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In the Madras High Court

Upadrasta Venkata Sastrulu — APPELLANT

Vs

Divi Sitaramudu and Others — RESPONDENT

Date of Decision : 18-03-1914

Acts Referred:
Madras Estates Land Act, 1908 — Section 3(2)(d)

Citation : (1914) 26 MLJ 585

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

Bench : Full Bench

Judgement

Sadasiva Aiyar, J.—Plaintiff is the appellant. He is an Inamdar of a village called Billapadu. the Inam grant having been made so long ago as

1748, That village was then a Mouje village, that is, a village in which there were peasant proprietors owning cultivable lands even then. The suit

relates to 60 acres out of the 300 acres in that village. For the purposes of this case, it must be taken that these 60 acres were lying as immemorial

waste at the time of the Inam grant to plaintiffs ancestors. It is further found by the Lower Appellate Court that these lands were afterwards given

by the Inamdar for cultivation from time to time to different sets of tenants without occupancy right. Paragraph 7 of the plaint says "" In Fasli 1317

the plaintiff changed the tenant who was in possession prior to that time and leased the schedule mentioned lands to the defendants for only a year.

Treating the one year''s tenancy as having expired on the 1st of April 1908 the suit was brought to eject the defendants in the District Munsif''s

Court of Gudivada.

2. The preliminary contention raised by the defendants was that as the plaintiff''s inam was an estate falling u/s 3 Clause 2(d) of the Madras Estates

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Land Act, the Civil Court had no jurisdiction to entertain a suit for the ejectment of defendants from the plaint lands which are ryoti lands in the

inam estate. The plaintiffs reply to this contention of the defendants seems to be that the inam itself is not an "" estate"" under the Estates Land Act,

and even if the inam is an estate, these 60 acres either never formed part of the estate or had ceased to form part of the estate and hence the

jurisdiction of the civil courts had not been taken away.

3. It has been held in numerous cases that, when a whole village is granted to a non-resident Brahmin as Inam, the presumption is that the grant is

only the grant of the melvaram right. The grant of the melvaram right means that the grantee is to receive the melvaram revenue from the peasant

proprietors'' who are already in the enjoyment of the cultivated lands in the village and that, as regards the waste lands in the village, he is entitled to

create further melvaram revenue for himself by letting them to cultivating tenants. The District Munsif gave a decree for the plaintiffs in this case, but

the District Judge on appeal held that the civil court''s jurisdiction was ousted as the plaint lands were part of an "" estate "" and that the lands have

continued to be ryoti lands in the estate, the platntiffs ancestor (the grantee) not having been a holder of the kudivaram at the time of the grant of

the melvaram to him. I think that the learned District Judge was right in his conclusions, and that his order directing the plaint to be presented to the

Revenue Court is correct.

4. The appellant''s learned advocate relied upon the observations found in Lakshminarasimha Rao v. Sitaramaswami (1910) 20 M.L.J. 290 and

some similar observations in later cases. I don''t think these cases go beyond this point, namely, that if it is proved that at the time of the grant of a

whole village in inam all the lands in that village were lying waste or if it is proved that at the time of the grant of certain defined extent of lands in a

village, (such a grant being called a minor inam grant), that extent of lands so granted as minor inam was lying waste, the grant might be deemed in

either case to be not of the melvaram alone in such waste lands but of the kudivaram also. In such a case, of course, even the whole village so

granted will not fall under the definition of "" Estate"" in Section 3, Clause 2(d), because that section relates to cases where the grant was of the

melvaram alone. Where the entire lands themselves in the village, as they were

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lying waste, were granted in inam, it cannot, of course, be said to be

a grant of the melwaram alone. But the present case is not such a case. Here the only thing admitted by the defendants is that about 20 per cent of

the lands lay waste when the whole village was granted in inam. I do not think that in such a case, the mere fact that there were some immemorial

waste lands situated in the village granted as inam, could remove the village itself from the definition of ""estate"" or that it can be held that the waste

