
(1947) 04 MAD CK 0002
In the Madras High Court

Yamujala Mangamma and Another APPELLANT
Vs
Kalyanapu Appadu and Another RESPONDENT

Date of Decision : 25-04-1947

Acts Referred:

Citation : AIR 1948 Mad 315 : (1948) 61 LW 239 : (1948) 1 MLJ 247

Hon'ble Judges : Shahabuddin, J

Bench : Division Bench

Judgement

Shahabuddin, J.—These revision petitions arise out of O.S. Nos. 97 and 98 of 1943 in the Court of the District Munsiff of Vizianagaram

which had been filed with regard to two different plots of land in Seetharamudupeta Agraharam of the Vizianagaram taluk. The plaintiff in O.S. No.

98 was one Mangamma, who claimed to be the owner of the plots and treated the defendants in that suit as tenants holding over. The other suit

was filed by Mangamma's lessee against the sub-lessees. The defence in both the suits was that the suit land was part of an estate, that the

defendants had therefore occupancy rights and the Civil Court had no jurisdiction. The learned District Munsiff accepted this contention and

returned the complaints for presentation to the Revenue Court. The District Judge on appeal confirmed the order in O.S. No. 98 of 1943, but with

regard to the other suit while accepting the finding of the trial Court that the land concerned in it formed part of an estate, he was of the opinion that

as the contest in that case was between the lessee of the landholder and his sub-lessees the question of occupancy right did not arise unless the

sub-lessee could be regarded as a ryot within the meaning of that expression in the Estates Land Act. He therefore remanded the suit for the

determination of that question. It is stated that on remand the Munsiff held that the sub-lessees were ryots and that the order returning the plaint

became final. The order of the District Munsiff returning the plaints was passed on 22nd April, 1944. The appeal by Mangamma was dismissed on

2nd December, 1944, while the order of the Munsiff after remand in the other suit was passed on 22nd December, 1944. On 2nd January, 1945,

the plaintiffs re-presented the plaints in the Revenue Court and obtained decrees. They filed suits in the Revenue Court for rent of the subsequent

faslis also and realised a portion of the amount due. In the meantime they filed these revision petitions within the time allowed by law.

2. Two preliminary objections are raised by the respondents. One is that the revision petitions cannot be heard in view of Madras Act XVII of

1946 and the other that the petitioners having filed suits in Revenue Courts not only for the faslis covered by the civil revision petitions but also for

the subsequent faslis are barred from questioning the decision of the Courts below. It is contended on behalf of the petitioners that Act XVII of

1946 does not apply to this case. As regards the other point it is argued that the suits had been filed not only for rent but for possession and though

decrees were obtained for rent still the relief of possession has yet to be granted and that is why the revision petitions have been filed, and that their

having obeyed the order of the Courts below and presented the plaints in the Revenue Courts does not debar them from filing these petitions. It is

said that they obeyed the order of the lower Court because they could not be certain as to when the revision petitions would be heard and

disposed of, that as a matter of fact they have not been disposed of till now and they could not possibly take the risk of their claim for rent getting

time-barred as the period spent in pursuing the matter in the revision would not be excluded u/s 14 of the Limitation Act.

3. In my opinion the preliminary objections have to fail. Act XVII of 1946 grants protection to the ryots under the Estates Land Act in respect of

the sale of the holding. The reasons given for their having obeyed the order of the Court when the plaints were returned to them are sound. No

decision has been cited on behalf of the respondents to show that the right of bringing this matter to this Court in revision is barred if the order

returning the plaint is obeyed. On the other hand, in *Parvata Satyanarayanamurthy and Others Vs. Sri Rajah Saheb Maharbabu-i-Doshan Sri*

Rajah Rao Venkata Kumara Mahipathi Surya Rao Bahadur Guru, Sardar, Rajahmundry Circar and Maharajah of Pithapur, it was held that where

a person files suits in a Civil Court for ejectment and mesne profits treating the person in occupation as a tenant continuing wrongfully in possession

after notice to quit but the plaints were returned to be presented to the Revenue Court on the defendants contending that they had the kudivaram

rights as all the lands were part of an estate and the plaints when returned were presented forthwith in the Revenue Court but the claims for faslis

beyond three years had become barred, Section 14 of the Limitation Act would not apply with regard to those faslis.

