Privy Council Appeal No. 120 *of* 1925.

Sri Raja Rao Sri Swetachalapati Ramakrishna Ranga Rao Bahadur Garu, Raja of Bobbili - - - - - - - *Appellant*

v.

Ayyagari Sodemma - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 14TH JUNE, 1928.

Present at the Hearing:

VISCOUNT SUMNER.
SIR JOHN WALLIS.
SIR LANCELOT SANDERSON.

[*Delivered by* SIR JOHN WALLIS.]

The only question for their Lordships' decision in this appeal is whether the istuva or parcel of land known as Nyallapollam in Sankili village of the Bobbili zemindari in the Madras Presidency, which is claimed by the plaintiff, was taken possession of in 1880, together with another istuva in the same village known as Chellakapollam, by the adoptive mother of the first defendant, the Maharaja of Bobbili, as security for the discharge of certain debts incurred by the plaintiff's deceased husband to the estate and to the local temple. Unless this be established, the plaintiff's suit is admittedly barred, and her rights in this istuva have long been extinguished under the law of limitation.

The Maharajah of Bobbili was the first and principal defendant, but in January, 1917, an order was made in this suit on the plaintiff's petition that "the present Rajah of Bobbili" should be made a supplemental twenty-fourth defendant, the zemindari having apparently devolved upon him in the lifetime of the first defendant, and he appears henceforth as the contesting defendant, and will be referred to as the defendant.

It is now common ground that when accounts were settled in 1905 and the debts fully discharged, the plaintiff was given

possession of Chellakapollam only, and not of Nyallapollam ; but there was also a question in this suit as to whether the whole of Chellakapollam was then returned to the plaintiff. Both the lower Courts held that the plot sued for formed part of Chellakapollam, and the High Court further found that the plaintiff was entitled to sue for it as the separate property of her deceased husband. These findings were not questioned before their Lordships.

It was admitted in the first defendant's written statement that Chellakapollam had been granted to the plaintiff's husband, Ayyagari Varahalu, who was the estate sheristadar, and that it had been intended to grant him Nyallapollam and other lands as well ; but it was alleged that he had acted prejudicially to the Samasthanam, and that, according to the custom of the Samasthanam and to the nature of the grant, as the suit lands were not absolute inams, the grant relating to Nyallapollam and the other lands was not given effect to and was stopped, and these lands had been entered under jeroyiti and in the enjoyment of the first defendant and his ancestors for the last 50 years. Chellakapollam, it was said, had been left in Varahalu's possession out of grace.

As regards the lands handed over as security in 1880, it was alleged that in 1875 Varahalu and his brothers had become indebted to and had obtained from the Samasthanam a loan to discharge their debts, and that in 1880 the usufruct of Chellakapollam was assigned to the Samasthanam, but it was denied that the assignment was made by the plaintiff.

This plea was intended to raise the question whether these istuvas were the self-acquisition of the plaintiff's husband or joint family property, as in the latter case the plaintiff would not be entitled to maintain this suit. That issue has been decided in the plaintiff's favour by the High Court both in this suit and in a suit brought against her by members of the joint family and tried together with this suit. The plaintiffs in that suit have not appealed to His Majesty in Council, and in these circumstances, Mr. Dunne, who appears for the appellant, has not questioned this finding before their Lordships.

It was further alleged in the written statement that as the plaintiff was the last heir of the mortgagees, accounts were settled with her and the Chellakapollam lands handed over to her on her executing an indemnity bond against claims by her husband's relations, paying the balance found due, and executing a receipt for the lands handed over. Lastly, it was alleged that ten years were allowed to lapse before the plaintiff made any further claim.

The issues which are now material were as follows :—

(1) Whether the suit lands belonged to the plaintiff's husband and whether the same were assigned by plaintiff to first defendant's mother, as in the plaint alleged, for a debt due to her.

(2) If not, is the suit within time ?

