Privy Council Appeal No. 48 *of* 1917.

Upadrashta Venkata Sastrulu - - - - - *Appellant*

v.

Divi Seetharamudu and others - - - - - *Respondents.*

(*Consolidated Appeals.*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 17TH MARCH, 1919.

Present at the Hearing :

VISCOUNT HALDANE.
VISCOUNT CAVE.
LORD PHILLIMORE.
SIR JOHN EDGE.

[*Delivered by* VISCOUNT CAVE.]

These are consolidated appeals against a judgment delivered by the High Court of Judicature at Madras on the 18th March, 1914, and decrees made in pursuance thereof in eleven suits. The High Court by its judgment affirmed a judgment of the District Judge of Kistna whereby he set aside the decision of the Munsif of Gudivada and directed the return of the plaints in all the suits for presentation in the Revenue Court.

The suits out of which these appeals arose were suits for ejectment in respect of different parts of the inam village of Billapadu in the Gudivada sub-district of the Kistna district. The appellant, who was the plaintiff in all the suits, is the inamdar of the village, holding under a grant made to his ancestor in or about the year 1748, and since confirmed and recognised by the British Government. The defendants were persons who at various dates in the year 1907 had been let into possession by the plaintiff

under tenancy agreements, expiring in 1908. Each of these agreements contained a declaration by the tenant to the effect that except the right of cultivating the land for a year under the agreement he had no other right whatever thereto, and accordingly that he agreed to the landlord (the plaintiff) taking possession of the land at the end of the year of tenancy without any relinquishment by the tenant. The tenancies having expired and these suits having been brought for possession, the defendants pleaded that they were ryots having permanent *zeroyati* rights, and that as the inam village was an " estate " governed by the Madras Estates Land Act, 1908, the Civil Courts had no jurisdiction to try the suits. The Munsif overruled this plea and granted decrees in favour of the plaintiff; but the District Judge, holding that the property was an " estate " under the Act of 1908, set aside the Munsif's decision and directed the plaints to be returned. This decision was affirmed by the High Court, and thereupon this appeal was brought.

The decision on the appeal must turn on the question whether the property is or is not an " estate " within the meaning of the Madras Estates Land Act, 1908 ; and for the purpose of determining this question reference must be made to the definition of the term " estate " contained in section 3 of the Act. That definition, so far as it is applicable here, is as follows :—

> " In this Act, unless there is something repugnant in the subject or context . . . (2) ' Estate ' means . . . (*d*) Any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been confirmed or recognised by the British Government, or any separated part of such village."

The term " kudivaram " is not defined in the Act ; but in *Suryanarayana* v. *Patanna* (Law Reports, XLV, I.A. 209) it was explained as being a Tamil word, literally signifying a cultivator's share in the produce of land as distinguished from the landlord's share, which is sometimes designated " melvaram." The " kudivaram " or " kudivaram interest," as it is called in section 8 of the Act, is in fact a species of tenant-right or right of permanent occupancy. The question, therefore, to be considered in this case is whether the inam grant was a grant of the land-revenue alone to a person not having a permanent right of occupancy, or whether it vested in the grantee the whole proprietary interest in the village. In the former case this appeal will fail, but in the latter it should succeed.

In dealing with this question the District Judge and the High Court acted upon a supposed presumption of law that an inam grant of a village, particularly if made to a Brahmin, is *primâ facie* a grant of the " melvaram " right only and does not include the " kudivaram." This view was supported, when the High Court gave its decision, by some previous decisions of the High Courts of Madras and Bombay ; but in the case above cited of *Suryanarayana* v. *Patanna*, it was held by their Lordships that no such presumption exists. Each case must therefore be

considered on its own facts ; and in order to ascertain the effect of the grant in the present case, resort must be had to the terms of the grant itself and to the whole circumstances so far as they can now be ascertained.

