

(1952) 11 MAD CK 0030

In the Madras High Court

Case No : Second Appeal No. 1938 of 1948

Simhadri Ramalingam Setti and another

APPELLANT

Vs

Duvvuru Linga Reddi and others

RESPONDENT

Date of Decision : 12-11-1952

Acts Referred:

Citation : (1952) 11 MAD CK 0030

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : V. Vedantachari and T. Rangaswami Ayyangar, for the Appellant; P. Srikantam and T.K. Srinivasan, for the Respondent

Judgement

Rajagopalan, J.—The plaintiffs, whose suit was dismissed by the Courts below, have preferred this second appeal. They sought a declaration, that the defendants were not entitled to any rights of occupancy in the two items of lands specified in the schedule to the plaint. The plaintiffs further sought a permanent injunction restraining the defendants from interfering with the plaintiffs' possession of those lands; in the alternative, the plaintiffs asked for recovery of possession of those lands. The first item was a piece of wet land measuring over 3 acres; the second item measuring a little over 30 acres was pasture land. The lands lay within the revenue village of Ponnayolu. The learned District Munsif held that Ponnayolu shrotriem was an estate within the meaning of the Estates Land Act, and that the defendants had permanent rights of occupancy in item 1 and a customary right to graze their cattle in item 2 subject to the payment of the lawful fees. On appeal, the learned Subordinate Judge held that Ponnayolu was not an estate; but he held that by User, the defendants must be deemed to have acquired permanent rights of occupancy in item 1, and rights to graze their cattle in item 2 by custom. The decree of the lower Court dismissing the plaintiffs' suit was confirmed.

2. The points that arise for determination in this second appeal are :

(1) Is Ponnayolu village an estate within the meaning of the Estates Land Act?

(2)-Even if Ponnayolu is not an estate, have the defendants acquired

(a) rights of occupancy in item 1 and

(b) rights to graze their cattle in item 2.

Point No. 1: "Estate" has been defined by S. 3, Sub-Cl. (2) of the Madras Estates Land Act (Act I of 1908):

(2) Estates" means- (d) any inam village of which the grant has been made, confirmed or recognised by the British Government notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

Explanation 1: Where a grant as an inam is expressed to be of a named village, the Area which forms the subject matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure, or been reserved for communal purposes.

3. It was common ground that the grant of inam was confirmed at the time of the Inam Settlement, when title deed No. 1516 was issued by the British Government. Though the learned Subordinate judge observed that it was doubtful if there was any grant at all, it was on the basis, that there had been a grant in the past, that the British Government purported to confirm the grant and issued the title deed. There was nothing in evidence to indicate when the grant was made, or what the terms of the deed of grant, if any, were. Title deed No. 1516 was not produced either. The terms of the grant and of the subsequent confirmation by the British Government have to be gathered primarily from Ex. D.1 an extract from the Inam Fair Register.

4. It is well settled law that the burden of proving that a given village is an estate within the meaning of the Estates Land Act lies on the person asserting the rights of occupancy, which entails an attack on the jurisdiction of the civil Court. The burden in this case lay on the defendant.

5. In the case of the suit village of Ponnayolu, it should be remembered that there was no evidence as to who made the original grant. The confirmation of the grant of course was by the British Government after the Inam Settlement.

6. Before the suit village of Ponnayolu can be accepted as an estate within the meaning of S. 3 (2) (d) of the Madras Estates Land Act, it has to be proved that the grant in the first instance was of the whole village, and that the subsequent confirmation too was of the whole village. In the District Board, Tanjore v. Noor Mohamed Rowther 65 L.W. 98 (S.C.) Mahajan, J. laid down :

To be an estate within the meaning of S. (2) (d). Explanation I of the Madras Estates Land Act, the grant must either comprise the whole area of a village or

must be so expressed as tantamounts to the grant of a named village as a whole, even though in fact it does not comprise the whole of the village area. In the latter case, in order to come within the scope of the definition it must fulfil the following conditions : (a) the words of the grant should expressly (and not by implication) make it a grant of a particular village as such by name and not a grant of a defined specific area only; and (b) that the area excluded had already been granted for service or other tenure; or (c) that it had been reserved for communal purposes. The burden of proving that the land constitutes an estate is upon the party who sets up the contention.

7. In *Somasundaram v. State of Madras* 66 L. W. 702, a Division Bench of this Court laid down :

If the British Government makes the grant, then that would be sufficient to make it an estate and the making of the grant must be of an inam village and inam village must be of a whole village and a named village. If that is so, the confirmation must necessarily also pertain to what could be granted to make it an estate, namely, of an inam village being a whole and a named village. The word "confirmation" means to ratify. Ratification has therefore to be complete and not in parts and must therefore refer to the whole and not to a portion. The confirmation that is intended under S. 8 (2) (d) of the Madras Estates Land Act is confirmation of the grant of a whole village, and if at the time of confirmation, the village is not available to the Dharmasnamdars for confirmation and the confirmation takes shape by issue of title deeds in respect of a portion of the village, it could not be confirmation as required under the section. Therefore, confirmation of a portion of the area covered by the village, as in the present case, would not amount to confirmation as an inam village.