As already stated, their Lordships are only concerned with these issues in so far as they relate to the Nyallapollam istuva, and unless that istuva was made over as security to the first defendant's adoptive mother in 1880, the plaintiff's claim to it is admittedly barred by limitation.

The plaintiff was unable to produce any documents of her own in support of her case, a disability she accounted for by the fact that there had been a dacoity in her house about the year 1880, when she lost gold, silver and documents. The stolen boxes were recovered, but not the documents. Her son-in-law and second witness, however, produced copies of grants to her husband of the Chellakapollam istuva in 1856 and of the Nyallapollam istuva in 1858, and also a copy of an earlier grant, as to which no question arises, which he stated the plaintiff's nephew and agent obtained and kept in his custody. The accuracy of the copies was admitted for the defence and they were exhibited accordingly.

Otherwise, apart from the oral evidence, which is not of much value, the case has to be decided on inferences founded on documents coming from the defendant's custody, which have been exhibited on one side or the other, and on any inferences that may arise if it be found that the defendant has failed to produce documents which he ought to have produced.

On this evidence the Subordinate Judge of Vizagapatam, who, unfortunately, was not the Judge who took the evidence, and the Madras High Court on appeal, held that both istuvas had been granted to the plaintiff's husband, and that the defendant's accounts showed that the plaintiff's husband had been in possession and enjoyment of them down to the year 1863. This is not now disputed by the defence. Both Courts also rejected the defendant's case that his accounts showed that the grants were resumed in 1863, in consequence of Varahalu's misconduct, and that from 1863 to 1872 Nyallapollam was in the private enjoyment of the Rani and was then incorporated in the zemindari estate.

It was proved, and is not disputed, that the plaintiff's husband held the office of sheristadar after the alleged resumption down to the time of his death in 1876, and also that the Chellakapollam istuva was left in his possession. In these circumstances both Courts arrived at the conclusion that it might safely be inferred that he continued in possession of the Nyallapollam istuva also as the defendant had failed to show he did not, and consequently that both istuvas were in possession of his heirs in 1880, when the Rani directed that possession should be taken of his Sankili manyam and the income applied in reduction of his indebtedness to the estate and the local temple.

At this point the two Courts differed. The Subordinate Judge, on a very careful examination of the evidence and the conduct of the parties, found that between the years 1880 and 1905, when Chellakapollam was handed back to the plaintiff, the debts for which it had been taken over were discharged exclusively out of the revenues of Chellakapollam, that this must have been well known to the plaintiff and her agents, and that she made no claim to Nyallapollam when Chellakapollam was handed over to her in 1905 or for eight years afterwards. Nyallapollam he appears to have held was not then

taken possession of under the Rani's hukum, but remained in the plaintiff's enjoyment until 1885, when it was incorporated with the defendant's estate without any objection on the part of the plaintiff, with the result that time began to run against her from that date. He therefore held that, as regards Nyallapollam, the plaintiff's suit was barred, and dismissed it accordingly.

When the case came before the High Court on appeal the learned Judges arrived at the conclusion that as, according to their finding, both istuvas were in the plaintiff's possession in 1880, both were taken over by the first defendant's mother; and they attached little or no importance to the subsequent evidence as to the conduct of the parties, because, to put it shortly, in their opinion the zemindar was in a position to do what he pleased and the plaintiff was not in a position to do anything. In their Lordships' opinion it cannot lightly be assumed either that any large landowner in the position of the first defendant would deal oppressively with the widow of an old servant of the family, or that, if he did so, the widow would be wholly without redress.

What the plaintiff has to prove, to avoid the bar of limitation, is that Nyallapollam manyam, as well as Chellakapollam manyam, was taken over as security for her husband's debts under the Rani's hukum of the 7th April, 1880 (Exhibit 9), which is at least as consistent with one manyam being taken over as with two. The defendant's case is that the Nyallapollam manyam was not in the plaintiff's possession at the date of the hukum and cannot, therefore, have been taken over as security, that it was never treated as forming part of the security, and that until this case was brought no one ever suggested that it was. These latter facts, if established, cannot be disregarded in determining the main issue, whether Nyallapollam was taken over as security in 1880.

