
(1920) 02 MAD CK 0003
In the Madras High Court

Subramania Aiyar alias Gurumurthi Aiyar	APPELLANT
Vs	
Onnappa Goundan and Others	RESPONDENT

Date of Decision : 12-02-1920

Acts Referred:

Citation : (1920) 12 LW 576 : (1920) 39 MLJ 629

Hon'ble Judges : Spencer, J; Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—The plaintiff is the appellant. His ancestors got a grant of lands as Bhudanam from the Maharaja of Mysore in 1743 for

the support of a Chatram at Dindigul, the Mysore dynasty having then been the ruling power in that part of the country. That grant, Exhibit A,

describes the grantor as the Lord of the Earth (Prithivisam-rajyam) and it grants these plaint lands in Giriampatti village with Ashtabogam (8 kinds

of enjoyment) and 10 kinds of rights (with water, trees, minerals, etc.) Having regard to the recent decisions of the Privy Council in Suryanarayana

v. Patanna ILR (1917) Mad. 1012 and Upadrashta Venkata Sastrulu v. Divi Sitaramudu ILR (1913) Mad. 166 there is no presumption that the

grant was only of the melwaram in these lands, and on the other hand, the grant is almost conclusive that the soil in the lands themselves was made

a gift of to the plaintiff's ancestor, In other words it was a nilamanibham and not a thirvam nibham grant.

2. As the chatram was not properly conducted, the Government resumed the manibham between 1899-1901. The resumption, was not of the

melwaram right alone but of the manibham itself, that is the entire lands, and the Government was entitled to so resume. The lands were transferred

from manibham to ayan at the disposal of the Government and the lands thus became ryotwari lands. Kayam pattah was issued for the purpose of

cultivation (See Ex. TT) to the plaintiff for 548 acres 46 cents, the same being the area of the resumed lands.

3. At the time of the resumption the tenants under the plaintiff were in actual occupation of the lands. The plaintiff lands are about 107 acres, out of the total area resumed by the Government. The tenants are the defendants.

4. In paragraph 8 of the plaint, the plaintiff States that he, actually ejected the defendants in January 1901 and that he personally cultivated the

lands through his pannai servants between January 1901 and June of that year. This has been found to be a false story by both the courts and might

therefore be ignored. The plaintiff's claim therefore has to be based on the other allegations in the plaint, namely, that the plaintiff got title from the

Government in May 1901 by the grant of the patta Ex. TT to him, that the defendants are trespassers without title and that the plaintiff is

therefore entitled to eject them. The defendants' possession as trespassers against the plaintiff could begin only from the date the plaintiff himself

got his new title that is in May 1901, the Government having become the full owner by resumption of the grant in 1900 (or even in 1899 as

appears from Ex. T T which speaks of a "" transfer "" in fasli 1308). One other fact might be noted. When the Government was considering to whom

they should grant these lands which had come within their power of absolute disposal, the tenants in possession seem to have sent a petition Ex. E

to the Tahsildar of Dindigul requesting him not to issue patta to the plaintiff but to issue separate pattas to themselves for the lands in their

respective possession, but they withdrew that petition and it was dismissed. Where a land is at the absolute disposal of the Government and they

grant it to the plaintiff, the fact that some relationship as landlord and tenant had previously existed between the grantee from the Government and a

third person cannot avail to deprive the grantee of his rights under the grant, and the third person who has no rights against the paramount title of

the Government cannot set up his prior rights destroyed by the action of the Government against the grantee from the Government even though

those prior rights were those of a landlord. This has been decided in Subbaraya v. Krishnappa ILR (1886) M.422 following Ammu v.

Ramakrishna Sastri ILR (1879) M. 226 and myself and Hanny J. followed it in Hathikudu Narain Rao v. Andar Sayed Abbu Sahib (1914) 28

M.L.J. 44 which latter case is referred to in Swaminatha Mudali and Others Vs. M. Saravana Mudali and Others, decided by my learned brother and myself.

5. Mr. Krishnaswami Aiyar strenuously argued on the strength of two decisions in Gangabai v. Kalappa Dari Mukhrya I.L.R(1885) . 9 Bom. 419

. and Babu Lal Sheikh v. Purna Chandra Babu (1909) 10. Cal. L.J. 602 that the act of the Government in resuming inam did not put an end to the

rights of the tenants as against the inamdar if the former inamdar himself was made the grantee of the new title by the Government after resumption.

