Danapratigraha, by Komaravollu Rajah, Palligadda, Mallapparaju, Lakkaraju, Perraju and Muzumdar Papanna Desasthas (natives) of Nizampatnani; Whereas 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 Arepalle M., Sircar Nizampatnam (taluk), for six pagodas you shall be enjoying the Shrotriems 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 as meritorious as a charity gift by one self.)

Signature of Rajahs ... Mallapparajn's signature. Perra's signature. Papanna's signature. Sri Nageswara.

7. Memorandum of boundaries of the agraharam written and given to Ponnappallenappa who is devoted to the six duties of a Brahman, namely. Yajana, Adhyayana, Adhyayana, Adhya-paka, Dana and Danapratigrahas by Komaravolu Rajahs, namely, Pulligadda Mallapparaju, Lakkaraju, Perraju and Muzumdar Papanna, natives of Nizampatnain, on the 9th Adhika Chaitra Bahula of this Prabhava year, namely, the year 1610 of the era of Salivahana commencing Jaya year.

8. Whereas we, fixing the Shrotriem at six pagodas, have given to you agraharam in the village called Arepalle M., Nizampatnam taluk, the boundaries and limits shown therefore are as follow:

Whereas we have given to you according to these boundaries you shall enjoy the agraharam paying the Shrotriem, from son to grandson and so on in succession and be happy.

9. It is argued on behalf of the respondents that the terms of the grant show that

it was of the melwaram only, and the matters relied upon in support of this 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 Arepalle M." It is agreed that the letter "M" is an abbreviation for a word Mauza or Mauja. 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 ryots cultivating the land who had occupancy rights, from which it follows that all that 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 Ayyar, J., in Venkata Sastrulu v. Seethiramudu (I)I.L.R. (1915) Mad. 891. where, referring to another village granted in inam in 1748, he says "that the village was then Mouja village, that is, a village in which there were peasant proprietors owning cultivable lands even then."

10. That case went up to the Privy Council and the decision was reversed and their Lordships deal with the matter in these words in Venkata Sastrulu v. Seetharamudu(2): ILR (1920) Mad. 166 .

Reliance was placed on the fact that, in the Register of 1802, Billapadu is called a Mauje (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 expressions of this character in 1783 and 1802 an inferences 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 Ayyar, 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, in which at page 336, the meaning is given as

A village" understanding by that term, one or more clusters of habitations and all the lands belonging to their proprietary inhabitants.

12. It is also stated there 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.

13. We were referred to Maclean's Manual of Administration, Vol. III, page 522, but this is merely a verbatim copy of Wilson's definition 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 if there were occupancy rights in the land. There is no evidence at all before us of how this word was used in 1689, and if it be a fact that at the time when 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 word which simply means "defined" and so "a denned place or village."

14. 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 "Shrotria" meaning a Brahman 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 six 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 Brahman 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 Brahman 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. That 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, Vol. III, the following passages occur:

Only in the case of grant to Brahmans, called Shrotriem, I understand that the land was not necessarily held by the grantee. Such grants in fact are assignments of revenue, and whether the land was unoccupied, and was acquired with the grant, is a question of fact in each case."

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 Brahman and Muhammadan Saints, etc., by granting the revenue on the land, whether they granted the land itself or not.

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 Brahmans 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.

15. 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.

16. It is to be observed that in *Venkata Sastrulu v. Seetharamudu* (I) ILR (1915)

Mad. 891. the grant was an Agraharam grant in inam to Brahmans; in Ponnusamy Padayachi v. karuppudayan(2) ILR (1915) Mad. 843 the grant was a Shrotriem grant; in Muthu Goundan v. Perumal Iyen(I) ILR (1021) Mad. 588. the grant was a Maniam grant to a temple and in all these cases it was held that the grant was of both varams. In the Secretary of State for India v. Srinivasa Chariar ILR (1921) Mad. 421 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 a Shrotriem grant may be either of the land itself or of the revenue only. The use of this word therefore is of no importance.

17. The third matter relied upon is that the grant being a Shrotriem grant was to Brahmans learned in the Vedas, and it is suggested that it was unlikely that such Brahmans 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 Brahmans. But all the information before us is that the Brahmans to whom the original grant was made lived about two miles from Arepalli and the argument in my judgment is of no value.

18. 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 1689 and whether there is anything 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 18445, page 343, to the appendix to the fifth report of the Select Committee on the East India Company's affairs, Vol. III, page 24, and to 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 by 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 zamindars 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 zamindars 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.

19. Another word in Exhibit I is relied upon 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 that 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 connexion 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.

20. 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. Pattanna* (I) ILR (1918) Mad. 1012 there is no presumption that the grant was of revenue only, and on the decision in *Muthu Goundan v. Perumal Iyen*(2) ILR (1921) Mad. 588 that there is a presumption that the grant is of both varams. 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 varams. The evidence has been fully and most carefully analysed in this case on the issue submitted to him by Mr. M. O. Tirumala Acharya, 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 the aghahamdars to harvest and thrash the crops and appropriate the produce, and to the documents in the litigation 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 aghahamdars 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 fact of the Principal District Munsif, and I hold that the grant of thus aghaharam village was a grant of both the kudivaram 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.

21. The appeals are therefore allowed, the suits being remanded for admission of the complaints in the District Munsif's Court and disposal according to law. Costs in this Court and the District Court will be paid by the 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.

22. I agree.

Coutts Trotter, J.

23. I agree.