

**Andiappan Ambalam and others** - - - - *Appellants*

*v.*

**V. E. Meyyappan Servai and others** - - - - *Respondents*

FROM

**THE HIGH COURT OF JUDICATURE AT MADRAS**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 24TH APRIL, 1944

*Present at the Hearing :*

LORD RUSSELL OF KILLOWEN

LORD JUSTICE GODDARD

SIR MADHAVAN NAIR

[*Delivered by* LORD RUSSELL OF KILLOWEN]

The contest on this appeal lies between the respective successors in title to two lessees to each of whom a lease was granted by the same grantors on the 24th January, 1908. The dispute concerns 2 plots of land, the question being whether they were leased by the lease to the appellants' predecessors in title (which will be referred to as the appellants' lease) or by the lease to the respondents' predecessors in title (which will be referred to as the respondents' lease). If they are not included in the respondents' lease, they are without doubt included in the appellants' lease.

Before considering the two documents it is necessary to state some preliminary facts.

The land in both leases is land in the Sivaganga Zamindari. The Zamindar at the date of the leases was a minor, and his estate was under the management of the Madras Court of Wards. The Zamindari was in lease to lessees.

In or about the year 1894 the ryots of Karaikudi village sought to evict certain persons who had trespassed on and occupied part of the waste lands of the Zamindari. The ryots alleged that the land so occupied formed part of their village, which had been leased to them by the Zamindari. The ryots and the occupants purported to compromise this dispute on terms whereby the former took the *melvaram* right and the latter the *kudivaram* right. The Zamindari, however, claimed that the land in question was part of Sekkalakottai village, and in the year 1901 filed a suit (No. 68 of 1901) in the Court of the Subordinate Judge of Madura East against the ryots and occupants, claiming to recover possession of the land in question. The land was described in the plaint thus:—

" In Sekkalakottai village, Eluvankottai taluk, Tiruppattur sub-district, Madura district, west of north to south channel running to Karaikudi-Kalukatti *urani*; and Kottaiyur cart-track and waste land, north of the said channel and of Sekkalakottai boundary limits, east of the old boundary limits and demarcation boundary stones of Karaikudi, Kalanivasal, Sekkalakottai villages and of the Karaikudi Kanmoi (tank) channel, and south of the said channel Sekkalakottai waste lands lying within these places of about 13-4-2 Kurukkams."

Apparently it was found that this description did not clearly identify what was the land claimed in the suit, or state its boundaries with sufficient clarity. Accordingly a commissioner was appointed by the Court, who surveyed the locality in dispute. From the report (dated the 17th

November, 1902) which he made to the Court, it is obvious that he had been accompanied on his survey by the parties, and had listened to their respective contentions. In the result he prepared a plan (F) upon which he showed the land which was in dispute in the suit coloured red. To quote from his Report—"The disputed locality in this suit is the portion marked red in the plan." The land in suit, with its boundaries, was thus definitely identified and delineated.

Judgment in the suit was not delivered until the 22nd December, 1908. In his long and careful judgment the judge referred to the commissioner's plan as showing the land in suit marked red, and came to the conclusion that it formed part of the village of Sekkalakottai and not of Karaikudi. He gave a decree in favour of the plaintiffs 1 to 4 (i.e. the Zamindari) "declaring that the plaint land (marked red in the commissioner's plan Exhibit XI which will be attached to the decree) belongs to them." He added that the 5th plaintiff would remain on the record for the purpose of continuing the suit under section 372 of the Civil Procedure Code. The 5th plaintiff was one Karuthan, who was added as a plaintiff in the suit on the 4th April, 1908. The reason for his joinder, and his remaining on the record must now be explained.

During the pendency of the suit, the leases in question in this appeal had been executed and registered. One of them was granted to Suppaya Servai the predecessor in title of the appellants, the other was granted to the respondents' predecessor in title, Karuthan. It is round this latter document that the present dispute centres, viz., whether it comprises more than, or only the land coloured red on the commissioner's plan. The appellants contend that it comprises only the land coloured red, while the respondents claim that in addition to the land coloured red, two plots (which the trial judge referred to in his judgment as plot I and plot II) were included in it. On either view Karuthan would be a person interested in the success of the plaintiffs in the suit, and he was joined as a co-plaintiff accordingly.

