

(1951) 02 MAD CK 0003

In the Madras High Court

Case No : Second Appeal No's. 2203 to 2207 of 1945 and C.R.P. No. 1526 of 1945

Sishtla Janakirama Sastri and Another

APPELLANT

Vs

Jagani Gopalam and Others

RESPONDENT

Date of Decision : 23-02-1951

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(19), 3(2)

Citation : AIR 1952 Mad 224 : (1951) 64 LW 732 : (1951) 2 MLJ 272

Hon'ble Judges : Rajmanner, C.J;Somasundaram, J

Bench : Division Bench

Advocate : P. Somasundaram and G. Venkatarama Sastry, for the Appellant; K. Rajah Ayyar, P. Satyanarayana Raju, M.B. Rama Sarma, V.V. Raghavan and N. Rajeswara Rao, for the Respondent

Judgement

Rajamanner, C.J.—These five second appeals arise out of five suits which were tried together and disposed of by a common Judgment by

the learned Deputy Collector of Eluru division. They were brought by, persons who were in possession of lands in the village of Idulakunta

Agraharam, in Eluru taluk, West Godavari district, against the appellants and others u/s 55 of the Madras Estates Land Act praying that the

defendants may be directed to execute pattas in their favour in accordance with the draft patta filed along with the plaint. The defendants resisted

the suits mainly on the ground that the revenue Court had no Jurisdiction as the lands did not form part of an estate within the meaning of that .Act.

Their plea was overruled and the Deputy Collector decreed the suits. The defendants preferred appeals to the District Judge of West Godavari

who confirmed the decision of the Deputy Collector that the lands were situated in an estate. These second appeals by the defendants are against

the decision of the District Judge.

2. The main question for decision in these appeals is whether the lands in suit formed part of an estate as defined in the Madras Estates Land Act.

The material statutory provisions in the Act relevant to this question are the following: ""Section 3 (2) (d): "Estate" means 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): (inserted by Madras Estates Land.

(Amendment), Act, 1945 -- Madras Act n of 1945): ""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."" Section 3 (19): "Village- means any local area,

situated in or constituting an estate which is designated as a village in the revenue accounts and for which the revenue accounts are separately

maintained by one or more karnams or which is now recognised by the Provincial Government or may hereafter be declared by the Provincial

Government for the purposes of this Act to be a village, and includes any hamlet or hamlets which may be attached thereto."" It is well established

that any inam village in Section 3 (2) (d) means ""a whole village granted in inam"", and not anything less than a village, now-ever big a part it may be

of that village.

3. The question, therefore, is whether the grant in favour of the appellants' predecessors-in-title which comprised the lands in suits was a grant of a

whole village in inam. The learned District Judge was not prepared to hold that the original grant in favour of the defendants' predecessors was a

grant of what was a whole village at the time of the grant, but he held that the grant fell within the definition in Section 3 (2) (d), because

subsequently and at the time of the institution of the suits the area granted as inam was designated as a separate village in the revenue accounts. He

relied upon the definition of "village" in Section 3 (19) and held, following the unreported decision of a learned Judge of this Court, Shahabuddin,

J., in "C. R. P. Nos. 1007 to 1014 of 1942" that the expression ""inam village"" in

Section 3 (2) (d), must be read along with the definition pič½
village"" in Section 3 (19) of the Act.

4. The decision of Shahabuddin, J., has never been followed in this Court to our knowledge. On the other hand, the correctness of that decision has been doubted more than once and the decision. of a Division Bench of this Court runs contrary to it. The reasoning of Shahabuddin, J., is best expressed by the following extract from his judgment:

The word ""village"" in that Clause (3) (2) (d), has naturally to be taken in the same sense which it bears in Sub-section 19 of Section 3 to which reference has already been made. Now under Sub-section (19) an area which was recognised as a village at the time of the Act or recognised as a village at the time the question arises or which may hereafter be declared as a village by the Provincial Government, is a village for purposes of this Act. it, therefore, appears to me that what Clause 3 (2) (d), says is that any inam which is recognised as a village in Government accounts as defined in Subsection (19) of which the grant has been made, confirmed or recognised by the British Government, constitutes an estate..... It could not have been the intention of the Legislature that "village" mentioned in Clause (d) of Sub-section (2) to Section 3 should bear a connotation different from that in Sub-section (19) and if once the definition of "village" in Sub-section (19) applies to Clause (d) of Sub-section (2) to Section 3, then the determination of the question whether a particular area of inam land is an- estate or not depends solely on whether that area at present comes within the definition of "village" in Subsection 19 irrespective of its character at the time of the grant.

5. The defects in this construction of the expression "village" in Section 3 (2) (d), are pointed out in detail by Raghava Rao, J., in "Ramamoorthi Sastri v. Ammanna" 1950 2 Mad. L. J. 442 and it is unnecessary to repeat them as we are in entire agreement with that learned Judge.

