
(1975) 12 AP CK 0014

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 27 of 1974

Valluri Appayya and Others

APPELLANT

Vs

Dosapati Narasimhamurty and Others

RESPONDENT

Date of Decision : 22-12-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105(2)
Evidence Act, 1872 — Section 35

Citation : AIR 1976 AP 295 : (1976) 1 APLJ 114

Hon'ble Judges : Jeevan Reddy, J;Chinnappa Reddy, J

Bench : Division Bench

Advocate : N.V. Ranganadham, for the Appellant; T. Ramachandra Rao, for the Respondent

Judgement

Jeevan Reddy, J.—This Letters Patent Appeal is preferred by the defendants by leave granted by Madhava Reddy, J., while dismissing S.A. No. 668 of 1972 arising from O.S. No. 74 of 1960 on the file of the Court of the District Munsif, Rajam.

2. The plaintiffs filed a suit alleging that they are the owners of the suit lands situated in Venkatarayuni Agraharam and that the defendants are their tenants. The said Agraharam is a pre-settlement minor inam and that when the Rent Reduction Act was enforced by the State, the defendants stopped paying the rent whereupon the plaintiffs filed suit O.S. No. 616/1953 on the file of the learned District Munsif, Rajam for a declaration that the said Act is not applicable and that the said suit was decreed. The defendants were therefore estopped from contending that the lands are situate within a whole inam village and that therefore it is an estate within the meaning of Section 3 (2) (d) of the Madras Estates Act and that since they were not parties to the suit O.S. No. 616 of 1953, they are not bound by the decision therein. They claimed occupancy rights in the said lands and submitted that they would be liable at the most in a sum of Rs. 60 only per year in view of the low yield. Other pleas regarding misjoinder etc.,

were also raised. The main question that fell for decision in the suit therefore was whether the suit land is an estate within the meaning of Section 3 (2) (d) of the Madras Estates Land Act.

3. The trial Court held, on a consideration of the oral and documentary evidence, that Venkatarayuni Agraharam is clearly an estate within the meaning of Section 3 (2) (d) of the said Act and that the defendants are not bound by the decree in O.S. No. 616 of 1953. In view of the finding on the main issue, the suit was dismissed. The plaintiffs filed an appeal which was dismissed confirming the findings of the Trial Court. S.A. No. 176 of 1974 (Andh Pra) was preferred in this Court which came up before Parthasarathi, J, for final disposal. The learned Judge allowed the appeal on the ground that both the courts below have illegally excluded from consideration Ex. A-5, a very material piece of evidence and therefore remanded the matter to the lower appellate Court for fresh disposal according to law. On this occasion, the first appellate Court allowed the appeal holding that the said Agraharam is not an estate. The defendants filed an appeal which has been dismissed by Madhava Reddy, J. Hence this Letters Patent Appeal by leave.

4. The conclusion that the Venkatrayuni Agraharam is an estate within the meaning of Section 3 (2) (d) of the Act was arrived at by both the courts below on the earlier occasion mainly on the basis of Ex. B-4, the Inam Fair Register and Ex. B-5 which is stated to be a "Yadast" pertaining to Venkatrayuni Agraharam within the Bobbili Zamindar said to have been prepared in 1818. Inasmuch as the decision of the case turns upon these three documents it would be appropriate to refer to their contents in a little more detail. Ex. B-4 is the Inam Fair Register pertaining to the said Agraharam prepared in or about the year 1865. It is well established by the several decisions of the Privy Council, Madras High Court and this Court that the preparations of the said Inam Fair Register was a great act of State and that the said register was prepared by the Government officials after conducting an enquiry on the spot and after examining all the relevant and available documents. The said register is entitled to great evidentiary value though it may not be conclusive. There may however be cases where the entries in the said register may be rebutted by producing authentic and cinching record. Now, according to the entries in the said register, the name of the grantor as well as the name of the original grantee is mentioned as "not known". The further entries in the said register clearly establish that the said Agraharam is an estate. Ex. B-5 is the Inam Statement of the year 1863 which also supports the defendants case that it is an inam village. As against this, the plaintiffs relied upon Ex. A-5 stated to have been prepared in 1818. We have looked into the said documents carefully. It does not appear as to who prepared the said "Yadast" or "Bhogatta" as it is referred to. It contains two signatures at the foot of the document namely of Dosapati Hanumantha Rayudu and Gasruzala Krishna Rayudu. It is not prepared under any statute or under any orders or directions of the Government or other competent authority. It is also not known as to what was the occasion for preparing the said "Yadast". Though it purports

to have been prepared in 1818 and shows the name of the grantor as well as the grantee, it is surprising that it was not referred to at the time of the preparation of the Inam Fair Register. The said Ex. A-5 incorporates a "Patta Nakalu" whereunder the grantor made a further grant of 2 1/2 vritties in addition to 16 vritties already granted. If the said document were true, it is highly unlikely that none of the concerned parties would have referred to it in the enquiry preceding the preparation of the Inam Fair Register. The relevant contents of the said document (A-5) are as follows :