Their Lordships will consider in the first place the terms of the hukum and the evidence as to what was done under it before coming to the question whether Nyallapollam had been resumed from Varahalu, the plaintiff's husband, before 1880.

"Hukum (order) issued by M.R.Ry. Raja Lakshmi Chellayamma Bahadur Rani Garu of Bobbili Estate, etc., to the Sheristadar Ramakuri Venkata Rao Pantulu. Late Ayyagari Varahalu Pantulu and others are heavily indebted by thousands of rupees to the sircar and to Sri Swamivaru. Though there has been default in respect of several instalments of the bonds already presented, it appears that Narasaraju (Varahalu's brother) and others have neither paid nor ascertained the debt and executed mortgage deeds afresh, and that they wickedly intend alienating the entire property towards other debts and evading (this payment) of this debt. So you should, immediately on the receipt of this order, send for the ryots who cultivate the Sankili manyam of the said Narasaraju and others, to the cutcherry, obtain Kadapas in respect of the said manyam, and get the profits thereof credited in every year towards the said debt.

"Wednesday, the 13th day of Palguna Bahulam of Pramadi, corresponding to 7th April, 1880.

(Signed) "SREE,
"Sree Rani of Bobbili.

(Signed) "APPIAH GARU,
"Dewan of Bobbili."

This hukum may be open to criticism as a high-handed action, but there does not seem to be any reason for attributing to the Rani any ulterior motive beyond the collection of the debts owing to the estate and the temple. Their Lordships observe in this connection that R. Venkata Rao, the sheristadar to whom the hukum was addressed, about this time married his son, the plaintiff's second witness, to the plaintiff's daughter and heiress, and it therefore became his interest during his remaining years of office to see, as far as he could, that the plaintiff was not unfairly treated.

The lands are described in the hukum "as the Sankili manyam of the said Narasaraju" (the brother of the plaintiff's deceased husband), it being apparently assumed that they belonged to the joint family and not to the widow. Now both Chellakapollam and Nyallapollam were or had been manyams, that is, inams, in Sankili village. Strictly speaking, manyam is the singular and manyalu the plural; but according to the evidence manyam itself was also used in a plural sense, and may therefore have included both manyams or only one. But for this unfortunate ambiguity the present case might not have arisen.

Now as to what was done under this hukum, their Lordships, after full consideration of the arguments addressed to them, entirely agree with the finding of the Subordinate Judge, from which the High Court do not expressly dissent, that both the debts and the allowances made by subsequent hukums to the family of the plaintiff's husband and to the plaintiff herself were met out of the revenues of Chellakapollam alone, and that the plaintiff and her advisers must have been aware of this. The revenues of both manyams must have been perfectly well known to the plaintiff and to her agent and nephew, to say nothing of her son-in-law's father, the sheristadar; and it must have been apparent to them on the two occasions when accounts were settled, in 1892 and 1905, and the bonds given by the plaintiff's husband discharged, that she had only been credited with the revenue of Chellakapollam and not of Nyallapollam. The revenue in paddy and money of Nyallapollam, according to the evidence, was not at the date of the grant inferior to that of Chellakapollam, and it is quite clear that if that revenue had been applied in satisfaction of the debts in addition to the Chellakapollam revenue and without the heavy deductions made from the latter for the allowances to the plaintiff and her husband's family, the total indebtedness must have been discharged long before 1905, and there could have been no balance of over Rs. 800 payable by the plaintiff to entitle her to get back Chellakapollam.