The case in Gangabai v. Kalappa Dari Mukhrya I.L.R(1885) . 9 Bom. 419 was decided on the old view that the grant of land in Inam was only

the grant of the Melwaram. The decision in Babu Lal Sheikh v. Purna Chandra Babu (1909) 10. Cal. L.J. 602 does not in my opinion lay down any

principle for guidance and there seems to have been a concession made by the counsel in that case which made it unnecessary to decide the

question now in dispute. Even assuming that that question arose at all for consideration in that case I feel myself bound by the decisions of this

Court and even assuming that these tenants had obtained their occupancy right by prescription or grant from the Inamdars (the plaintiff and his

predecessors), the plaintiff's new title acquired by the grant of a ryotwari pattah to him by the Government after the inam was resumed (and

therefore after all title under the inam grant and the subordinate titles of tenants under the inamdar had been put an end to) cannot be affected by

these subordinate rights available against him only if his old title as inamdar continued. Mr. Krishnaswami Aiyar next argued on the strength of

Muhammad Esuff Sahib v. Moulvi Abdul Sathur Sahib 36 M.L.J. 262. F. B that an Inamdar who is a trustee cannot get rid of his position as such

trustee by neglecting the trust and thus making the Government resume the inam and grant the lands under the ryotwari tenure to the trustee himself.

Of course I am bound to follow this Full Bench decision but I fail to see the full applicability of that decision to the facts of this case. The plaintiff

was no doubt the trustee of the charity (chatram trust) and he might according to this Full Bench decision even now be compelled in appropriate

proceedings (taken by persons interested in the trust) to apply the income of the lands which are now held by him under ryotwari patta for the

purpose of the trust, but he stood in no fiduciary position towards the tenants who had occupancy rights as against him or his ancestors and in fact,

the grant of occupancy right to tenants of charity lands by the trustee would ordinarily be a breach of trust (see *Kunhunni Panikkar v. Raman*

(1919) 10 L.W. 427 and *Palaniappa Chetty v. Sreemath Daievasikamony Pandara Sannadhi* 38 M.L.J 1. The Lower Appellate Court clearly

misconstrued Ex. A and Ex. B which clearly indicate that the manibham was a nilamanibham and not thirvamanibham. Its opinion in paragraph 8

that the word "nilamanibham" may mean the grant of melwaram only is clearly wrong. Owing to these errors of construction and also owing to the

erroneous view that the presumption is that a grant of land in inam even though by the ruling power was a grant of only the melwaram (this view

having prevailed in Bombay and in this Presidency till the Privy Council overruled it by recent decisions) the Lower Appellate Court thought that

the burden of proving that the tenants had not the kudivaram rights lay on the plaintiff. There is nothing which could be called evidence in this case

to show that anybody had any rights in the land except the King of Mysore on the date of the grant in 1743 to the plaintiff's ancestor. The

Government by resumption about 1900 put an end to the grant itself and all rights claimable against the grantee. That the defendants themselves

applied for a grant of the lands from the Government under Ex. R. indicates that no question of setting up adverse title against the Government is

arguable on the side of the defendant.

6. In the result, I would set aside the decrees of the Lower Courts which dismissed the plaintiff's suit on the ground, as the Lower Appellate Court

puts it, that the plaintiff "" had not shown that his ancestor was also kudiwaramdar at the time of the grant.

7. The question as to want of notice to quit was faintly argued, but the plaintiff did not admit in the plaint that there was any relationship of landlord

and tenant between him and the tenants after the grant of the ryotwari pattah to him for cultivation of these lands, and hence no question of notice

to quit arises, the defendants not having stated that the plaintiff accepted rent from them as his tenants after the grant of the plaint lands by the

Government.

8. It is a very hard case for the tenants, but the hardship has been caused by the act of the paramount proprietor, the Government, who might have

gone into the question whether it was more equitable to grant the lands on ryotwari pattah to the plaintiff who was neglecting the trust or to the

defendants who had obtained rights of occupancy in separate lots under plaintiff, but the Government did not choose to do so.

9. In the result the decree of the Lower Courts are reversed and the plaintiff will get a decree in accordance with the prayers 1 and 2 in paragraph

17 of the plaint, but subject to the defendants being allowed to have the superstructures erected on the lands removed within six months. Having

regard to the false statements in the plaint about the plaintiff having been in actual possession and about an alleged subsequent trespass in January

1902, to the hardship on the defendants and to the uncertainty of the law as to the nature of an inam grant till recently, I would make no order as to

costs.

