

(1898) 03 MAD CK 0008
In the Madras High Court

Raja Vellanki Venkata Rama Ran

APPELLANT

Vs

Raja Papamma Rau

RESPONDENT

Date of Decision : 08-03-1898

Acts Referred:

Citation : (1898) ILR (Mad) 299

Hon'ble Judges : Morris, J;Macnaghten, J;Hobhouse, J;Couch, J

Bench : Full Bench

Judgement

1. This suit was brought to recover possession of the village of Vundrazavaram lying within the zamindari of Nidudavolu, which was formerly the

property of the zamindar Narayya Appa Rau. Narayyadied without issue on the 7th of December 1864, leaving a will which dealt with the

zamindari and the village separately.

2. The suit was commenced in February 1888. The original plaintii"f was Jagannatha, the appellant's father. He died at an early stage of the

proceedings, and the appellant was substituted as plaintiff in his stead. The defendants were Papamma, the surviving widow of Narayya, and an

infant also called Narayya Appa Rau, whose late father Ramayya had been adopted by Papamma, some time after the completion of the

transaction, the effect of which is now in question. The infant Narayya died in the course of the litigation and on his death his interest became

vested in the respondent Papamma.

3. It is common ground that Jagannatha was in possession of the village in dispute from 1869 to 1879 and that during this period his possession

was undisturbed. From 1879 to 1883 he was continually in trouble and litigation with the raiyats who withheld their rents and refused to accept

pattas at the instigation, it is said, of Narayya's widows or their manager Venkatadri. In 1883 Papamma having survived the younger widow

Chinnamma, who was Jagannatha's sister, came forward openly and dispossessed Jagannatha.

4. The sole question at issue is this--In what character or in what capacity did Jagannatha hold the village while he was in possession? Was he

absolute owner, as the appellant contends, or was he, as the respondent has variously asserted, tenant for life or tenant at will, or grantee upon

certain conditions for the breach of which he was liable to be dispossessed, or lastly, was he, as the High Court has held, merely manager under a

revocable appointment?

5. By his will, which was dated the 6th of December 1864, the day before his death, Narayya gave his zamindari and all his other property to his

two wives--Papamma and Chinnamma. To Jagannatha and Sura, who were brothers of his junior wife, he gave the village of Vundrazavaram in

perpetuity. The testator gave three other villages to Sura's son Venkata Krishna. He enjoined his wives to live in harmony with Venkatadri, whom

he described as his younger brother, but whose exact relationship to the testator does not appear and he gave his wives authority to adopt a

relative.

6. The testator's wives signed the will in token of their consent to abide by its terms, and on the 9th of December 1864 they sent a copy of the will

to the Collector and notified their intention of acting in accordance with its provisions.

7. It appears that neither Jagannatha nor Sura took any steps to obtain possession of Vundrazavaram on the testator's death. There was no

opposition on the part of the Ranis, nor was there, so far as appears, any unwillingness on their part to carry out the testator's wishes. But

Jagannatha considered that he had not been fairly treated by the testator who had made a more liberal provision for the family of his younger

brother, and so he refrained from accepting the bequest in his favour in the hope that the Ranis would increase it. In the meantime, the village

remained part of the zamindari and the rents were received by, or on behalf of, the Ranis and went into their treasury.

8. In 1869 Sura being then dead and his son Venkata Krishna who had married

Venkatadri's daughter having succeeded to his rights, the family differences were composed. It was arranged that the entirety of the village of Vundrazavaram should be made over to Jagannatha as from the commencement of the current year with the consent of Venkata Krishna, who was to receive satisfaction for his moiety from the Ranis. The meeting at which the arrangement was completed took place on the 22nd of January 1869. There were present among others Venkatadri Jagannatha, the appellant, and Venkata Krishna and one Prakasa, the Raja of Vutukuru, a near relative, who is now dead. The Ranis were there too, though of course in their own apartments, and communications took place with them from time to time through Prakasa, the appellant, and Venkata Krishna. Before Venkata Krishna consented to place his moiety at the disposal of the Ranis for the purpose of the arrangement, he was assured by them that he should either have the moiety bequeathed to him by the testator or receive other villages instead. When he was satisfied Venkatadri dictated to his clerk an order addressed to the amildar directing him to make over the management of the village to the person sent by Jagannatha on behalf of his master. The order was then given to Venkatadri. He handed it to Prakasa and then to Jagannatha. They both read it. Jagannatha read it aloud and expressed his approval. It was then taken to the Ranis. They read it and signed it in the presence of Prakasa, the appellant, and Venkata Krishna, and again repeated their assurances to Venkata Krishna. In conformity with this order, Jagannatha was put into possession of the village. Nothing further is to be found in the record about Venkata Krishna. It must be taken that he received adequate compensation in accordance with the assurances that had been given him.

9. That is in substance the whole of the evidence about the transaction which resulted in Jagannatha being put into possession of the village of Vundrazavaram. The only witness at the trial who appeared before the Ranis was the appellant himself. The Subordinate Judge, who observed his demeanour, was satisfied that he was a truthful witness. Neither the respondent nor Venkatadri came forward to contradict him. They were both cited as witnesses for the appellant. But "the former" as the Subordinate Judge states, "threw so many difficulties to her examination on commission that plaintiff was obliged to abandon her as his witness, and the latter was

reported to be too seriously ill to subject himself to any examination.