The estate accounts, to which the Subordinate Judge refers as appropriation accounts, show that there were two bonds, of which one was discharged on or before the 5th February, 1892, by payments amounting to Rs. 2072–5–8, and given back to the plaintiff's agent, who signed for it, while the other was discharged by

payments of Rs. 2768–13, including a final payment in 1905 of Rs. 825–5–9 by the plaintiff's agent on her behalf. This balance is struck on the back of the second bond (Exhibit A), and it would have been perfectly easy for the plaintiff's agent to check the figures. The way in which the bonds were discharged is fully shown in the estate accounts, and it is unlikely that the plaintiff's agent would have signed on her behalf the receipt (Exhibit 1) of 2nd October, 1905, without looking into them. The receipt is as follows :—

> " Receipt presented by Kapavarapu Narasimhaswami Pantulu, agent on behalf of Sodemma Garu, wife of late Ayyagari Varahalu Pantulu Garu.
>
> " As I have on 7th September, 1905, discharged in full the debt due under the bond executed on 27th October, 1875, by late Varahalu Pantulu and others, Chelikani Chandrayya Doragaru, Amin of Kaviti tana, has this day delivered to my possession the inam lands which are known as Chelakapolam istuva which were assigned towards the discharge of the said bond debt and which bear G. 8–16 and Rs. 42–14–0 cash appanam per annum, which are comprised within the boundaries mentioned herein below."

Their Lordships entirely agree with the Subordinate Judge that the conduct of the plaintiff and her agents on this occasion is entirely inconsistent with her present case, that she knew she was entitled to recover Nyallapollam as well, and are quite unable to accept her evidence that she asked for it at the time. As already stated, it was on this evidence alone that the Subordinate Judge found that Nyallapollam was not given as security in 1880, even though, in his opinion, Nyallapollam was then and for some time afterwards in the plaintiff's possession.

Their Lordships will now proceed to deal with the evidence as to whether Nyallapollam was in possession either of the plaintiff herself or her husband's family when security was taken under the hukum of 1880, as unless that is shown her suit is barred.

Exhibit III is the grant to Varahalu of Chellakapollam in 1856. What was granted was land " bearing," that is to say, producing, a grain rent of 6 garces of paddy and a money rent of Rs. 19–111. The grantee was to increase the yield if he could, and was to pay the Rajah a fixed kattubadi or quit rent of Rs. 3 only. The grant of Nyallapollam (Exhibit D) in 1858 described the land as producing a grain rent of 6 garces and 27 putties of paddy and a money rent of Rs. 22–11. The grantee was to increase the yield if he could and was to pay the Rajah a fixed kattubadi of Rs. 3–8 only. It appears from the terms of Exhibit D that these 6 garces and 27 putties were local measure and were equivalent to 6 garces in sikka or Government measure.

There is no dispute now that Varahalu was in enjoyment of both grants down to 1862 or 1863. The defendant has put in the kattubadi diary of the estate from 1816 to 1883, and exhibited an entry of the 3rd September, 1863 (Exhibit XIX), in the following terms :—

> " Ayyagari Varahalu Pantulu not having conducted himself according to the will and pleasure of the *Sircar* (Rajah) and the *Manyam* lands newly

assigned by the *Sircar* in the villages mentioned herein below having been resumed and annexed to the Estate by the *Sircar*, the amount excused for the year *Dundubhi* (1862–63) as *per* letter, dated Thursday, the 6th Niya of *Sravana Bahulam* of the year *Rudhirodgari* (3—9—1863) (is).

RS.	A.	P.	
7	0	0	Relating to the Khandayam Manyam.
6	8	0	Relating to the Sankili Manyam.
2	4	0	Relating to the Javam Manyam.
3	0	0	Relating to the Regidi Manyam.
18	12	0	

* * * *

This entry undoubtedly records a remission of kattubadi or quit rent to Varahalu in consequence of his manyams having been resumed by reason of his not having conducted himself in accordance with the will and pleasure of the Rajah. The kattubadi remitted in respect of the Sankili manyam, a word which, as already stated, includes the plural as well as the singular, was Rs. 6–8, that is to say, the amount of the kattubaddis of Rs. 3 and Rs. 3–8, reserved in respect of the Chellakapollam and Nyallapollam grants in Sankili village. The entry therefore proceeds on the footing that both grants had been in fact resumed, whether the Rajah had or had not any right to resume them. It is not shown that there was any subsequent payment of kattubadi under either grant.

