

(1917) 02 MAD CK 0015
In the Madras High Court

Swaminatha Mudali and Others

APPELLANT

Vs

M. Saravana Mudali and Others

RESPONDENT

Date of Decision : 28-02-1917

Acts Referred:

Specific Relief Act, 1877 — Section 18
Transfer of Property Act, 1882 — Section 3

Citation : AIR 1918 Mad 383 : (1917) 33 MLJ 370

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

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—In these 61 connected second appeals the appellants are the principal defendants in the suits. The suits were brought in

ejectment, the appellants being treated as having been sub-tenants from year to year of persons who owned rights in the lands as grantees of lease

rights under the East India Company under a grant of 1801; that grant being a grant of lease rights for 99 years. After that grant expired in January

1900 the plaintiffs became direct lessees of the Government (from the date of the expiry of the prior grant) another term of 99 years. The prior

grant of 1801 is evidenced by the indenture Exhibit P. while the new grant of 1904 is evidenced by the indenture Exhibit A.

2. The following facts may be set out to understand the contentions on both sides:

The East India Company claimed to be owners of the lands in dispute in January 1901. It appears from the Chingleput Manual that in 1760 a grant

was made to the East India Company of the Chingleput District by the Nawab Muhamad Ali as Jagir or estate and that the grant was confirmed in

1763. This word Jagir is a word of very undefined signification, but as regards

the particular lands in dispute the East India Company considered themselves to be the owners. Soon after January 1801 the Company became the Sovereign power for the territories in which these lands were situated and it is of course absurd to speak of them thereafter as Jagirdars of these lands under themselves or to speak of these lands as Jaghire estate.

3. Now the lease of 1801 under Exhibit P was made to two gentlemen, Messrs. Bosbuck and Abbott who seem to have already, (presumably with the company's permission), almost completed a brick building on a portion of the 300 cawnies of the leased lands and seem to have effected other improvements. The material portion of this document Exhibit P are to the following effect:

1. The lessees and their heirs and assigns, etc., were entitled "" to have hold, use, occupy, possess and enjoy the leased lands,"" with all benefits, and advantages"" at a yearly rent of Rs. 1,575 in consideration of a small premium of five pagodas paid them and the payment of additional premia of

Rs. 105 to be paid at the end of every thirty years. (2) The lessees, &c. "" shall not do or cause anything to be done upon the leased premises""

which shall grow to the annoyance, grievance or damage of the said company, their tenants or the inhabitants or their bounds."" (3) If the lessees, or

their heirs or assigns, etc., shall commit breach of any of the covenants, the Company may "" re-enter"" upon the leased premises "" or any part

thereof in the name of the whole"" and ""have again to possess and enjoy the same."" Subsequently, by successive assignments the right under Exhibit

P which I shall call grant-ownership passed in 1816 to a Mudaliar belonging to the well-known Manali family. See Exhibit Q. Since then this grant-

ownership has remained either with the members of the Manali family or with the members of a family connected with them by marriage and at the

time of the expiry of the lease in January 1900 the grant ownership was vested in Manali Ramakrishna Mudali, the father of the present plaintiffs.

4. About the year 1840 the Manali Mudaliar who then owned the grant right, seems to have sold to his brother, claiming not only the grant-

ownership right but also right as Mirasidar in the, lands. For the first time evidently, about 40 years after the grant, the person representing the

original grantee seems to have set up an independent mirasi right in the lands.

See Exhibit S. Then about the year 1850 or so, this alleged mirasi right in the lands seems to have become the subject of dispute between the grant-owners and their tenants now represented by the defendants. That mirasi right which included the occupancy right in the lands was finally decided to belong to the grant owners as between them and their tenants. See Exhibits D to G. In 1889, however, about 11 years before the expiry of the term of the grant the tenants seem to have been recognised by the then grant-owner, as having occupancy rights in their holdings. These documents of recognition (the pattas) have been noted in the footnote at page 37 of the judgment of the District Munsif. When the term of the grant of 1801 expired in January 1900, the Revenue Officers of the District entered into correspondence with their higher officers as to the proper mode of the future disposal of these lands. In May 1900 Manali Ramakrishna Pillai applied for the renewal of the lease for another term of 99 years or in the alternative, for the grant of a ryotwari patta to him by the Government. The tenants seem in rivalry to have applied for the grants of ryotwari pattas to themselves, while these questions were being considered. Ramakrishna Pillai died. The present two plaintiffs are his sons and in December 1904 they were granted a renewal lease evidenced by Exhibit A.