4. Before setting out the contentions of the petitioners on the merits it is necessary"" to refer to certain entries in Ex. P-8, the extract from the Inam

register relating to Sitharamudupeta Agraharam which is the only evidence adduced in this case on the question whether the land concerned in the

suits formed part of an estate. This extract is headed "" an extract from the register of inams in the village of Sitha-ramudupeta Agraharam in the

taluk of Vizianagaram in the District of Vizagapatam."" In columns 12 and 13 which are intended for the particulars of the original sanad and the

name of the original grantee the entries are ""No sanad "", "" not known "". In column 1 the entry is "" 1. Personal "" and the extent declared" under old

inams is shown as nil. The note of the Inam Deputy Collector however is that the five vrittis of the total Gudikat shown in the extract belonged to a

temple and had been treated as devadayam grant in all the accounts which formed a separate kadam or portion and that the two extents, i.e., the

five vrittis and the rest of the extent were recommended to be confirmed by separate title deeds to be continued as long as the pagoda was in good

order and the service therein was performed. The order of the Inam Commissioner was approved and confirmed as recommended in one deed

excluding the pagoda grant which was confirmed separately. Quit rent for enfranchisement Rs. 180. Title deed No. 866. The 5 vrittis are continued

to the pagoda value 450 pays jodi of Rs. 20. Title deed No. 867.

5. The learned District Munsiff set for himself the question for determination in these words:

The whole question in this case turns upon the point whether these 5 vrittis constituted a separate and independent grant in favour of the temple

before or at the time of the grant of this aghaharam or whether it was a grant subsequent to the grant of the whole village as an aghaharam. In the first case this grant cannot be said to be a grant of the whole village because 5 vrittis of it were already granted to the temple separately and it is only the rest of the village that could be deemed to be the subject-matter of the aghaharam grant. In the second case the grant being of the whole village first and subsequently 5 vrittis out of it having been carved out. for the use of the temple the original grant must be construed to be of a whole village. What is it that was granted is the question?

6. After dealing with the recitals in the inam extract he observed that the point to be decided was not free from difficulty and that the documents filed were not un-ambiguous. He however came to the conclusion that the grant was of a whole village because of the entry in column I which as stated was "I Personal". This entry, he thought, would not have been made if there was another grant as a religious endowment. He also considered that as the extent deducted under the old inams was " nil" there was no justification for concluding that there was a separate grant in respect of a portion of the village. As regards the accounts referred to in the observation of the Inam Deputy Collector as accounts showing that the 5 vrittis were treated as a separate devadayam grant, he observed that If there was any such earlier accounts prior to date of the grant of the aghaharam and if those accounts do not relate to the aghaharam village accounts referred to in column 3 then there would have been the information relating to who granted and the name of the original grantee and so on and those accounts would have been mentioned in the other columns.

7. He therefore considered that this did not help the plaintiff. The learned District Judge did not deal with this matter at length but expressed his agreement with the views of the District Munsiff. He held that the five vrittis did not constitute a separate grant at the time of the original grant but represented endowments made subsequently. The fact that at the time of the confirmation two title deeds were given for these two separate extents or in other words the confirmation was not as a single grant but as two separate grants was not considered by either Court.

8. The contentions of the learned advocate for the petitioner are these : (1) The very fact that the heading of the extract is "" extract of inams in the

village of Sitharamudupeta Agraharam"" indicates that what was mentioned in the extract Ex. P-8 was not the whole extent of that village but that there were other inams also. The amendment of 1945 will not apply inasmuch as the grant cannot be said to have been expressly of the village of Sitharamudupeta Agraharam. There is no evidence as a matter of fact as to what the total extent of that village was and having regard to the observations of the learned District Munsiff that the matter was not free from difficulty and the documents were not unambiguous, the decision should have been in favour of the plaintiff as the burden in these cases lay on the defendants, the ordinary presumption being that the Civil Courts have jurisdiction. In any case the note made by the Inam Commissioner clearly indicates that the old accounts showed the five vrittis as a separate devadayam grant. This circumstance in itself is insufficient for rejecting the claim of the defendants that the grant was of a whole village. (2) Even if it considered that the original grant was of the whole village there can be no doubt that at the time of the confirmation, i.e., the inam settlement the whole village was not regarded as a single inam but as two distinct inams and therefore the lands in question do not form part of an estate. On behalf of the respondents reliance is placed on the grounds given by the learned District Munsiff in his judgment.