- "1. Name of the Village : Venkatarayuni Agraharam, Rajam Paragana.
2. Name of the person granting patta : Sri Janardhana Rangarayuni Garu.
3. Name of the person obtaining patta : Dosapatti Appalayacharyulu."

Then follow the names of the present holders and their relationship with the original grantee. The names of the several holders are mentioned thereafter along with the land in their respective possession. At the end of the said document, we find an extract under the heading "Hakikat". Three items are mentioned thereunder as follows :

"Patta is available

2. How do you know the particulars in the number?

I learnt from my ancestors. Hence stated.

1. There is no difference in the extent mentioned in the patta and the Shrotrium."

Thereafter, under the caption "Patta Nakalu", the following extract is found :

"Patta of gift of land executed on the 15th day of Karthika Sudhaka of Vilambi year by Sri Janardhana Rangarayuni Garu to the "Bhuktas" (enjoyers) of Venkatarayuni Agraharam.

As the sixteen "vritties" of land granted to you previously is found insufficient, the cultivable and commencing from the way leading to Tangulu beyond the stones on the eastern side of your Agraharam, and excluding upto the way leading to Marivalasa Duddu on the southern side and upto the bund of Dambadalamma tank is (hereby) granted. Therefore you shall include that land in our agraharam, cultivate the same and be in happy enjoyment of the produce therefrom from son to grand-son.

(Sanskrit Sloka omitted) Sd. F.J.

Monday, the 13th day of Falguna Sudha of Eswara Year corresponding to 2nd March, 1819.

Sd. Dosapati Hanumantharayudu written by Guru Balarishnarayudu.

5. It may be noted that the original patta was not produced even on that occasion though it was stated to be available. The "Patta Nakalu" extract in the

said document pertains to additional 2 1/2 vritties granted in the Vilambi year which we are told corresponds to 1776 A.D.

6. The trial Court accepted and acted upon Exs. B-4 and B-5 and so far as Ex. A-5 is concerned, it held that the Patta Nakalu contained in the said exhibit is inadmissible in evidence being a copy of the copy. It was of the opinion that the extract found in Ex. A-5 was taken from a copy of the Patta ad not from the original patta and therefore Ex. A-5 represents a copy of the copy. However, it was also observed that the said Patta Nakalu was not referred to or relied upon by the Inams Commissioner at the time of confirming the inam under Ex. B-4. The said reasoning was confirmed by the lower appellate Court on the first occasion. However, when the matter came up before Parthasarathi, J, the learned Judge was of the opinion that the Patta Nakalu contained in Ex. A-5 must then be extracted from the original patta and not from a copy and that therefore, it is admissible. The learned Judge further observed :

"It appears to have been prepared under the instructions of the Collector. A perusal of the document shows that a comprehensive inquiry in respect of lands situated in the village, the names of the parties in possession of the lands situate therein, the root of their title and the facts and circumstances relating to the original grant was made. The particulars elicited as a result of the enquiry are found recorded in the document. The name of the grantor and the grantee and the extent of the land that was included in the grant, are mentioned. It embodies the statement given by the Inamdar which shows that the particulars were elicited from imprisonment by interrogation of the person who conducted the inquiry. In answer to the inquiry, it was stated that a patta was available. At the end of the document is found an entry under the head "copy of patta.....". The expression "patta nakalu" can only mean that what is embodied under that heading was copy from the original patta In other words, the expression "patta nakalu" implies that the original was available and a copy had been made It does not state that it is a copy of the patta nakalu." On the reasoning, it was held that the patta nakalu in Ex. A-5 is admissible in evidence. It was then observed :

"It is obvious that if the effect of Ex. A-5 is to be taken into account. Its evidentiary value has to be weighed against the other features in the case. Though the subordinate Judge observed that Ex. A-5 is rally conclusive in favour of the plaintiffs, in my opinion, it would not be just to rest the contention in the second appeal entirely on the obiter dictum of the Subordinate Judge. It is, therefore, necessary to remand these appeals in the lower appellate Court for fresh disposal in the light of the observations made therein."