lands never formed part of the estate and were granted on a different footing from the grant of the remaining lands. Just as the private home-farm

lands of an Inamdar continue to be part of the estate, though no tenants have got any Kudivaram right in them, so the immemorial waste in an

estate does form part of the estate, provided that the grant of the village was intended t6 be only the grant of the Melwaram right in the village

lands. Where the Government or a Zemindar grants a whole village, some lands in which are lying waste but most of the lands in which are under

cultivation, I think that the usual presumption prevails that the grant of the village in general terms means only the grant of the Melwaram in the

whole village lands including the waste lands. The Inamdar, so far as the waste lands are concerned, cannot be considered to have the Kudivaram

right in them though he could create kudivaram interest in a waste land by letting it to a cultivator and could have (before the Estates Land Act)

converted it into a private land by cultivating it through his home-farm servants and thus got the Kudiyaram right vested in himself. Till he does

either of these things, the lands would lie waste, owned by the Inamdar, no doubt, in a certain sense (which is not all an unreal sense) but he cannot

be said to have the Kudivaram right in it, Kudivaram implying direct contact by cultivation with the soil. I do not feel myself much impressed with

the argument based on logic that the Kudivaram in a waste land must belong to somebody and, as regards immemorial waste, it must be with the

landlord. This argument if pressed to its logical limit, would lead to the conclusion that when a ryoti land is abandoned by the tenant, it becomes at

once private or home-farm land as the Kudivaram right till then existing in the tenant became joined in the landlord with the Melvaram right and he

became the owner of it to the same extent as he is of the private home-farm land in which land both such rights admittedly combine. The kudivaram

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mighteven be admitted to be vested in a sense in the land-holder in ryoti lands abandoned by the former tenant if it is necessary to admit that

proposition in order to support his right to grant the kudivaram right to any person he likes after the abandonment by the former tenant of the said

lands but that does not vest absolutely'' in him according to the common law governing the rights of Zemindars and tenants (and now according to

the Madras Estates Land Act), in such a away that what was ryoti land became converted into the landholder''s private land. Whether this state of

things is logical or not, it has been accepted by the Legislature and I think Courts of Justice are under a duty to advance the views of the

Legislature as clearly expressed in the Estates Land Act, namely, that the kudivaram interest in ryoti lands should, if possible, be prevented from so

permanently vesting in the landlord as to convert them into his private or home-farm lands.

5. I think it must be admitted that the Judgment of Miller J. in Ponnusamy Padayachi and Another Vs. Karuppudayan and Others, goes to the

length of holding that a land which is not the private or home-farm land of the Inamdar ceases to be part of the estate if no tenant holds permanent

occupancy right therein. With the greatest respect, it seems to me that if even private or home-farm land continues to be part of the estate (though

the kudivaram right in it admittedly belongs to the Inamdar), the mere fact that no tenant is able to prove that he has a permanent occupancy right in

a ryoti land cannot make it cease to be part of the estate. Spencer J. in that same case expressed a different view at page 291 and he did not

accept the contention that all lands in which no tenant proves a permanent occupancy right in an estate falling u/s 3 Clause 2(d) cease to form part

of the estate (see the penultimate paragraph of the Judgment of Spencer J.). I think Ponnusamy Padayachi and Another Vs. Karuppudayan and

Others, is binding authority only for the proposition that a suit for the ejectment of a tenant of old waste who has no occupancy right and who holds

under an unexpired lease granted before the Estates Land Act can be brought in a civil court provided the suit is not based on one of the grounds

mentioned in Section 153 Clause (a) to (e) of the Estates Land Act.