Spencer, J.

10. These suits were brought by the plaintiff for the purpose of obtaining a declaration that the lands in suit belonged to him and for ejecting the

defendants who were occupying them. His case was that the plaint lands were granted in 1743 by the Maharajah of Mysore as personal Inam to

one Ramalinga Avadhani, the grandfather of his adoptive father who was then manager of the Kalinarayanappan Chattram at Dindigul. He alleged

that this was an absolute grant of the lands in suit with all rights of melwaram and kudivaram. The defendants on the other hand claimed that they

had occupancy rights in the lands and that the plaintiff was only entitled to collect rent, and on these points the parties joined issue. The plaintiff

further set up a case that in 1902 the defendants being out of possession wrongfully trespassed upon the plaint lands in spite of his obstruction, and

this forms the subject of the second issue. The District Munsif found against the story of dispossession and held that it was utterly worthless and

untrue. The District Judge does not refer to this point and it is unnecessary for us to deal with it further.

11. On the question of law as to whether in inam lands there is a presumption that the occupancy right resides in the inamdhar or in his tenants the

District Munsiff observed ""Ordinarily the presumption is that in the case of Zemin lands and inam lands the tenant in occupation has occupancy right."" In support of this proposition he quotes the case of Suryanarayana v. Potanna ILR (1918) Mad. 608 That was a decision by this Bench, which followed a long course of previous rulings upon the point by this Court and also some by the Bombay High Court. It was reversed by the Privy Council in Suryanarayana v. Potanna ILR (1918) Mad. 608 and therefore, it can no longer be accepted as good law. The District Munsif also relied on certain observations which he quoted from Venkatanarasimha Naidu v. Dandamudi Kotayya 36 M.L.J. 585 to the effect that ancient and modern sovereigns in India did not set up more than a right to a share of the produce raised by the ryots in lands cultivated by them, however much that share varied at different times. This was a decision on the question of occupancy rights in a zemindari or permanently settled estate, and therefore those remarks however correct they may be, had no application when they were pronounced to the right of tenants holding under inamdars.

12. The District Judge stated that it was an elementary proposition in law that the State granted only such rights as it possessed, and those rights were only the rights to collect revenue and that the State did not claim any right in the soil. This cannot be regarded as a correct statement of the law since the Privy Council decisions in Suryanarayana v. Potanna ILR (1918) Mad. 608 and again in Upadrashta Venkata Sastrulu v. Divi Sitaramudu 7 M.L.J. 251 In the last named decision the Judicial Committee have laid it down that there is no presumption of law that an inam grant of a village is prima facie a grant of the land revenue only. Their Lordships say that the determining factors are the terms of the particular grant and the whole circumstances connected therewith.

13. Both the Courts below thus started with an incorrect conception of what had to be proved and on whom the burden of proof lay in such cases.

As the Privy Council have declared that the terms of the particular grant are one of the factors which must determine the rights of the parties we

must look to Ex. A which is a registration copy of the deed of gift taken from Oakes" register where it was registered in 1809. The District Munsif

was inclined to throw doubts on the genuineness of this deed of grant but the

District Judge has presumed it to be a copy of the original and in the arguments before us its genuineness was not impugned. It is a record of a grant in 1743 by the Maharajah of Mysore of the lands in suit to the plaintiff's ancestor. It is described as Bhudana-sasanakramam which implies that it was a grant of the soil ; it confers powers of alienation by sale, gift, &c. with eight kinds of enjoyment and ten kinds of rights, from generation to generation through son to grandson. It is difficult to conceive how there could be a more absolute grant of the land and every right connected therewith. Ex. B which is an extract from the jamabandi account of fasli 1206 (A.D. 1797) contains a description of the dry lands which form a part of the holdings in this inam as nila maniam (nilam means land) and this is another indication that the inamdar had rights over the soil. The District Judge refers to the Olugu accounts of the year 1799 Ex. 58 , which he thinks to contain indications that there were Goundans in possession as tenants at that time. He is mistaken however, in thinking that all the persons mentioned therein are Goundans. The document contains nothing to justify the assumption that whoever was cultivating the land at that time had occupancy rights in it. He also relies on the inam register Ex. LX. This shows that the tenants in possession were paying teerva. Teerva means rent and the payment of it does not indicate that those who paid it had occupancy rights. Ex. U is another document referred to by the District Judge. It is a statement taken, at a time when the inam was under attachment by Government from some of the resident tenants by the Tahsildar of Dindigul. If anything, this document supports the plaintiff's claim, because the deponents stated that they had only the right of enjoyment without any right of sale or mortgage. They alleged that they had been enjoying the lands for five generations and that they were unwilling to surrender the lands, but they did not assert any ownership or occupancy right therein.