There is no documentary evidence at all for the next ten years till 1872, when we find Varahalu still estate sheristadar, an office which he held until his death in 1876, and also apparently in possession of Chellakapollam, which was admittedly in possession of his heirs in 1880, when it was taken as security under the hukum. He may never have been deprived of it, or it may have been restored to him. The defendant's case is that for some years after the resumption the revenues of the resumed manyams were not carried into the estate accounts but into the kaniki or private accounts of the Rani, and that in 1872 these revenues were transferred to the estate accounts pursuant to three hukums of the 25th September, 1872 (Exhibits VI, VIA and VIB), addressed by the Rani to Varahalu himself as estate sheristadar, to her private sheristadar, and to the Amin R. Venkata Rao. These hukums direct that the manyams resumed from Varahalu should be transferred from the Rani's private accounts to the estate accounts, as their management had not been satisfactory.

The estate accounts for 1862 to 1872 have not been produced, the suggested explanation being that they do not relate to the manyams resumed from Varahalu, which were treated at that time as forming part of the Rani's kaniki or private estate. This omission has been much relied on for the respondent, and it has also been argued that there was an inam diary which would have thrown light on these matters which was called for, but was not forthcoming.

However, this may be, for 1872 and the following years there is abundant documentary evidence on which Mr. Dunne has strongly relied. It has already been seen that in 1880, when the Rani decided to take over the manyam or manyams which had belonged to the plaintiff's husband, she did so in the hukum already set out, by directing the sheristadar to send for the ryots who cultivated the manyam to the cutcherry and obtain kadapas from them.

Now this is exactly what we find being done after 1872 in respect of Nyallapollam. From the deed of gift of 1858 in the plaintiff's husband's favour it appears that the ryot then cultivating the Nyallapollam manyam which was the subject of the gift was one Rayapureddi Latchanna. It is sufficient to set out the first part of the kadapa executed by this very Rayapureddi Latchanna on the 30th October, 1872 (Exhibit V), in the Rani's favour to show that in 1872 he was again holding under the estate and not under the plaintiff's husband.

> "Kadapa executed by Rayapureddi Latchanna, resident of Sankili, a village belonging to the said zamindari:—The piece of land that was originally a *manyam* of Ayyagari Varahalu Pantulu Garu, a resident of Sankili, but that was afterwards removed from his possession and kept in your private cultivation under the supervision of Inuganti Seetharamayya Garu, viz., 10 garces of wet land of Sankili village, has been this year taken by me on lease from you for one year, Angeerasa (1871–72), Fasli 1281 with the exception of date trees and palm trees existing thereon. The annual *Makta* fixed for the said extent is 6 garces and 27 candies of *Sarva* paddy and cash Rs. 20–2–0.

In the original grant of 1858 (Exhibit D), the land was entered as producing 6 garces and 27 candies of paddy and Rs. 22–11–0 in cash, which was then payable by the cultivator Latchanna. The figures are the same in Exhibit V, except that fourteen years later the cash rent, for some reason or other, had fallen from Rs. 22–11–0 to Rs. 20–2–0. Similar kadapas executed by Latchanna have been exhibited for 1876, Exhibit V_1, 1877, V_2. Then Exhibits V_3 to V_{11} (1886) are kadapas executed by Latchanna, and after him by his son, for much larger areas, which, according to the son's evidence, included Nyallapollam. He states that he paid cist to the Rani and never cultivated under the plaintiff's husband.

These documents clearly show that from 1872 to 1877, and for subsequent years also, if the evidence of the first witness for the defence be accepted, Nyallapollam was in the possession of the Rani and not of the plaintiff's husband.