8. It is with reference to these principles that the question at issue in this second appeal, namely, whether Ponnayolu village was an estate within the meaning of S. 3 (2) (b) of the Madras Estates Land Act, has to be decided. As I have already pointed out, the terms of the grant and of the subsequent confirmation by the British Government have to be gathered primarily from the extract from the Inam Fair Register. Ex. D.1, the extract which relates to the confirmation of the grant culminating in the issue of T.D. No 1516. Columns 3, 4, and 5 of the register showed details of the extent granted; the area was given in terms of the local measure in column 4 and in terms of acres and cents in column 5. Column 4 showed that a total extent of 242-14 4 of cultivable land, plus an extent of 36-0-0 poramboke lands constituted the grant. Column 13 headed "Name of the Original Grantee" showed three names, Maddipati Chalam, Raviprola Lakshmi Narasu and Chakrara Pullambhotlu. Column 14, no doubt, showed only the first of these two names. But then, that is of little significance as what we are now concerned with is one who the original grantees were and not with the question, whose names appeared in the register prepared subsequent to 1802. Column 14 also showed the extent of the inam granted; and that has to be read with columns 3, 4 and 5. Column 14 showed that in arriving at the extent of the grant

at 242-14-4, inams of the extent of 3-9-0 had been excluded. In column 16 of the register was recorded the names of the owners immediately before the Inam Settlement. Of these, the first two, Maddipati Subbarayudu and Venkatakrishnamma, belonged to the branch of the first of the three grantees enumerated in Column 13, Maddipati Chalam. Between them, they were entitled to a fourth share. Raviprolu Lakshminarayanappa enumerated as No. 3 in Column 13, entitled to another fourth share, belonged to the branch of the second of the grantees, Raviprolu Lakshminarasu. Chakrala Guruvamma, No. 4 in column 16, with another fourth share, was the successor-in-interest of Chakrala Pullambhotlu No. 3 in column 13, Nos. 5, 6, and 7 Venkatasubbiah, Pattabhi and Adilakshmi did not belong to the families of any of the three grantees whose names were mentioned in column 13. Column 16 showed that these three Venkatasubbiah, Pattabhi and Adilakshmi, were entitled to the remaining fourth share. The entry in column 18 was "shares since the commencement." We need not concern ourselves with Nos. 8 to 14 in column 16. They were shown as subsequent Inamdars with a note at the end "subsequent village service inams wet 3-10. The recommendation of the Deputy Collector in column 21 was : " The shrotriem being of an older date than 50 years, can be confirmed. " Column 22 recorded the orders of the Inam Commissioner " approved and confirmed " with a note that T.D. No. 1516 was issued.

9. Maddipati Chalam, Raviprola Lakshminarasu and Chakrala Pullambhotlu whose names were enumerated in column 13 were shown as the original grantees. Column 16 showed that they were entitled only to a three fourths of the village, and that the members of the Pillala family, enumerated as Nos. 5 to 7 in column 16 were entitled to the other fourth, each of the four groups owning their shares " since the commencement. " On the basis of the entries in column 16, it is not possible to decide when the grant of a fourth was made to the Pillala family, whether it was antecedent to or contemporaneous with the grant to the three persons whose names were mentioned in column 13. There was no other evidence. If the grant which the Inam Commissioner had to consider was only to three persons Maddipati Chalam, Raviprolu Lakshminarasu and Chakrala Pullambhotlu and no other conclusion is possible, if due weight is to be given to the entries in column 13, especially in the absence of any other evidence, and was only of a 3/4th share in the village, that by itself should suffice to negative the contention, that the grant in the first instance was of the whole village of Ponnnavolu. Even if the grants to these three and to the Pillala family were simultaneous, it must be remembered there was no evidence to prove that the grant to the three persons enumerated in column 13 could not be viewed as the grant of the whole village. On the evidence on record I am unable to hold that the defendants have discharged the burden that lay on them to prove that the grant in question was of the whole village of Ponnnavolu.

10. I have already pointed out that column 4 and column 14 of Ex. D-1 showed the extent of the grant, namely, 242-14-4. Column 14 showed that in arriving at this extent, inams, that is, minor inams measuring 3-9-0 had been excluded.