6. Though the decision of Shahabuddin, J. is not referred to by them, the decision of Patanjalt Sastri and Bell, JJ., in "C. M. A. No. 584 of 1944 and C. M. A. No. 313 of 1945" reported in as a footnote to the case in "Ramamoorthi Sastri v. Am-. manna" 1950 2 Mad. L. J. 442 goes against it. In that case what was granted originally was at the time of the grant a hamlet of an adjoining village; but it came to be recognised

subsequently as a separate village and treated as such in the revenue accounts. It was contended that as the grant comprised a local area which

was recognised by the Government to be a village at the commencement " of the Act the definition in Section 3 (2) (d), applied. But the learned

Judges repelled the contention observing that Section 3 (19) refers only to a village situated in or constituting an estate and:

to import that definition into sub-clause (d) to Section 3 (2) which itself defines one category of estates, would lead to repugnancy in the context.

With respect, we are in full agreement with the reasoning of Patanjali Sastri and Bell, JJ., and Raghava Rao, J. In our opinion the definition of

village"" in Section 3 (19) cannot be incorporated into the definition of an ""estate"" in Section 3 (2) (d), of the Act. The view of shahabuddin, J.,

cannot be accepted as sound.

7. The learned District Judge in view of the decision of Shahabuddin, J., which he followed considered it unnecessary to decide the other question

whether the grant even at its inception was of a whole village as contended by the plaintiffs. In the view we have taken that the decision of

Shahabuddin, J., was erroneous, it is now necessary to decide that question.

8. The terms of the original grant are available to us as the sanad granted to the ancestors of the defendants has been produced (Ex. D. 1). It runs

as follows:

Bhudana dharma Basana Patrika (deed of gift in respect of land) executed and delivered in the year 1678 of the "Salivahana" era, corresponding

to the 15th Vysakha suddah of the current year "Dhara" (1756) in favour of Sishtia Narasimha Garu by Jagannatha Appa Rayanim Garu Fash

1165 Eedulakuntapalem, hamlet of Mupparu" relating to Haveli Ellore taluk-tank, "4 Khatties" and land of 8 Khatties all round the tank, wherein

wet cultivation is carried on by transplantation, in all, a "khandrika" of 12 "khatties" has been granted to you, in the name of God Sri Rama, as a

Sarva Agraharam. Therefore, growing crops therein every year, you may enjoy the produce thereof hereditarily from son to grandson and so on

and live happily.

9. There can be no doubt that when the terms of the grant are available other documents are not evidence as to the effect of the grant, which must

depend upon the language used in the instrument and the circumstances of the

grant itself. (See "the Secretary of state v. Srinivasachariar" 44 Mad 421 and "Sankaranaraysna v. H. B. E. Broad, Madras" ILR (1948) Mad 585 . The language of a-grant -- we have perused the Telugu original

also - leaves no room for doubt, and we have no hesitation in finding that the grant was not of a whole village. It is quite clear that the main village is Mupparru. Eedulakuntapalem is described as a hamlet (Sivaru). This means that Eedulakuntapalem was not itself a separate village. The grant is described to be of a ""Khandrika of 12 khatties."" The word ""Khandrika"" appears to us to be very significant. It is derived from the Sanskrit word Khandam"" which means ""a piece"" or ""a part,"" The Judicial Committee accepted the meaning of the expression ""Khandrika"" given to it in Madman's Manual of the Administration in the Madras Presidency, Vol. in as: ""a block of land granted as inam, less than a village, but much larger, than an ordinary Inam."" ("The Secretary of State v. Mallayya" 63 Mad. L. J. 649 According to Wilson's Glossary Khandrika" is:

an allotment of privileged land not exceeding four or five "kattis", or from 50 to 70 acres; it may be either rent free or subject to quit rent."" It is impossible to hold, having regard to the description of Eedulakuntapalem as a hamlet and the description of the area granted as ""Khandrika"" that the original grant comprised a whole village. (10) In the case already referred to in another connection decided by Patanjali Sastri and Bell, JJ., the subject-matter of the grant was described as Fatna Pentapadu, hamlet of Pentapadu village. This description was held to clearly show that what was granted as inam was not a whole village but only a portion of the village. In the other case decided by Raghava Rao J., "Ramamoorthi Sastri v. Ammanna", 1950 2 Mad. L. J. 442 the grant was of a hamlet adjoining a main village and the learned Judge came to a similar conclusion that at could not be deemed to be a grant of a whole village.

11. Our attention was drawn to an unreported decision of Panchapagesa Sastri, J., in "C. R. P. Nos. 593 to 601 Of 1947, dealt with a grant of a Khandrika"" and the learned Judge held that the ""Khandrika"" was not at the time of the grant a separate village but was only a part of the main village.