To complete the history of the matter, when the Sivaganga Zamindari was surveyed in the year 1926, the Appellate Survey Officer decided that the two plots in question were included in the respondents' lease. On the 3rd February, 1930, the appellants instituted a suit in the Court of the Subordinate Judge at Devaikottai, against the successors in title to Karuthan claiming to set aside the decision aforesaid. The relevant issue in that suit was framed in the following terms:—"Whether the suit plots form part of the cowle in favour of Suppaya Servai as alleged in the plaint." The Subordinate Judge decided in favour of the plaintiffs, and set aside the decision of the Appellate Survey Officer. On appeal the High Court at Madras set aside the decree of the Subordinate Judge and dismissed the suit. Hence the present appeal.

Their Lordships now proceed to consider the terms of these two contemporaneous leases, for it is upon a determination of their true construction that the result of this appeal must depend.

The appellants' lease comprises about 470 kurukkams (to quote clause 1 of the document) "set out hereunder as item 1 and mentioned in the plan annexed hereto." In the description of the property set out thereunder it is stated to be east of the south to north channel flowing to Karaikudi *Kellukatti Urami*, of the Kottaiyur cart-track, and "of the land granted to . . . Karuthan . . . and forming the subject-matter of the suit in O.S. No. 68 of 1901 on the file of the Sub-Court of East Madura." The plan annexed is the Exhibit G, and in it (as the trial judge observes) the red-marked plot is identical with the red-marked plot on the commissioner's plan F. On the red-marked plot in Exhibit G are the words and figures following:—"The Suit Land in O.S. No. 68 E.S.C. Plot No. 1 = about KKMS—13-4-2. Granted to Karuthan Ambalam."

The respondents' lease needs to be stated in greater detail. The grantors are called the transferors and Karuthan is called the transferee. The first clause grants permanent cowle transferring all the right of the zamin in "the land at Sekkalakottai village . . . within the four boundaries mentioned hereunder." By clause 3 the transferee pays a

premium of Rs.3,000, and the clause proceeds as follows:—" and further the transferee is bound to pay permanently annas 6 per kurukkam from the fasli when the said land comes into the possession of the transferee, the same forming the subject-matter in dispute in O.S. No. 68 of 1901 on the file of the Sub-Court of East Madura." Clauses 7, 8, 9 and 10 must be set out in full. They run thus:—

" (7) The transferors have filed O.S. No. 68 of 1901 in the Sub-Court of East Madura regarding this cowle land; and the transferee, with the knowledge of the objections raised by the Defendants therein, has obtained this document. Hence the success or failure and profit or loss in respect of the said case concerns the transferee.

(8) It has been agreed upon that the transferee should get the encumbrances in respect of this cowle land settled at his own expense and that he has no future claim against the transferors regarding the same. Should there be laches on the part of the transferee in respect of such settlement, he is bound to pay permanently the entire thirva, etc. The transferors agree that, if in spite of proper efforts, he does not get the said land, he need not pay the thirva, etc., mentioned in the 3rd paragraph above. But, for this or any other reason, the transferee has no right whatsoever to claim at any time the return of the *Nazir* of Rs. 3,000 paid by him as mentioned in paragraph 3 above or any portion thereof.

(9) In O.S. No. 68 of 1901 now pending in the Sub-Court of East Madura, the transferors and transferee should file a petition in the Court to the effect that the transferee should at once be made a supplemental Plaintiff, and both should be parties in all future proceedings and the transferors should render help to the transferee. But the transferee himself should meet all the future necessary expenses of the said case from time to time. The transferee has obtained from the transferors the records relating to the said case. It has been agreed upon that, as regards the amounts hitherto spent by the transferors, in the said case, they have no claim or concern whatsoever and that if it is decreed that the Defendants should pay costs to the Plaintiffs in the said suit, such entire costs belong to the transferee. As regards the amount of expenses that may have to be incurred by the transferors continuing to be parties in future, the transferee is bound to pay the same from time to time.

(10) If, for any reason, it is decided in O.S. No. 68 of 1901 on the file of the Sub-Court of East Madura or in the appeals, etc., relating thereto that the transferors should pay any costs, etc., to the Defendants, the transferee himself is bound to pay the same."