7. When the matter went back to the lower appellate Court, it referred to the observations of Parthasarathi, J, and then proceeded to hold that Ex. A-5 was much anterior to Ex. B-4 and Ex. B-5. It relied upon the decision in A.K. Sherfuddin Vs. Kairoon Bi and Others, to the effect that "Wallace's register and Traverse's register which were prepared earlier to the Inam Fair Register, had to

be preferred over the Inam Fair Register and then held that inasmuch as Ex. A-5 is anterior to Inam Fair Register, it prevails over the latter. Then the Patta Nakalu was referred to and since it was already held to be admissible in evidence by Parthasarathi, J, it was acted upon and on that basis held that the Inam consists of two separate grants relating to the same village or Agraharam and for that reason, the suit lands are not situated within an estate within the meaning of Section 3 (2) (d) of the Act and allowed the appeal. The defendants then filed S.A. No. 668 of 1971. Madhava Reddy, J, held that though the Inam Fair Register is entitled to grant evidentiary value, yet he held, following the decision in Sherfuddin v. Kairoon Bi (supra) and Veerayya v. Punnamma ((1958) 2 AnWR 134) that anterior documents of undoubted authenticity have to be preferred over the entries in the Inam Fair Register. He then held :

"Reliance can be placed on Ex. A-5, Haqeeqat account of 1818, prepared much earlier and the authenticity of which cannot now be questioned in this second appeal having regard to the prior judgment of this court in S.A. No. 176/64, notwithstanding the fact that it does not wholly tally with the entries in Exs. B-4 and B-5 Inam Fair Register and Inam Statement of 1860 respectively."

Then the learned Judge referred to the contents of the Patta Nakalu contained in Ex. A-5 and held that the suit lands are not situated within an estate and accordingly dismissed the Second Appeal.

8. Mr. N.V.Ranganadham, the learned counsel for the defendants-appellants. Raised two contentions namely (1) that the judgment and the reasoning of Parthasarathi, J, in S.A. No. 176/1964 (Andh Pra) is not correct and that he is entitled to question its correctness in this Letters Patent Appeal since Section 105(2) C.P.C. has no application and does not govern the appeals under Clause 15 of the Letters Patent. He relied upon the decision in Satyadhyam Ghosal and Others Vs. Sm. Deorajin Debi and Another, ; Dewaji Vs. Ganpatlal, : and V. Srinivasa Varadachariar Vs. Runganayaki Ammal, that Ex. A-5 is not an authentic document and that Parthasarathi, J, has not pronounced upon the authenticity but only on its admissibility. He submitted that the lower appellate Court failed to give any finding in regard to its authenticity, while Madhava Reddy, J, has assumed that the authenticity of the said document was concluded by the judgment of Parthasarathi, J, while in fact is not so. According to him, if Ex. A-5 is excluded from consideration, then the defendants are bound to succeed having regard to the contents of Exs. B-4 and B-5. On the other hand, Mr. T. Ramachandra Rao, the learned counsel for the respondents-plaintiffs, contended that the power of the appellate Court under Clause 15 being co-extensive with the power of the second appellate Court, the judgment of Parthasarathi, J cannot be questioned herein and further that in any event, the said reasoning is correct and unexceptionable. He relied upon the decisions in Viswapathi v. Venkata Krishna (AIR 1963 AP); Sattemma Vs. Vishnu Murthy, ; Nain Singh Vs. Koonwarjee and Others, and Jagarnath Ram and Another Vs. Thakur Prasad and Others, in support of his submission regarding the binding nature of the

judgment of Parthasarathi, J. We shall first deal with the first submission of Sri N.V.Ranganadham.

9. According to sub-section (1) of Section 105, C.P.C. no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction except where it is expressly so provided, but where a decree or irregularity in the order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. Sub-section (2) then states that notwithstanding anything contained in sub-section (1) where any party aggrieved by an order or remand made after the commencement of this Code from which an appeal lies does not appeal therefrom he shall thereafter be precluded from disputing its correctness. While Mr. Ranganadham contends that the order of remand passed by Parthasarathi, J, is not an order from which an appeal lies because under Clause 15, the aggrieved party "had no right of appeal" against the said judgment, since the appeal against the said learned Judge granting a declaration that the case is a fit one for appeal, the bar contained in sub-section (2) of Section 105 cannot operate in this Letters Patent Appeal, it is contended by Mr. T. Ramachandra Rao that having regard to the language of Clause 15 of the Letters Patent, the order of Parthasarathi, J, must be deemed to be appealable though the appeal is conditional upon the learned Judge granting the said declaration. He points out that the defendants did not even ask for leave before the said learned Judge. He submits that Section 105(2) applies to the Letters Patent Appeals which are in the nature of internal. Appeals in the same court and that the same limitations as are applicable in the Second Appeal also apply herein.