6. While the Legislature was not at all anxious to see that home-farm lands are not converted into ryoti lands but was rather anxious the other way

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(see the prdviso to Section 81 of the Estates Land Act), the Legislature has taken great care in Section 185 to restrict the claim of the land-lord to

treat lands in an estate as private lands; it has raised a strong presumption in favour of lands being ryoti lands (S. 23) and it has expressly enacted

that the merger of the occupancy right in the land-holder even by transfer or succession shall not convert ryoti land into private land (Section 8,

Clause 3). If even a merger by transfer or succession cannot convert ryoti into private land, merger by abandonment or surrender (supposing such

a merger can take place) cannot a fortiori, so convert it (see also Section 6, Clause 2). I have held in Suryanarayana v. Potannah (1913) 26

M.L.J. 99 (following Badan Chandra v. Rajeswari (1905) Cri.L.J. 570 and Muktakeshi v. Pulin Behari (1909) Cri.L.J. 324 that acquisition by the

landholder of the kudivaram by surrender or abandonment of the land by the tenant cannot remove the tenant''s land from the definition of an

estate "" even when the ""estate "" was one falling u/s 3, Clause 2(d). As regards all other kinds of estates, the intention of the Legislature is quite clear

and the exception to Section 8 should therefore be strictly confined to the narrowest limits. The Lower Appellate Court''s conclusion, therefore,

that so far as the plaint village, that is, the village, as a whole, is concerned, the land revenue alone Was granted in Inam to a person not owning the

kudivaram thereof is correct. The village is an estate u/s 3, Clause 1(d) of the Estates Land Act, and the 60 acres in dispute is part of the estate.

Even immemorial waste lands in an estate are ryoti lands unless they are proved to come under the peculiar definition of "" old waste "" or unless they

are proved to be private land (Section 23 of the Estates Lands Act). In Ramachandra v. Venkatarao ILR (1882) R. 598 and Rajya v. Balakrishna

Gangadhar ILR (1905) Bom. 420 it was held that an Inamdar could not be held to have the same rights in the soil of immemorial waste lands as a

Kudivaramdar has in the soil of his holding, though the Inamdar had the right to convert any portion of the immemorial waste into home-farm lands,

that is has the right to get kudivaram and occupancy rights by actual cultivation. I would, therefore, hold that the plaint lands were ryoti lands and

not the private lands of the Inamdar-landholder at the time of, and immediately after, the inam grant.

7. When the Inamdar afterwards granted the lands for cultivation without giving the cultivators permanent occupancy rights (but only the rights to

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occupancy for one year or from year to year or a specified number of years) and when he changed the cultivators from time to time, it cannot be

said that thereby the; Inamdar himself got any permanent occupancy or kudivaram right in the land as there is no evidence to prove that he let them

expressly as his private or home-farm lands. The occupancy right (that is, the right to occupy and cultivate) was enjoyed by the cultivating tenants

from time to time though they did not get a permanent occupancy right thereby. The contention that by the surrender of the land by the predecessor

of the defendants to the Inamdars, the Inamdars got permanent occupancy or kudivaram rights under the exception to Section 8 of the Estates

Land Act is untenable both for the reasons mentioned in my judgment in Adusumilli Suryanarayana and Another Vs. Atchuta Potanna and Others,

Battula Seshayya and Kosuri Venkataratnam and Others, and also for the reason stated by the learned District Judge on the facts of this case,

namely, that even if the surrender by the tenant be equivalent to a transfer of the tenant''s right to the land-lord, the tenant who surrendered had

himself no permanent occupancy or kudivaram right to transfer to the land-lord. The judgment of my brother Tyabji J., in the recent cases, Sree

Balusu Buchi Saravagarudu Garu Vs. Kovvuri Venkata Raju and Others, and Ardajari Rama Reddi v. Karpi Sivaga (1913) 21 Ind.Cas. 916 have

decided that so far as ryoti lands are concerned a suit for ejectment of a tenant by a land-holder on any ground could be brought only in the

Revenue Court. In the result, I would therefore dismiss these Civil Miscellaneous Appeals without costs.

Seshagiri Aiyar, J.