The Subordinate Judge finds, on the strength of the kadapa (Exhibit V), that Nyallapollam was under resumption in 1872, but ignoring the evidence of Exhibits V_1 and V_2, he finds that in the years immediately following it was again in possession of the plaintiff's husband. This finding is based upon his inferences from the estate accounts which have been put in evidence for 1872 and the following years. Their Lordships have most carefully examined those accounts in view of the findings of the Sub-

ordinate Judge and of the arguments addressed to them on this appeal, and find, on the one hand, that they do contain entries showing that the rent or cist payable under these kadapas went into the estate accounts during these years, and, on the other hand, that the entries relied on for the plaintiff do not establish that her husband and his heirs were in possession of Nyallapollam during these years or in 1880, which is the crucial date.

The principal accounts exhibited were the Atukubadi accounts, said to have been prepared by the kurnam of the village (Exhibit VII series), the D.C.B. accounts (Demand, Collection and Balance accounts) (Exhibit VI series), said to have been drawn up in the Tana or divisional office, and the Land Cess account of Sankili village from 1874 (Exhibit XII series). The zemindar was responsible for the land cess leviable on the revenues of the village under the Local Boards Act, and, when he had alienated any part of these revenues by the grant of inams or manyams, he had to collect the land cess from the alienees.

On examining the accounts we find the rent or cist payable by Rayapureddi Latchanna under his kadapa of 1872 brought into the Demand, Collection and Balance accounts of the estate (Exhibit VI (c)), under the heading "Kadapa filed by Rayapureddi Latchanna in respect of kaniki manyam belonging to Varahalu Pantulu" (the plaintiff's husband), and much reliance has been placed on this description. The manyam had been *kaniki*, that is, in the Rani's private estate, and had previously been Varahalu's, but the entry as a whole shows that this was no longer so, as the rent is brought into the estate account as forming part of that estate, and the description must therefore relate to the previous state of things.

Then as regards land cess, Varahalu is debited in these accounts with Rs. 14–7–6, and it is said that if the grain and money rents shown in the grants of Chellakapollam in 1856 and of Nyallapollam in 1858 be taken, and if the grain rents be converted into money at the appropriate rates, and added to the money rents, and one anna in the rupee be charged on the respective totals, the demand for Nyallapollam works out at Rs. 14–7–6 and the demand for Chellakapollam at three annas less; and that this shows that Varahalu was still in possession of Nyallapollam. Now we know that in the intervening years the money rent of Nyallapollam had fallen from Rs. 22–11–0 to Rs. 20–2–0, and the money rent of Chellakapollam may also have varied in this period. After 1880 we know that under estate management its grain and money rents substantially increased. In these circumstances their Lordships are of opinion that there are no sufficient grounds for holding that this demand related to Nyallapollam.

Further, according to the plaintiff's case, in these years Varahalu had two manyams, Chellakapollam and Nyallapollam, and consequently there ought to be two debits of land cess against him in the accounts. If, therefore, Rs. 14–7–6 does not refer to Chellakapollam, but to Nyallapollam, it could have been shown

from the accounts what the land cess of Chellakapollam was, and this has not been done.

Their Lordships consider it unnecessary to pursue this matter further. In their opinion, the plaintiff has failed to prove that her husband was in possession of Nyallapollam after 1863, or that it could have been taken from her as security by the defendant's predecessor in 1880, and there is a considerable body of evidence as to the state of things existing both before and after 1880 which goes to show that it was not so taken.

In these circumstances, their Lordships are of opinion that the appeal should be allowed as regards the Nyallapollam istuva, and the decree of the High Court varied accordingly, and that the respondent should pay the appellant's costs both here and in the lower Appellate Court, and they will humbly advise His Majesty accordingly.

In the Privy Council.

SRI RAJA RAO SRI SWETACHALAPATI RAMAKRISHNA RANGA RAO BAHADUR GARU, RAJA OF BOBBILI

v.

AYYAGARI SODEMMA.

DELIVERED BY SIR JOHN WALLIS.

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