10. In *V. Srinivasa Varadachariar Vs. Runganayaki Ammal*, it was held that Clause 15 of the Letters Patent is not controlled by Section 105, C.P.C. and that is open to an appellant, though he did not appeal against the order of remand to attack it in the appeal against the final decree. That was a case where an order of remand was made by the High Court itself on an earlier occasion by a learned single Judge of the High Court. Though there is no elaborate discussion in the said decision, we are of the opinion that it lays down the correct principle. In *Satyadhyan v. Smt. Deorajin Debi* (AIR 1950 SC 941) (supra) it was held that :

"The order of remand was an Interlocutory order which did not terminate the proceedings and so the correctness whereof can be challenged in an appeal from the final order."

Of course, it was a case where the correctness of an earlier order of remand made by the High Court was allowed to be canvassed before the Supreme Court in the appeal against the final orders of the High Court. But we do not see any distinction in principle between the Supreme Court sitting in appeal and a Bench of High Court sitting in appeal under Clause 15. Both are appellate Courts, Mr. T. Ramachandra Rao, however, argues that Section 105, C.P.C. has no application to the Supreme Court, whereas it applies to the High Court. We are not to appreciate it. Section 105, C.P.C. is applicable to Supreme Court inasmuch as it does to High Court. The same principle was followed in *Budhilal Deviprasad* and

Another Vs. Jagannathdas Bajrangdar, where the aforesaid Supreme Court decision was referred to and it was held that inasmuch as no appeal lies from an order of remand under Clause 10 of the Letters Patent of Nagpur High Court (corresponding to our Clause 15), the correctness of such an order can be gone into in the appeal against the final order. Dewaji Vs. Ganpatlal, has also been cited by the learned counsel for the appellants in support of his contention. It has been held therein that the correctness of an interlocutory order made by a single Judge can be canvassed in the Letters Patent Appeal preferred against the final judgment in the said appeal. However, that was a case where the interlocutory order referred to was merely an order calling for a finding while keeping the appeal on the file of the High Court but inasmuch as the earlier Supreme Court decision has held an order of remand to be an interlocutory order, the principle of this decision also can be taken to support the appellants' contention. Kuppa Viswapathi Vs. Kuppa Venkata Krishna Sastry, cited by the learned counsel for the respondents merely points out the distinction between Clause 15 and Section 109 C.P.C. Article 133 of the Constitution namely that while under latter provisions, there must be a final order of the High Court for maintenance an application for leave to appeal to the Supreme Court under Clause 15 the order appealed against need not be a final order. We do not see the relevancy of this decision. The next decision cited on behalf of the respondents is in Sattemma Vs. Vishnu Murthy, . The said decision declares that a decision refusing to review an order by a learned single Judge is a judgment within the meaning of Clause 15 and that the right thereunder is not affected by Order 47, Rule 1 or Order 43, Rule 1 or any other provisions of the CPC which restrict the right of appeal. The said decision is equally beside the point. Reliance was then placed on the decision in Nain Singh Vs. Koonwarjee and Others, . But that is a case in which the order of remand in question was made by the lower appellate Court against which a right of appeal is conferred under Order 43, rule 1 and hence it was held that where the aggrieved arty against an order of remand does not chose to file an appeal, he cannot question its correctness in an appeal preferred against the subsequent final orders of the lower appellate Court. No exception can be taken to the said principle, but it in no way advances the respondent's contention. Lastly we may refer to the decision in Jagarnath Ram and Another Vs. Thakur Prasad and Others, which clearly supports the contention of the respondents' counsel. The reasoning of the said decision is that inasmuch as an order of remand made by a learned single Judge of a High Court is appealable under Clause 15 the party not availing of the said right cannot question its correctness later on. We cannot however agree with the said reasoning. We have already pointed out that clause 15 does not confer any right of appeal on an aggrieved party in a Second Appeal. The appeal depends upon the volition of the aggrieved party. Such a declaration is within the exclusive discretion of the Judge and does not necessarily depend upon a request to that effect by party. Even in the absence of a request, the Judge may make a declaration and then it is open to the party to either avail of it or not. We are therefore of the opinion that it is open to the appellants herein to canvass the correctness of the judgment of

Parthasarathi, J, in S.A. No. 176 of 1964 (Andh Pra).