10. The transaction seems to be a very simple and very intelligible arrangement, if the position of the parties at the time is considered. Jagannatha

was entitled to one moiety of the village and one moiety of the rents from the testator's death. His grievance was that the testator had not given him

as much as he thought he was fairly entitled to. With the consent of the person entitled to the other moiety the Ranis made over to him the whole of

the village as from the commencement of the current year. In the absence of any evidence it is impossible to suppose that it could have been

intended that his interest in the one moiety should be less than or different from his interest in the other. It was not suggested that he should

surrender his absolute interest in his own moiety. Sura's moiety was made over to him as an addition to his own. The natural inference--and indeed

the only reasonable inference--that can be drawn from the surrounding circumstances is that he was to hold the entire village in the same way as he

was entitled to hold his own moiety, and that his interest in the two moieties should be commensurate. Such a transaction would be perfectly good

as a family arrangement. Jagannatha was put in possession of the whole, and as the law then stood no writing was necessary to vest Sura's moiety

in him.

11. Jagannatha's complaint was that one moiety of the village was not enough for the maintenance of himself and his large family. It is difficult to

conceive that he would have surrendered his absolute interest in one moiety for a life-interest in the whole which would have left his family

unprovided for at his death. It is equally inconceivable that he would have accepted any interest less than a life-interest. The suggestion that the

village was granted to him on condition of personal attendance on the Ranis or on any terms involving a right of resumption is not supported by any

evidence.

12. Of course, if there were anything in the order of the 22nd of January 1869 inconsistent with an absolute interest in Jagannatha, it would be a

different matter. It would be impossible for the appellant to rely on possession obtained under a document which would have contradicted his

present claim. But the order so far as it goes is consistent with an absolute interest in the person in whose favour it was issued. It directs the amildar

to deliver up the management of the village to the messenger of Jagannatha, "so that he may get business managed on his behalf." It states no doubt

that the profits over and above the fixed rent required to cover the proportionate part of the Government revenue of the whole zamindari were to

be enjoyed by Jagannatha as "vasati," that is, for support or maintenance. But it must be remembered that it was just because he complained that

the profits of half the village were not enough for the maintenance of himself and his family that he was put in possession of the whole. There is not

a word in the order cutting down Jagannatha's interest to a life interest or to a tenancy at will or imposing any terms as the condition of his

continuing to hold the village.

13. The whole difficulty seems to have arisen from the singular way in which the appellant insisted in presenting his case to the Court. He would

have it that his interest was derived solely and directly from the testator and that Jagannatha was put in possession in conformity with the testator's

will as indeed the Subordinate Judge held, whereas it is perfectly plain that Jagannatha took Sura's moiety from the Ranis who purchased it from

Venkata Krishna by giving him some equivalent. The respondent, on the other hand, insisted that all parties ignored the will and treated the bequest

of Vundrazavaram as a nullity. and so the learned Judges of the High Court have held. They say that "for 24 years the will has been ignored and the

estate has not been given to the first plaintiff," that is Jagannatha," in accordance with its terms. On the contrary he himself was a party to ignoring it

That seems to their Lordships to be going too far in the other direction. The fact is that the will was plainly the foundation of the whole transaction,

though Sura's moiety was derived immediately by gift from the Ranis.

14. Their Lordships are, therefore, unable to agree with the opinion of the learned Judges of the High Court, who seem to have thought that

Jagannatha's title to the possession of the village depended simply and solely upon the terms of the order of January 1869, which they construed

as a revocable order committing the management of the village to Jagannatha during the pleasure of the Ranis.

15. One matter on which the learned Judges of the High Court very much relied as confirming their view ought, perhaps, to be noticed. Some

letters were produced which the Subordinate Judge held to have been written by

Jagannatha, though there was a dispute about it. They are undated, but they seem to belong to the period when Jagannatha was in difficulties with his raiyats. The letter on which most reliance was placed purports to be addressed to his sister Chinnamma. It is abject and servile in tone and incoherent in its language. In it the writer says: ""If you and Papamma should now write to say you should give up that village " I will do so without entertaining any contrary intention...the longest I should live would be two or three years more; it (the village) will then be added only to your possessions irrespective of any one else. You must take a little trouble and show an affectionate regard by thinking these persons belong to a high family, and we will treat them with so much fairness; if you do not think in that manner I only lose my livelihood. I did not wish in the beginning for any right."" Then there is a letter to the manager in which the writer says: ""I have prepared and sent an account of some sort. You will, after perusing the same, write to me how I shall act in the matter of recovering the moneys payable by the raiyats. Hitherto I have acted wisely so as to avoid disputes. As it is not possible to do anything without your permission in Vundrazavaram, I have expressed my opinion in detail and shall remain at Kadiyam till a reply is received and shall manage in such manner as you tell me to manage."" The learned Judges say that ""the words amount to an unequivocal admission that the writer can only hold the village for the short remainder of his life and is liable to be called upon to surrender it at any time at the will of the Rani."" The Subordinate Judge thought that such letters written at such a time were not worthy of serious consideration. Their Lordships are disposed to think so too. The letters were apparently written at a time when the Ranis by their manager were covertly interfering with Jagannatha's possession, and he was maintaining his title by legal proceedings against the raiyats. He may well have thought that his sister would not openly declare herself his antagonist or proceed to extremities against him, and that peace might be obtained at any rate in his time by abasing himself before the Ranis and their manager.

16. Their Lordships are of opinion that the judgment of the High Court must be reversed and that the appeal from the District Judge ought to have been dismissed with cost, and they will humbly advise Her Majesty accordingly.

17. The respondent will pay the cost of this appeal.