The land " mentioned hereunder " is thus described:—

" West of the south to north channel flowing to Karaikudi-Kallukatti *urani* and of Kottayur cart-track and of K. R. Subbayya Servaikarar's cowle land, north of the said channel and of Sekkalakottai boundary stones, east of the old boundary stone of Karaikudi, Kalanivasal and Sekkalakottai villages and of the demarcation boundary stones and of Karaikudi *konmoi* channel and south of the cowle (land) of K. R. Subbayya Servaikarar; within these, land of about Kurukkams 13-4-2."

This description is practically identical with the description in the plaint in the Suit No. 68 of 1901.

The crucial question is what land did the respondents' lease, upon its true construction, include? In order to ascertain its true construction the whole document must be considered, and not merely the so-called " description of property " at the end thereof. Further in their Lordships' opinion it is proper in this case to take into consideration the simultaneous lease to Suppaya, for it is common ground, as stated by the trial Judge, that the one begins where the other ends.

Turning to the respondents' lease, if it shows anything clearly it shows, in their Lordships' opinion this, that the land intended to be leased was only the land which was the subject-matter of dispute in the Suit O.S. No. 68 of 1901. Clause 3 says so in express terms, and makes the thirva run only from the fasli when the transferee gets possession. Clause 7 repeats the statement. Clause 8 emphasises it from another angle, by relieving the transferee from all liability for thirva, road cess or railway cess " if in spite of proper efforts he does not get the land ", meaning (necessarily as their Lordships think in view of clause 9) if he does not get the land as the result of the suit. It appears to them inconceivable

that the lease was intended to include any land other than the suit land, for apparently the transferee would be under no liability to pay thirva, etc., for that other land if the suit was unsuccessful although his right to possession of it did not depend on the issue of the litigation. Reference to the appellants' lease only confirms this view. His land is stated to be bounded on the west by, among other things, "the land granted on cowle to . . . Karuthan . . . and forming the subject-matter of the Suit in O.S. No. 68 of 1901," a condition of things which would not permit of any land intervening between that suit land and the land leased to Suppaya.

Only one factor remains to be ascertained, viz., what was the land which was the subject-matter in dispute in the Suit O.S. No. 68 of 1901? As to that there can now be no doubt. The Court settled the question by appointing a commissioner for the express purpose of defining the land beyond question. It was the land marked red on the commissioner's plan F and no other. It was by reference to that plan and the land so marked thereon, that the Subordinate Judge of Madura made his decree. But the matter does not end there. The appellants' lease contained the plan G, which shows a plot of land marked red identical with the red-marked plot in plan F, and describes it as the suit land in O.S. No. 68 of 1901, and as containing about kurukkams 13-4-2, which is the area stated in the respondents' lease to be the estimated area of the land described therein.

When all these facts are taken into consideration they can, their Lordships think, lead only to one conclusion, viz., that the respondents' lease was only intended to include, and upon its true construction only does include, the land marked red on the two plans F and G. Karuthan took a speculative lease for which he was prepared to pay Rs.3,000 viz. a lease of lands of which he would never get possession if the suit failed, but in respect of which he was under no further liability unless and until he obtained possession, as a result of the suit being successful.

The High Court were of opinion that the respondents' lease showed the boundaries with certainty and precision: but those are the same boundaries which necessitated the appointment of a commissioner in the Suit No. 68 of 1901 in order that they might be ascertained with certainty and precision; and the result was the fixing of the plot coloured red in plan F, which is repeated on the plan G. Further, the High Court seem to have thought that the decree in the Suit covered more than the land coloured red on plan F; but this would appear to be a misapprehension. The judgment of the Subordinate Judge of Madura and the operative portion of the decree are in express terms confined to the land coloured red on the commissioner's plan.

Their Lordships are of opinion that this case does not come within any of the authorities cited by the High Court. It depends upon the true construction of the special terms of the respondents' lease which, when all its provisions are taken into consideration, shows that the dominant intention of the parties thereto was to confine it to the land, possession of which would be recovered in the event of the suit being successful, i.e., the land coloured red on the plans F and G. That was in substance the view of the trial judge, whose decree should be restored.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, the decree of the High Court set aside, and the decree of the Subordinate Judge restored. The respondents will pay the costs of the appellants of the appeal to the High Court and of the appeal to His Majesty in Council.

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[DELIVERED BY

LORD RUSSELL OF KILLOWEN]

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