8. The question for decision in these cases is whether the Civil Courts have jurisdiction to entertain the suits. My conclusions are based on the

pleadings in the case and on the admission of the parties; any pronouncement made regarding the rights of the plaintiff and the defendants on this

preliminary issue will not conclude parties at the further hearing of the case by the proper tribunal. The facts of the case in so far as they are

material for the determination of this point are these, The village in question consists of 300 acres. It was granted to the ancestors of the plaintiffs in

1748. Of these, 60 acres were uncultivated and were lying waste. The remaining 240 acres must be taken for purposes of this case to have been

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under the occupation of tenants who had permanent rights. The present litigation relates to the 60 acres which were waste at the time of the grant.

If the village is an estate then the civil courts have no jurisdiction to entertain this suit; otherwise this suit was rightly instituted. This is an Inam village

and as such it comes u/s 3, Clause 2(d) of the Estates Land Act. There is no doubt that the entire land revenue of the village was granted to the

plaintiff at the time of the grant. But there was a portion on which no land revenue was due because it was waste land. I do not think that makes

any difference in the decision of this case. It is true that the language of the definition would show that nothing but land revenue should have been

granted if the village is to be regarded as an estate. The fact that upon a portion of the village no land revenue was due is not enough to conclude

that the grant of the inam was not an estate. In coming to this conclusion I have not lost sight of the suggestion made by the learned Counsel who

appeared for the appellant that the grant of rights in the waste land must include the kudivaram rights as well. I think there is a great deal of force in

this argument.

9. It has been argued by Mr. Srinivasa Aiyangar that where a grant is of unoccupied waste land all that the grantee acquires is a right to annex it to

his home-farm land by doing certain acts indicative of his intention to do so, and that till then he acquires no higher rights in it'' than what he has in

the lands occupied by permanent tenants. Prima facie the grant of the soil comprises all there is in it. The potentiality of a tenant acquiring

occupancy rights may be there, but that will not derogate from the grantee having full rights in the soil at the time of the grant. The history of

legislation in this country, of which we are bound to take judicial notice, shows that the right in the soil vests in the paramount power; It may be

open to argument when a particular legislation comes to'' be tested before a court of law whether such an assumption is well-founded. Till the

Legislature makes a departure, courts are bound to proceed on the assumption that the right in the soil is in the Government. This is based on the

theory that the ancient sovereigns of this country had similar right. In that view, I must hold that the grant of the village in 1748 included the right to

such revenue or rent as the grantor had in the village, plus the full rights in those unoccupied portions of the village in which the tenants had no

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permanent rights of occupancy. My conclusion therefore is that in 1748 the grantee acquired both the Kudivaram and Melvaram rights in the 60

acres, and the rights of the Melvaramdar alone in the remaining 240 acres. Even in this view, I must hold that the village that was granted in 1748

was an estate under the Estates Land Act. The use of the word alone in qualifying land revenue is somewhat misleading. What the Legislature

meant to lay down was that no kudivaram rights should have been granted in the lands which were under the occupancy of tenants; any other

construction will lead to difficulties. Supposing the boundaries of a grant included, as it always does, a few stray acres of waste land and some

poramboke; in all such cases, if Mr. Parthasarathy Aiyangar''s contention were upheld, there will be no grant of an estate. In order to bring a case

within Section 3, Clause 2(d) all that need be proved is (1) that the entire land revenue or rent which the grantor was entitled to in the village must

have been transferred, (2) and the grantee should not have been the owner of the kudivaram of the village as a whole. In the present case both

these conditions are found. I have therefore come to the conclusion that the village is an estate. The jurisdiction of the Civil Courts would be taken

away unless the plaintiff can show that he is entitled to the exception to Section 8 of the Estates Land Act.

10. We have heard very full arguments upon the construction of this exception both from Mr. Srinivasa Aiyangar for the defendant and from Mr.