14. It is unnecessary to consider all the documentary evidence in the case because it appears that in 1900 the Government decided to resume this inam and impose full assessment and to grant a ryotwan patta. They granted a ryotwari pattah to the plaintiff, although it appears that the defendants also applied for patta under Ex. R. In a very recent case decided by the Privy Council in *Seturatnam Iyer v. Venkatachala Goundan* (1920) 38 M.L.J. 176 the plaintiff held a patta from the Government and sued for

recovery of possession of the land in his patta, the defendants

admitting that they held under the plaintiff. Their Lordships held that the defendants must fail unless they could prove a permanent tenancy or any

occupancy right in themselves. They observed that permanence is not a universal and integral incident of an under-ryot's holding ; and, if claimed, it

must be established and that might be done by proving a custom, a contract or a title, and possibly by other means. In Ponniah Nadan v. Deivanai

Ammal (1918) 36 M.L.J. 463 the learned Chief Justice and Seshagiri Iyer J., after reviewing the history of the ryotwari settlement have laid it

down that in lands so held the presumption is that the ryotwari pattadar is the owner of the land and the burden lies on the tenants who claim a

permanent right of occupancy to prove it. This principle was followed in Aiyappa Naicker v. Tirumalayappa Mudaliar (1909) 37 M.L.J. 238

decided by my learned brother and Napier, J. In it Napier, J., throws some doubt on a decision by myself and Krishnan, J., in Muthuswami Iyer v.

Nainar Ammal (1917) I.L.W. 194 With due respect, his criticisms seem to me to be undeserved. We did not lay, down any principle either for or

against all tenants holding under a ryotwari pattadar but we stated that when a person seeks to eject another from possession on the ground that

the defendant is a tenant whose tenancy has been terminated, the burden at the outset falls on the plaintiff to lay the foundation of a suit for eviction

by proving that he has a right to eject, and this he may do by establishing a prima facie case of a terminable tenancy which is unaffected by any

defence of permanent tenancy set up by the defendant, for proving which the burden lies on him. This principle seems to be as good law to-day as

it was when Venkatacharlu v. Kandappa ILR (1891) Mad. 95 and the judgment (S.A. No. 192 of 1879) in the foot-note to Kittu Hegadthi v.

Channamma Shettathi ILR (1904) Mad. 528 were pronounced, and is not affected by the ruling of the Privy Council that when the landlord's title

is conceded, the burden lies on the tenant to prove that he has a permanent tenancy or occupancy right.

15. In the present case the fact that the plaintiff now holds a ryotwari patta strengthens his case that the occupancy right has always been with him,

and the defendants have entirely failed to prove that they have either by grant, by contract or by prescription acquired a permanent occupancy

right.

16. There was no issue framed in the suit upon the question whether the defendants had by long enjoyment established a prescriptive right of occupancy, but the District Munsif considered that they had acquired a right by prescription in consequence of their assertion of right in 1881 in the statement, Ex. U and the District Judge agrees with him. But as I have already pointed out there was no assertion of an occupancy right in Ex. U, but only an assertion of an intention to continue in enjoyment until evicted. It was impossible to complete a title by prescription against the Government in less than 60 years. The defendants were mere under-tenants of a Government pattadar since 1901.

17. In paragraph 36 the District Munsif mentions that no notice to quit has been given, but the defendants did not take any objection to the suit on the ground of want of notice, and there was no issue on the point. There is no evidence that the defendants have been paying rent to the plaintiff since the pattas was granted to him in 1901. If they were in possession as trespassers it was unnecessary that the plaintiff should give them a notice terminating their tenancy.

18. In the result, I think we must allow the appeals and re-verse the decisions of the Courts below and grant a decree as prayed for by the plaintiff in paragraph 17, Clauses (1) and (2) of his plaint. Each side will bear its own costs throughout. Six months for removal of superstructures.