

**(1925) 03 MAD CK 0064**  
**In the Madras High Court**

Secretary of State

APPELLANT

Vs

Sreeramamurthi and Others

RESPONDENT

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**Date of Decision :** 02-03-1925

**Acts Referred:**

**Citation :** AIR 1926 Mad 125 : (1925) 22 LW 546

**Hon'ble Judges :** Phillips, J;Odgers, J

**Bench :** Full Bench

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### **Judgement**

Phillips, J.—The only question for decision in this case is whether the plaint forests which were constituted as Government Reserve in 1910, belong to Government or form part of the plaintiff's Chinnakkalrayan Jagir. The learned District Judge has considered the evidence and has come to the conclusion that the plaintiff is the owner of these forests; and has given a decree accordingly. This Second Appeal is filed by the Secretary of State for India in Council and it is contended that this finding of the District Judge is not warranted by law and that upon the facts found by him the suit must be dismissed.

2. There is no grant produced in this case, nor any other evidence of the manner in which the plaintiff obtained his Jagir. It would appear probable, that the Jagir was originally obtained by the plaintiff's predecessors-in-title squatting upon the land many years ago. However that may be, the real question for decision now is, whether the District Judge has found as a fact that these forests were originally included in the Jagir or whether he means to find that, inasmuch as the plaintiff has proved possession and enjoyment since 1872, the presumption must be raised that the land belongs to him.

3. The latter, is I think, the correct inters-pretation of the judgment, as will appear from paragraphs 18 and 19, in the first of which he sets out all his findings of fact and in the second, the legal inference to be drawn from these facts. The most important finding of fact is the first, namely, that neither party has produced satisfactory evidence of title apart from the evidence of possession and enjoyment. The second finding is, that, there is no evidence from which it

can be stated definitely in whose possession and enjoyment the slopes (i.e., the suit forests) were down to the year 1872. From these two findings I think it is clear that the Judge did not mean to find that the title of the plaintiff was proved ; but inasmuch as possession for 38 years had been proved it was incumbent on Government to prove a subsisting title, failing which possession for 60 years might be inferred. The learned Judge refers to the decision of the Privy Council in Secretary of State v. Chellikani Rama Rao (1916) 39 Mad. 617 but he distinguishes that case on the ground that there the legal problems started with the position that the title was in the Crown, whereas in the present case the Government has shown no subsisting title. There seems to be a certain amount of confusion in the learned Judge's mind as to the difference between "" title " and " subsisting title." Undoubtedly the title must originally have been in the Government, for otherwise no grant could have been made of the land and when the Judge talks of " subsisting title " he appears to think that in-as-much as there has been adverse possession for a number of years that original title has vanished, unless Government can show that it is still subsisting. This question of "subsisting title" has been very clearly dealt with in the judgment of the Privy Council in Secy. of State v. Chellikani Rama Rao (1916) 39 Mad. 617 where they deal with the prior judgments of this Court namely Secy. of State v. Vira Rayan (1886) 9 Mad. 175 Secy. of State v. Kota Bapanamma Garu (1896) 19 Mad. 165 and Chellikani Rama Rao v. Secy. of State (1910) 33 Mad. 1 the last of which was then under appeal. In these prior cases, it had been consistently held that if a person had been in possession of land for a long period it was incumbent on the Crown to show possession of the proprietary right within 60 years, namely, that it was incumbent on Government to establish not merely original title but a " subsisting title." The view has been directly negatived by the Privy Council. After referring to the view of this High Court expressed as follows.:

Though no title was originally in the Crown, as till as the possession of the claimants (or twenty years prior to the notification is found, it rests upon the Crown to prove that it has a subsisting title by showing that the possession of the claimants commenced or became adverse within the period of limitation, that is, within sixty years before the notification.

their Lordships remark.

In so far as this negatives the duty resting upon the claimants to establish affirmatively their and their predecessors' possession for sixty years, their Lordships opinion is, as stated, that this is erroneous. But with reference to the "subsisting title" it appears to their Lordships that nothing further is needed than the acknowledgment of the undisputed fact, that these islands formed in the sea belong to the Crown. That fact is fundamental: until adverse possession against the crown is complete, that is to say, is for the period of sixty years, that fundamental fact remains, and that fact forms "subsisting title.

4. It is, I think clear, from this dictum that it is misleading to talk about "subsisting title " when there is a finding of original title in the Government,

which title has not been displaced by proof of adverse possession. Consequently the District Judge, having found that there is no evidence on which "a finding as to possession and enjoyment prior to 1872 can be based, held that the plaintiff has failed to prove adverse possession for the full period of 60 years and consequently his title against Government has not been perfected. His finding that possession for over 60 years must be presumed is therefore wrong. It is argued for the plaintiff that there are certain observations in the judgment which go to show that the learned Judge really found that the plaintiff had title from the time of his grant and reference is made to the following observations:

5. Paragraph 11:

I think the inference is legitimate that from 1872 to 1884 P.W. I's uncle was in possession as lessee of these blocks and that they were really part of the Jagir itself.

6. Again in paragraph 18:

The legitimate conclusion is from 1873 onwards down to the date of the notification, these slopes have formed part of the Chinnakal Rayan Jagir.

7. As I have pointed out above, I am satisfied that from the conclusions of fact specified in paragraph 18 and the legal inferences drawn there from in paragraph 19 that this statement, " that the slopes formed part of the Chinnakal Rayan Jagir " only means that this conclusion is arrived at from the presumption that arises from possession since 1872 and is not a finding of fact apart from the question of adverse possession.

8. In this view the plaintiff must be deemed not to have established his title and consequently the appeal must be allowed and plaintiff's claim dismissed with costs throughout.

Odgers, J.

9. I agree.