5. These suits have been brought in ejectment after the issue of notice to the defendants to quit the lands.

6. The lower Courts decreed the plaintiffs' suits on these two findings of facts, namely, (1) that the East India Company were full owners of the plaintiff lands (known as Pazhal Line lands) at the time of the grant of 1801 and that the Government were full owners at the time of the second grant of 1904 to the plaintiffs; and (2) that no miras right (whether it means permanent occupancy right or whether it means the peculiar right of some Chingleput Mirasidars to Swathantharam, Kuppatam and other minor requisites in consideration of their once having been full kudivaram owners), vested either in the grant owners or in any of their successors or in the tenants (defendants).

7. Now Mr. Rangachariar for the appellants (defendants) contested the validity of the above two findings of fact and he also argued a long array of other contentions which however might be summarised under 2 or 3 heads as

follows: (1) that under grant A itself of 1904 the Government recognised the occupancy rights of the defendants and that therefore the plaintiffs cannot contest such rights which they were bound to recognise under the terms of their own grant; (2) that in 1889 there was a contract by the then grant-owner Vythilinga Mudali to transfer the right of occupancy to the tenants and that there was such a transfer in 1889; and (3) that even if the transfer and the contract of transfer of 1889 conferred no permanent kudivaram rights in favour of the defendants (the tenants), they were entitled, after the plaintiffs got the second grant, to claim such occupancy rights (at least during the 99 years' term of the second grant) as against the plaintiffs (a) on the strength of Section 18 of the Specific Relief Act, or (b) under the provisions of Section 3 of the Transfer of Property Act, or (c) u/s 90 of the Trusts Act or (d) on the doctrine of estoppel.

8. As regards the first question, namely, whether the East India Company were full owners, the first grantees, viz., the two European gentlemen to whom the Company granted the lease could not surely deny the title of their landlord who claimed full ownership. Mr. Rangachariar was obliged to argue that even at the time of the grant there were some mirasidars, some unknown people who had occupancy right in these lands. That is very improbable as it appears from Exhibit B that the lands were waste lands, and that it was only the grantees under Exhibit P who made improvements and built buildings thereon. We are asked to give no weight to Exhibit B on the ground that it contains some mistakes. The Lower Courts are entitled to find facts on the evidence including the documentary evidence. The question of the weight to be given to the evidence rests with them, not with us in second appeal. Even if the East India Company were known as Jagirdars in 1801, a Jagirdar might have absolute interests in waste lands and even in cultivated lands, and the presumption which has been adopted in respect of grants of Jagirs by the British Government cannot reasonably be applied to grants made by the Nawabs of the Carnatic. It also appears to me from the documents contained in Exhibit Z that the Government, the tenants, the plaintiffs' father, all acknowledged the right of the Government to dispose of these lands in their absolute discretion, either by granting ryotwari patta to anybody they liked or by, granting

fresh lease. As I have already suggested, even if the East India Company were mere Jagirdars, they become full " owners after the territory passed to them by treaty and their grant must be a grant of the right to directly take possession of the soil of the lands as lessees unless it is shown that somebody else owned the kudivaram rights in the lands in 1801.

As regards the alleged mirasi right of others it was only, (as already remarked) about 40 years after the grant, that it was first set up and the Government is clearly not bound by what the successors of their grantees stated behind the back of Government. The case in *Bagkojirao Saheb v. Lakshman Rao Saheb* ILR (1912) B. 639 relied upon by Mr. Rangachariar has no relevancy., Their Lordships of the Privy Council point out in that case the danger of relying up in the doctrine of *contemporanea expositio* and restrict the application of the doctrine to the acts and conduct of the grantor, beginning contemporaneously with the grant and continued for a long course of years. Here we are asked to extend that doctrine to declarations of the grantees' successor made 40 years afterwards behind the back of the grantor. I think that we ought to accept the finding of fact of both the Lower Court, that no mirasi right existed in these lands in 1801 in any person other than the East India, Company and if none existed then, no such right could have come into existence afterwards which could be set up validly against the Government. It may also be noted here that these lands were carved out of two villages by an artificial line and hence they seem to have become known as Puzhal Line Lands. The usual argument that villages in the Chingleput District were formerly mirasi villages could not therefore be applied to these lands. It is unnecessary to speculate whether this assertion of mirasi right in 1840 for the first time (there being no indication in the assertion as to how the mirasi right was acquired or how it originated) was due to the grantee's anxiety to protect himself against his tenants' setting up occupancy rights in themselves or whether it was due to his intention to claim occupancy rights for his Successors against the Government after the expiry of the term of the grant, or to both motives. On the findings that the Government owned and own the absolute right in the soil of the land that they are not mere melwaramdars, it is unnecessary to consider another contention raised by Mr. Rangachariar that the lands formed part of an unsettled Jaghir estate,

(Clause (2) (c) of Section 3 of the Estates Land Act) and that the tenants occupying lands therein are ryots in such an estate entitled to permanent

occupancy rights from the date when the Estates Land Act came into force, u/s 6 of the Act. The above disposes of contentions 1 and 2 of Mr.

