
(1903) 01 MAD CK 0013
In the Madras High Court

Sappani Asari

APPELLANT

Vs

The Collector of Coimbatore

RESPONDENT

Date of Decision : 30-01-1903

Acts Referred:

Citation : (1903) ILR (Mad) 742 : (1903) 13 MLJ 472

Judgement

1. It is not necessary for us to consider the question of the validity of the first grant upon which the plaintiff relies, since we are clearly of opinion that under the second grant to the 1st defendant the plaintiff had, at the date of the institution of this suit, a good title to the site in question. The grant of the site was duly made by the Tahsildar. Section 9 of Regulation II of 1803 does not apply since the matter is not governed by any Regulation in force in 1803 or by any Regulation subsequently enacted. The matter is governed by executive orders of Government, which direct that the right of appeal from a Tahsildar's order with reference to the grant of a house-site shall be to the Sub-divisional officer (not to the Collector) and that the order of the Sub-divisional officer shall be final. At the time the 2nd grant was made by the Tahsildar an appeal lay from his decision to a Divisional officer, An appeal from the decision of the Tahsildar was brought to the Sub-Collector. Certain proceedings then took place which are recorded in Exhibit VII:

Proceedings of the Collector of Coimbatore, dated 11th December 1895.

Read letter from the Sub-Collector, dated 20th November 1895, Reference on No. 1632, R. S. of 1895, requesting orders on the house-site darkhast appeal of Vadamalai Asari of Karun-galpalaiyam.

Order Reference on C. No. 4688 of Rev.

It is clear that the grant of the land to Krishnasami Asari has been obtained fraudulently in order to evade the Collector's order declining to grant it to Veerappa Asari, Under the circumstances it should be cancelled, and the party now in possession of the house ordered to vacate it and remove the materials

from the land within 3 month's time. It should be reported whether this order is obeyed 2. The Tahsildar showed great want of judgment in failing to stop the building as requested by the appellant.

For Collector,

To

The Sub-Collector of Coimbatore with a file of records

(Copy).

Communicated to the Tahsildar of Erode for information and guidance and submission of the report at the end of the period.

2. A similar neglect of orders should not take place.

3. The notice should be served at once and sent to this office for record.

(Initialled), Ag. Sub-Collector. 10--12.

2. It seems to us impossible to regard these proceedings as a decision by the Sub-Collector on the question raised in the appeal to him. The only order in appeal is that of the Collector and that order was merely communicated by the Sub-Collector to the Tahsildar. The Sub-Collector exercised no discretion with reference to the question which came before him in appeal. In short he did not deal with the appeal and he made no order thereon. No authority has been referred to, and no argument has been addressed to us, to show that in matters not dealt with by the Regulations, the Collector has a revisional power similar to that given to him by the Regulations in matters dealt with therein ; and that the Collector's order on the appeal to the Sub-Collector ought to be regarded as an order made by the Collector in the legal exercise of his revisional powers. It cannot therefore be said that the order of the Tahsildar granting the site has been legally set aside.

3. This being so we must hold that by virtue of the grant duly made by the Tahsildar, the plaintiff had a good title at the date of the institution of the suit.

4. The plaintiff is entitled to a decree declaring his title to the land in question. The decree of the District Court and that of this Court affirming that decree will be set aside. The decree of the District Munsif will be restored in so far as it declares the plaintiff's title and as to costs. The plaintiff's right to have the decree restored in so far as it relates to other reliefs claimed by him has not been pressed before us. The plaintiff is en-titled to his costs in this Court and in the lower appellate Court.