9. The definition of the word "" estate "" in the Estates Land Act given in Section 3(2) (d) is this:

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 amongst the grantees or the successors in title of the grantee or grantees.

10. As stated already that the lands in question came within this definition was the case of the respondents and it is conceded by their learned advocate that the burden of proving this lay on them--see Ramayya v. Lakshminarayana (1934) 67 M.L.J. 1 : L.R. 61 IndAp 177. The learned District Munsiff appears to have been in doubt as to what the nature of this grant was and if there be any doubt with regard to this matter the respondents have to fail. From Ex. P-8 it cannot definitely be said that the original grant was of the whole village of Sitharamudupeta Agraharam.

The heading which has been referred to already is significant. The word "" in "" does indicate that there were other inams also in that village. In Satti

Suri Reddi and Others Vs. Kolachina Agnihotrudu and Another, relied upon by the petitioner with regard to a similar heading it was observed that

it itself indicates that various lands in the village were held under inam grants. However there can be no doubt that accounts before the inam

settlement indicated that a block of five vrittis was treated as a separate devadayam grant. In my opinion this observation of the Inam Deputy

Collector is very important indeed. From the fact that two title deeds were issued in respect of this village and the accounts prior to the settlement

showed that there were two grants considered with the circumstance that the entries with regard to the particulars of the original grant as well as

the name of the grantee are not available, it appears to me that there is sufficient justification for the conclusion that from the beginning there were

two grants. In any case the second contention of the learned Counsel for the petitioner has to prevail. According to the definition of an estate

mentioned above what has to be seen is whether the confirmation or recognition by the British Government was in respect of the entire inam village

or of only a portion. It is very clear from the entries in the extract to which reference has been made that at the time of the inam settlement, i.e.,

when the inam was recognised by the Government the extent mentioned in this extract was not treated as a single grant. In *Burugu Viswanadham*

Brothers Vs. Yarru Subbaiya, where an entire village had been granted to a person by way of inam and after the original grant the grantee had

made a grant of a portion of it which was treated as a minor inam and the question that arose was whether a lessee of a piece of land was a tenant

of an estate within the meaning of Section 3(2)(d) of the Madras Estates Land Act, *Kuppuswami Aiyar, J.*, held that merely because the land in

question formed part of the original grant of an entire village it could not be said that at the time when it was recognised it was part of the inam

which was recognised or confirmed by the British Government and hence the land in question was not a part of an estate. He observed:

The answer to the question as to whether the confirmation or recognition by the British Government was in respect of the entire inam village or of

only a portion is the basis for the decision as to whether the land was an estate or not.

11. In *C.R.P. No. 727 of 1945* where the facts were similar *Happell, J.*, agreed with *Kuppuswami Aiyar, J.* I with respect agree with the view

expressed in these decisions. In both these cases there were two title deeds issued at the time of the Inam Commission and in those cases the

original grant was of a whole village. In the present case as stated already the accounts prior to the inam settlement indicated to the Inam

Commissioner that the two extents were treated as two separate grants, thereby indicating that the grant was not a single one at the outset.

12. However there were two title deeds at the time of the settlement. In my opinion these decisions apply to the facts of this case also and the

lands in question did not form parts of an estate.

13. I therefore consider that the Civil Courts had jurisdiction to try the suits. The order returning the complaints for presentation to the Revenue Courts

is therefore set aside. The District Munsiff will take the suits on file and dispose of them according to law and the findings he has already recorded

and also after taking into consideration any realisations made under the decrees obtained by the petitioners in the Revenue Courts. The civil

revision petitions are allowed with costs--one advocate's fee.