11. We may now take up the second submission of Mr. N.V. Ranganadham. Having held that we are entitled to go into the correctness of the said judgment, we will now examine the observations of the learned Judge with respect to Ex. A-5. It is no doubt true as contended on behalf of the respondents that it is coming from the custody of the Collector, but that by itself is no proof of its authenticity or that it was prepared in 1818 as it purports to have been. It appears that the observation of the learned Judge that "it appears to have been prepared under the instructions of the Collector" is a result of certain confusion. The document nowhere shows that it has been prepared under the instruction of the Collector or any other Revenue Officer. However, the certified copy contains a signature of some officer dated 19-1-1951, "for Collector, Visakhapatnam. It is found below the endorsement "true copy" and it is a part of the certificate to be appended by a public authority while granting a certified copy. The said signature of the officer signing for the Collector is not a part of the original document. Further, it is not shown as to who prepared the "Yadast" Bogatta and for what purpose. As pointed out by us hereinbefore, it is not prepared under any law or under any other orders or instructions of any authority. Merely because the said document purports to have been prepared in 1818, we cannot automatically take it for granted that it was really so prepared. It is not a public document. Hence there is no presumption regarding the correctness of its contents. Any number of private documents may come from the custody of a public official, but merely on that account, they or their contents, cannot be held to be true or authentic. Even in the oral evidence, no effort has been made to explain the circumstances or the occasion for preparing the said document. In view of the fact that it was not referred to at the time of the IFR enquiry and that the name of the grantor and the original grantee is mentioned as "not known" at the said enquiry though Ex. A-5 clearly refers to both the particulars, authentic and that it was prepared in 1818. It is conceded even by Mr. T. Ramachandra Rao, the learned counsel for the respondents, that the assumption of Madhava Reddy, J., that the authenticity of Ex. A-5 cannot be questioned having regard to the prior judgment of Parthasarathi, J., is not correct. Parthasarathi, J., did not give any finding regarding its authenticity, but his discussion mainly pertained to the realm of its relevancy in any event, for the reasons given above, we are not prepared to accept the said document to be an authentic one. We may also note that we are equally unconvinced about the reasoning of Parthasarathi, J, with respect to the meaning of the expression. "Patta Nakalu" occurring in Ex. A-5. We are not prepared to hold on the basis of the contents of the said document that the original patta was produced before the authority preparing the said "Yadast" and that the extract found therein is a copy made from the original. Even the so-called "Patta Nakalu" referred to in the said document is with respect to 2 1/2 vritties and is not of the original grant. If the original patta was available (whether with respect to the grant of 16 vritties or with respect to the subsequent grant of 2 1/2 vritties_, it is unlikely that it would not have been

produced by any of the concerned parties at the time of the enquiry preceding the preparation of the Inam Fair Register.

12. At this state, we may refer to the decisions in *A.K. Sherfuddin Vs. Kairoon Bi and Others*, and *Veerayya v. Punnamma* ((1958 2 AnWR 134)) (supra). *Sherfuddin v. Kairoon Bi* (supra) was a case where the anterior public documents namely the Wallace's register and the Traverse's register prepared by the Government officials in discharge of their official duties were preferred over the entries in the Inam Fair Register. The authenticity of the said anterior record was unquestioned and in these circumstances, it was held that the entries in the Inam Fair Register are not conclusive and that the said anterior record has to prevail. Similarly, in the case reported in *Veerayya v. Punnamma Ram*'s register of Regulation XXXI of 1802 was preferred over the entries in the Inam Fair Register. It was found to that case that the said Ram's Register was prepared in accordance with the said Regulation and concerned Collector in 1768, and that its authenticity and reliability being unquestionable, it was preferred over the entries in the Inam Fair Register. But inasmuch as we are not prepared to accept Ex. A-5 as authentic, the principle of the said decisions can have no relevance herein. Lastly, we may refer to the decision reported in *Haradas Achariya v. Secy., of State* (AIR 1917 PC 86) cited by the learned counsel for the respondents upon the evidentiary value of *Hakikat Chowhuddibandi* papers. The *Hakikat Chowhuddibandi* papers therein were boundary papers prepared by the owners of the estates and sent on to the Government in pursuance of a Government request to afford the Government satisfactory information with respect to various particulars of the villages within their boundaries. But the same cannot be said with respect to either Ex. A-5 or the "akikat" statement found therein. For the above reasons we hold that the suit land are situated within an estate within the meaning of Section 3 (2) (d) of the Act.

13. We therefore allow the Letters Patent Appeal and dismiss the suit. There shall be no order as to costs in the circumstances of the case.

14. Appeal allowed.