12. As the language of the original grant is clear and does not admit of any ambiguity, we do not think much useful purpose will be served by an

elaborate discussion of the subsequent documents. Though there are some documents in which the Eedulakuntapalem Agraharam has been treated

as a separate village without reference to Mupparru village, there are other documents of great probative value which confirm the view taken by us

of the original grant. There is a "farmana" of the year 1791 from one William Warren, acting evidently on behalf of the East India Company

addressed to the Circar Servants and Haveli servants of Paragana Haveli Ellore taluk. In this the grant is described as:

a "Khandrika of 12 kathies" consisting of tank of 4 "kathies" and land of 8 "kathies" all round the tank, wherein wet cultivation is carried on by

transplantation in the hamlet, Eedulakuntapalem, "Mourije" Mupparru.....

This description does not carry us any further than the original grant itself.

13. The extract from the inam fair register relating to the grant in question is Ex. P. 26 but there is nothing in any of the columns on which much

reliance could be placed by the respondents. The heading is "'Register of inams in the village of Idulagunta Agraharam in the taluk of Ellore, in the

district of Godavari.'" This cannot in any way affect the scope of character of the original grant.

14. As a consequence of the grant to the appellants' ancestors of a fairly large block of land which had a defined identity as a hamlet, It is not

surprising that there should be separate chittas and other revenue papers. Exs. P. 23 and P. 23 (a) are two such faisala chittas for the years 1842-

43 and 1850-51. On the same ground we find a separate entry of Eedulakuntapalem Agraharam in the register of inams (Ex. P. 26 already

referred to and Ex. P. 24 of 1860 and Ex. P. 25 of 1885.) It is common ground that in or about 1911 a special triune officer was appointed for the

Eedulakuntapalem village and thereafter the village was recognised as a revenue village. It is, therefore, unnecessary to refer to the documents

subsequent to 1911. Nor is it necessary to refer to the document filed on behalf of the respondents, documents to which the appellants or their

predecessors were parties in which Eedulakuntapalem is described as a village without reference to the main village Mupparru.

15. On the other hand, there are public documents of great value which unmistakably lead to the inference that Eedulakuntapalem until the

beginning of this century was being treated as a part of the village of Mupparru

though, of course, it was treated as inam. In Ex. D-12, the tracing from a map prepared in the survey of 1863 in Ex. D an extract from the survey and settlement register of Mupparru village of the year 1866, the area covered by the grant in Question was shown as covered by survey Number 339 in the village of Mupparru. Again, in Ex. D. 7, a plan of Mupparu, prepared at the re-survey of 1894 and Ex. D. 5 re-survey and settlement register of that village prepared in 1902 the area of the grant is shown as a part of Mupparru village. It is on a consideration of these documents that the learned District Judge remarked:

.....it might have to be conceded in favour of the landlords that down to 1902, since the inam was treated as a survey number of Mupparru village, it could not be said that Idulagunta was treated as a separate village by itself.

16. Mr. Rajah Aiyar for the plaintiifs respondent tried to found an argument on the mention of the word ""haveli"" which qualifies Ellore in the original

grant. He suggested that Mupparru was a ""Haveli"" village, that is. Government village and Eedulakuntapalem which was granted to the appellants"

ancestors by the Zamindar must have been a separate village belonging to the zamindar. There is no basis in fact for this suggestion. The word

haveli"" does not necessarily mean that Mupparru was a Government village, that is, a village in the possession of the East India Company. We find

from Wilson's Glossary that villages formerly retained under the management of the officers of the Nawab of the Carnatic were generally known as

haveli"" villages. There is nothing in the original grant to support the inference that the grantor owned the hamlet but did not own the main village

and, therefore, the hamlet had a separate existence as an entire village.

17. Mr. Rajah Aiyar referred us to the recent decision of the Privy Council in "Krishnaswami Aiyangar v. Perumal Goundan" 64 Mad L W 1. That

case related to a grant by the British Government in 1895. It was a grant of what was regarded as an entire village at the time. There was evidence

that the village so granted had once formed part of a larger village. Their Lordships pointed out that in 1895 the Government granted on inam

tenure the whole village that is, "the whole village which for the past 100 years had been recognised as an inam village" and that the important fact

was that the grant comprised the whole of what was then regarded as an inam

village. We fail to see how the decision on such facts can be of any help to decide the question before us which must be decided on the construction of the terms of the original grant, Ex. D. 1.

18. We find in conclusion that the lands in the suits are not situated in an estate as defined in Section 3 (2) (d), of the Madras Estates Land Act

and the revenue Court had no jurisdiction to entertain the suits which purported to have been instituted u/s 55 of that Act.

19. The second appeals are allowed and the suits dismissed with costs throughout.

20. C.R.P. No. 1526 of 1945": This revision petition arises out of a suit filed by the landlords in ejectment in the Court of the District Munsiff of

Eluru and relates to lands comprised in the same grant as we have dealt with in the above second appeals. The plaint was returned for presentation

to the revenue Court on the ground that the lands were situated in an estate. Now that we have held that this view is wrong the civil Court would

have jurisdiction to entertain the suit.

21. The order of the learned District Judge is hereby set aside and the suit is remanded to the District Munsiff, Eluru, to be tried and disposed of

according to law. The costs of the revision petition will abide the result of the suit.