The original grant of 1748 is not now forthcoming, although it is referred to in Exhibit Z (an extract from the Cazulet Register of 1802), and there is no doubt of its having existed. The earliest deed which is produced is a " gift deed of agraharam," executed in September, 1783, by the zemindars in favour of the plaintiff's ancestor, which appears to be a confirmation of the original grant. The operative part of this deed is as follows :—

> " We have conveyed to you, as *sarva agraharam*, the village of Billapadu, attached to Gudivada Parganah, together with gardens, holy shrines, wells, big and small tanks, &c. So you shall cultivate the same and enjoy the produce thereof every year as a dedication to the God Sri -- —, hereditarily from son to grandson and so on.
>
> " Sanskrit Sloka :—' To administer (or confirm) the gift of another is twice as meritorious as one's own gift-making.' "

Other confirmatory documents were executed at or about the same date ; and in one of these, being a " hakikhat " (or representation) made to William Oram, Esquire, the Collector, by officials of the district, dated the 23rd July, 1788, it was stated that the village of Billapadu Agraharam had continued to be in the enjoyment of the plaintiff's ancestor, who is referred to as " a resident of the aforesaid place." There are also some *dumbalas* (or orders) dated in the year 1793 requesting that the plaintiff's ancestor shall be allowed to reap and enjoy the crops pertaining to Billapadu.

In the Cazulet Register of 1802, above referred to, and in similar registers dated 1860 and 1865, the property is entered in the name of the plaintiff's ancestor ; and on the 27th June, 1865, a Recognition of Title was duly granted to the plaintiff's ancestor.

There is not in any of the documents above referred to any trace of a claim by any person other than the inamdar to a permanent right of occupancy ; and the fact that by the terms of the grant the grantee is desired to cultivate the lands, and that he is referred to as residing in the village, tend to show that no such right existed in any other person. In the judgments under appeal stress is laid on the fact that the confirmatory grant of 1783 refers to the existence on the property at that date of gardens, wells, tanks, etc., and also on the fact that in the Register of 1802 Billapadu is called a *mouje* (or *mauza*), these expressions indicating (it is suggested) that the village was the home of proprietary inhabitants who had planted gardens and dug wells ; but it does not appear to their Lordships that it would be safe to build on the use of expressions of this character in 1783 and 1802 an inference as to the existence in 1748 of tenants having permanent rights of occupancy. And when the subsequent history of the estate comes to be examined, it is found to be wholly inconsistent with the existence

of any permanent occupancy rights. Tenancies have been continually granted by the inamdars for short periods and at variable rents. When tenancy lands were compulsorily acquired by Government and compensation was paid to the *agrahamdar*, no claim to compensation was put forward by the tenants. In the year 1904 all the tenants formally relinquished their lands to the plaintiff and put them in his possession, and from that date until tenancies were granted in the year 1907 the property remained vacant. When the defendants were admitted as tenants, they severally declared (as stated above) that they had no right of occupancy except such as was given to them by the tenancy agreements. It has been found in these suits on issues specially directed that the land in question was waste land at the time of the grant of the inam, and that at the time of the letting to the defendants they had no occupancy right.

Having regard to all the facts it appears to their Lordships to be impossible to resist the conclusion that the inam grant carried, not the land revenue alone, but the whole proprietary interest in the property; and it appears probable that, but for the supposed presumption above referred to, the High Court would have come to the same conclusion. If so, it follows that the property is not an "estate" within the meaning of the Madras Estates Land Act, 1908, and that section 189 of that Act does not apply. In view of this conclusion, it is unnecessary to consider the effect, having regard to section 8 of the Act, of the relinquishment of tenancy rights made in the year 1904. Section 153, as amended by section 8 of Act IV, of 1909, appears to have no application to this case.

For the above reasons their Lordships are of opinion that this appeal should be allowed and the decrees under appeal should be set aside and the decrees of the Munsif restored, and that the defendants should pay the plaintiff's costs in all the Courts and his costs of this appeal; and they will humbly advise His Majesty accordingly.

In the Privy Council.

UPADRASHTA VENKATA SASTRULU

v.

DIVI SEETHARAMUDU AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY VISCOUNT CAVE.

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