Ramesam for the plaintiff. The plaintiff must show in order to claim the exemption that he had acquired the kudivaram right since the grant. The fact

that the right was given to him by the grant will not be enough because he has to show the right was subsequently acquired and inheres in him at the

time of the suit. The question is whether by surrender at the end of Fasli 1316 by the then tenants the plaintiff has acquired the Kudivaram right. It

is found by the District Judge in paragraph 4 of his finding that the tenants had no occupancy rights at the time of the surrender. Therefore any

surrender by them will not enlarge the rights of the plaintiff. Secondly it is doubtful whether the exception contemplates the acquisition of kudivaram

rights by surrender. Clause 1 of that section speaks of the union of the rights of the landlord and tenant by transfer, succession or otherwise. Unless

the word "" otherwise"" includes cases of surrender, the exception will not avail the plaintiff. In considering a similar clause in the Bengal Tenancy

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Act, it was held in Badan Chandra Das v. Rajeswari Debya (1905) Cri.L.J. 570 and Muktakeshi Dasi v. Pulin Behary Singh (1909) Cri.L.J. 324

that surrender is not ejusdem generis with transfer and succession. The same view was taken by Justice Sadasiva Aiyar in Adusumilli

Suryanarayana and Another Vs. Atchuta Potanna and Others, Battula Seshayya and Kosuri Venkataratnam and Others, . In Ponnusamy

Padayachi and Another Vs. Karuppudayan and Others, Mr. Justice Miller has taken a different view. In this state of authorities I have to find out

whether surrender is analogous to transfer or succession. In Blackstone''s Abridgment it is stated that in order that a surrender may clothe the

surrenderee with all the rights of the surrenderor there should be acceptance by the former. In Oastler v. Henderson (1877) 2 Q.B.D. 575 the

plaintiff had let a house to the defendant for 7 years ; from 1868. In December of that year the defendant surrendered the keys to the plaintiff. The

plaintiff employed agents to advertise the house for letting, but it was not until 1872 that he was able to get a new tenant. In 1870, for a short time,

some workmen of the plaintiff occupied two rooms in the house for the purposes of plaintiff''s business. The plaintiff sued the defendant for rent

from December 1868 to 1872. The defence was that there was a valid surrender and that the acts of the plaintiff amounted to an unequivocal

acceptance of the remaining term and consequently defendant was not liable to pay rent. The Lords Justice refused to uphold this contention.

Cock-burn C.J. says that the plaintiff had not taken possession of the premises ; ""and in order to estop the lessors, so as to constitute a surrender

by operation of law, there must be a taking of possession. The plaintiffs (the landlords) took the keys because they could not help themselves, the

defendant being gone. Then they try to let the house. The landlords did nothing but what they might reasonably be expected to do under the

circumstances for the benefit of all parties."" He concludes by saying that the occupation for short periods by plaintiffs'' tenants did not manifest an

intention not to hold the defendant to his lease. Lord Justice Brett says: ""If after the agreement the landlord actually takes possession or does what

virtually amounts to it, if he not only attempts to let out actually does let, then there is a palpable act done with regard to the premises raising an

estoppel within the rule laid down in Nickells v. Altherstone following Lyon v. Reed. It seems to me that there was no act done amounting to an

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estoppel prior to March 1872."" The view taken is that the mere delivering up does not take away the liabilities of the one nor add to the rights of

the others. Some overt act calculated to show that the surrenderee has exercised dominion over the property, and has added it on to his estates is

necessary. Some act has also to be done by way of putting an end to the tenancy. This conclusion derives support from the decision in Cheekati

Zemindar v. Ranasooru Dhora ILR (1899) M. 318 where Mr. Justice Subramania Aiyar says at page 324 "" For in the case of lands which have

been relinquished by the former occupants or which have been lying waste from time immemorial, they too, when taken up by a raiyat, are treated

exactly on the same footing as land into the possession of which it is not shown that the raiyat was let in by a Zemindar, and the raiyat holds

possession of them for an indefinite period.

11. In my opinion surrender ipso facto is not a mode of acquisition and has not the same effect in conferring rights as transfer or succession.

Consequently the word otherwise will not include a surrender, because that will be obnoxious to the principle of construing words ejusdem generis.

12. My conclusion is that the plaintiff is not entitled to the benefit of the exception to Section 8, and the village is an estate and as such the Civil

Courts have no jurisdiction to entertain the present suits. I would make no order as to costs.

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