Privy Council Appeal No. 89 *of* 1917.

Raja Parthasaradhi Appa Rao Savai Aswa Rao Bahadur, Zemindar of Sanivarapupet, and others - - - - - - *Appellants*

v.

Raja Bommadevara Satyanarayana Varaprasada Rao Naidu Bahadur, Zemindar of South Vallur, minor under the Court of Wards - - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST NOVEMBER, 1918.

Present at the Hearing:

LORD BUCKMASTER.
LORD DUNEDIN.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.

[*Delivered by* LORD DUNEDIN.]

The respondent is zemindar of certain lands in the village of Satrampadu. The lands were let on 11th August, 1903, on a five years' lease to the appellants. At the expiry of the term the lease was prolonged for a further period of three years. At the expiry of the three years the respondent wished to resume possession, but was met by the assertion that the appellants had a permanent right of occupancy in virtue of the provisions of the Madras Estates Land Act which was passed in June, 1908, and came into force on 1st July of the same year. This suit was then raised to recover possession and to get mesne profits.

The provision of the Act on which the appellants rely is the 6th section which says that every ryot now in possession or who

shall hereafter be admitted by a landholder to possession of ryoti land not being old waste, situate in the estate of such landholder, shall have a permanent right of occupancy in his holding. "Estate" is defined as meaning (in addition to certain definitions which would not apply in the present question): "any permanently settled estate or temporarily settled zemindari." The respondent says that his estate does not fall within this definition.

The facts as to the estate are as follows. The respondent's predecessor was zemindar of a settled estate situate in another district. Parts of this estate were taken by the Government under the Land Acquisition Act for the purpose of making drainage canals, etc. In terms of the Act the landholder was entitled to be compensated. This compensation might have been made by payment of a sum of cash down, or, if the landholder consented, by a reduction of the *peishcush* settled on the estate. The value of the lands taken was investigated; it was brought out that compensation would be fairly settled by a remission of Rs.777 out of a total *peishcush* of Rs.35,588. The landholder then presented a petition to the Government praying that instead of the *peishcush* being *pro tanto* remitted, he might be given some Government lands in another district of which lands he had already acquired the ryoti rights. This was acceded to, and accordingly no remission was made of the *peishcush*, which continued to be exacted as formerly, but by order of the Collector the new lands were transferred to the landholder, and were entered in the register as zemindari lands instead of Government lands as formerly. These are the lands which were let to the appellants. The question therefore is, are these lands part of a permanently or temporarily settled estate? It is obvious that when in the hands of the Government they were not so. What then has made them acquire the character of a settled estate? The appellants' Counsel argued that the effect of the transaction detailed above was to make the lands an estate settled at a *peishcush* of Rs.777. But a settlement must be effected formally and there should be some recorded evidence of it. It seems impossible here to point to anything which has that effect. There is admittedly no sanad dealing with the lands in terms of the article of the Regulations. That in the opinion of the learned District Judge was *per se* conclusive. It is, however, enough to say that there is nothing to which the appellants can point as making a settlement. There being no document and the matter being left to inference to be drawn from the facts, it would be possible to suggest more than one mode of settlement. There is the view as just stated, which was pressed by the appellants' Counsel, which would amount to a separate settlement of the new lands at a *peishcush* of Rs.777, and a reduced *peishcush* of R.34,811 on the old lands. But it would be equally easily suggested that the new lands became an integral part of the old lands at a total *peishcush* of Rs.35,588; or again that the new lands were settled at *nil*, leaving the original *peishcush* as it stood. There is no reason to prefer any one of these theories to the others. Yet the question of what lands could be sold to

discharge the debt of an unpaid portion of the *peishcush* of Rs.35,588 would necessarily depend on which was the true view. This uncertainty is fatal to the idea of a settlement having been made.

This disposes of the case, and is substantially the ground on which the learned District Judge decided it. The High Court went upon different reasons, with which their Lordships are not prepared to agree, but as the result at which they arrived was the same, no alteration need be made, and their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

RAJA PARTHASARADHI APPA RAO SAVAI ASWA RAO BAHADUR, ZEMINDAR OF SANIVARAPUPET AND OTHERS

v.

RAJA BOMMADEVARA SATYANARAYANA VARAPRASADA RAO NAIDU BAHADUR, ZEMINDAR OF SOUTH VALLUR, MINOR UNDER THE COURT OF WARDS.

DELIVERED BY LORD DUNEDIN.

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