Rangachariar. As regards the 3rd contention namely, that the Government itself by Exhibit A directed the plaintiffs not to interfere with the

occupancy rights of the defendants, this contention is founded upon the following covenant in Exhibit A, namely that the lessees, their heirs, etc. will

not do any act ""which may grow to the grievance or damage of the Government of India or the Government of Madras or their tenants."" Mr.

Rangachariar argued that ""their tenants"" meant the tenants of the lands, namely the defendants. This clause has been taken from the former

indenture Exhibit P of 1801 where the words are "" the damage of the said company, their tenants or the inhabitants or their bounds"". Clearly the

expression "" their tenants "" in Exhibit P means the Company's tenants. The same expression when used in Exhibit A clearly means the tenants of

the Government of India or the Government of Madras. This covenant is the usual covenant in English indentures creating leases by which the

lessor protects himself against the acts of his lessees which might injure other tenants of his (i. e., of the lessor) either of the same land or of

neighbouring lands, and also against acts of his lessee which might cause nuisance or damage to neighbouring landowners.

9. The fourth contention of Mr. Rangachariar was argued in a rather indefinite way. That is, sometimes he argued that the event of 1889 on which

he relied was a contract to transfer rights in lands and at other times as if it was a completed transfer of such rights. I shall consider his contention in

both of its aspects. So far as I could find from the written statement, (paragraph 9) the defendants do not set up that there was a contract by

Vythilinga Mudaliar to transfer his mirasi or occupancy right to them. Nor do they set up that there was an actual transfer of any such right. A

transfer of the permanent occupancy, right in Immovable property can be made either, by a registered instrument or by giving possession if the

transfer was an oral transaction of sale. As I said, I cannot find any language in the written statement, which could be treated as, asserting a transfer

to defendants at that time of an occupancy right. On the other hand, paragraph 9 says and implies that Vythilinga Mudaliar had not got any

occupancy right and. that the ryots had occupancy right all along, that that right of theirs had been judicially recognised and that all that Vythilinga

Mudali did was himself to recognise the right which had been in the tenants from the long past. The theory of transfer being thus brushed aside,

there is the question of the contract to transfer. Again, I cannot find that there was a contract to transfer any right, set up in the written statement, It

denies that Vythilinga Mudaliar had any rights of occupancy which he could contract to transfer. Assuming however for arguments" sake that there

was a contract to transfer or that there was a transfer I shall shortly consider the contentions based under the heads (a) (b), (c) and (d) already set

out. Coming to Section 18 of the Specific Relief Act, it has no application as the defendants do not seek any specific relief in this case baaed on

any such contract, that is, they are. not suing for specific performance of the alleged contract of transfer of occupancy rights to last for the second

term of 99 years. With regard to Section 43 of the Transfer of Property Act, that applies to cases when a person erroneously represents that he is

authorised to transfer, certain rights, in Immovable property. No such representation is alleged and we are asked to imply such a representation as

having been made in 1889. It is impossible, in my opinion, to imply any such representation from the mere fact that in issuing pattas Vythilinga

Mudaliar called himself the mirasidar of the land and then acknowledged the tenants"...(kaipathu) rights. Coming to Section 90 of the Trusts Act, it

applies to cases where a tenant for life or co-owner or mortgagee or other qualified owner, avails himself of his position as such and gains an

advantage in derogation of the rights of other persons interested in the property, or where he is representing all persons interested in such property

gains any advantage. It is impossible from the facts of this case to hold that the plaintiffs represented themselves as acting on behalf of these tenants

also or ever did represent these tenants when or before they obtained the renewal. On the date of the renewal of Exhibit A they had themselves

ceased to have any interest in the lands. Nor had the defendants any rights in the land on the date when the fresh grant was made. Section 90 of

the Trusts Act therefore has no application. See also Hatiikudur Narain Bao v. Andar Sayad Abas Sahib (1914) 28 M.L.J.44 where Hannay; J.

and myself (myself with some hesitation) held that where a land really belongs to Government, no question of estoppel and no question u/s 43, Act

IV of 1882 arise so as to interfere with the rights of the subsequent grantee from the Government.

10. Coming to the question of estoppel a tenancy by estoppel cannot be created where the act of the landlord which is relied upon (and which

created a lesser right than the landlord represented himself to be entitled to create), did confer upon the tenant a right as lessee for some term,

however short. (See Foa on Landlord and Tenant page, 473) See also Weller v. Spiers (1872) 26 L.T. 896.

11. In the result I would dismiss all these second appeals with costs. Pleader's fee 15 rupees in each case.

Spencer, J.

12. I agree.