Column 14 only recorded the exclusion of the extent of the minor inams from the extent granted to the other inamdars. The entry in column 14 by itself would give no indication to decide the question, whether the grant of the minor inams measuring 3-9-0, was antecedent in point of time to the grant of 242-144, or the three fourth share therein to the three grantees Maddipati Chalam, Raviprolu Lakshminarasu and Chakrala Pullambhotlu. Unless there is proof that the grant of minor inams was antecedent in point of time, the requirements of Explanation 1 to S. 3(2) (d) of the Madras Estates Land Act, that it did not include certain lands in the village of that name which have already been granted on service or other tenure, cannot be deemed to have been satisfied : [See *Somasundaram v. State of Madras* 65 L.W. 702].

11. One of the tests formulated by the Supreme Court in *District Board, Tanjore v. Noor Mohamed Rowther* 65 L.W. 98 (S.C.) is that the words of the grant should expressly, and not by implication, make it a grant of a particular village as such by name and not a grant of a defined specific area only. The evidence on record does not satisfy that test either. But then it should be remembered that the deed under which the original grant was made to Maddipati Chalam, Ravi. prelu Narasu and Chakrala Pullabkotlu was not available.

12. Though T.D. No. 1516 was not put in evidence, fuller details than in the case of the original grant can be gathered of the confirmation of the grant by the British Government, from the recitals in Ex. D. 1. But even Ex. D.1 does not satisfy the test that the words of confirmation should expressly and not by implication make it a grant of a particular village as such by name. The learned Counsel for the respondents pointed out that the entry in column 21 was "shrotriem can be confirmed" That certainly does not amount to an express recital that the "whole of the village of Ponnayolu" was meant by the word "shrotriem". It might as well refer to the tenure on which the grant was to be confirmed. That would exclude the inference even by implication that the grant of the whole village under the inam was confirmed, as being the only possible inference from the facts proved in this case. But then, such an inference by implication is not enough. That was ruled out by the Supreme Court in *District Board, Tanjore v. Noor Mohamed Rowther* 65 L.W. 98 (S.C.).

13. It should be remembered that the Inam Commissioner confirmed not only the grant which led to the issue of T.D. No. 1516; he also confirmed the grant of three minor inams. It is not even clear whether separate title deeds were issued for these three minor inams. The terms of the confirmation have to be gathered from the extracts of the Inam Fair Register, Ex. P. 10, P. 10 (a) and P. 10 (b). Two of the minor inams Exs. P. 10 and P. 10 (a) were held on service tenures; the third P. 10 (b) referred to a personal inam. I have already pointed out that the extent of these three inams was excluded from the extent granted as inam to Maddipati Chalam, Raviprolu Lakshminarasu and Chakrala Pullambhotlu (See column 14 of Ex. D.1). If that was all that the Inam commissioner confirmed, and he purported to confirm no more than the original grant, the extent of the

minor inams were obviously excluded from the grant which was confirmed by the Inam Commissioner, In the absence of proof that the grant of the minor inams was antecedent in point of time to the grant of the inam to Maddipati Chalam, Raviprola Lakshminarasu and Chakrala Pullambhotlu, it cannot be said that the grant to these three persons was of the whole village and not merely a grant of a specified extent in the village, though a considerable portion of the village.

14. The evidence on record does not establish that the grant was of a particular village as such by name and not merely a grant of a defined specified area only. Nor does the evidence establish that even at the time of confirmation, the confirmation was of a grant of a particular village as such by name.

15. It is not on the basis of the reasoning adopted by the learned Subordinate Judge, but on an independent examination of the evidence on record that I have reached the same conclusion that he did, namely, that the defendants failed to prove that Ponnnavolu villase was an estate within the meaning of S. 3 (2) (d) of the Madras Estates Land Act.

Point 2 : I am really unable to accept the finding of the learned Subordinate Judge, that, though Ponnnavolu was not an estate, the defendant had acquired permanent rights of occupancy in item No. 1. The learned Counsel for the defendants-respondents realised that user, hew-ever long, could not furnish a legal basis for a claim of permanent rights of occupancy. It was on the basis that Ponnnavolu was an estate, that the defendants rested their claim that they had rights of occupancy in item 1, and that they had rights to graza their cattle in item 2. When that basis failed, the claim has to be rejected. It was not even in evidence whether apart from the occupancy rights which the defendants claimed in item 1, they had occupancy rights in any other land in the village to sustain their claim, that they were veesabadidars. I have to decide point No. 2 also in favour of the plaintiffs and against the defendants.

16. The decrees of the Courts below are set aside and the plaintiffs claim is decreed with costs throughout. The plaintiffs will be entitled to a declaration that the defendants have not acquired rights of permanent occupancy, or any other right in items 1 and 2 of the schedule to the plaint. The plaintiffs will be entitled also to recovery of possession of these items from the defendants. Leave granted.