THAYAMMAL v. KUPPANNA KOUNDAN.

TYABJI, J.

I therefore agree in the order proposed by my learned brother.

The memorandum of objections is allowed with costs as Exhibit III was not executed for purposes binding on the plaintiff and it is not proved that Rs. 50 (the money recovered by the plaintiff's aunt) was spent for the plaintiff's benefit.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Officiating Chief Justice, and Mr. Justice Kumaraswami Sastriyar.

1914. July 17 and 20.

SRI MEERJA RAJA SRI POOSAPATI VIJIARAMA GAJAPATHI RAJI MAHARAJ MANYA SULTAN BAHADUR, MAHARAJA OF VIZIANAGARAM (PLAINTIFF), APPELLANT,

v.

THE COLLECTOR OF VIZAGAPATAM AND SEVENTY OTHERS (DEFENDANTS NOS. 1—3 AND 5—63), RESPONDENTS.*

(*Madras*) *Assessment of Land Revenue Act* (*I of* 1876), *sec.* 2—"*Owner*" *under, meaning of—Permanent lessee, not an owner—Non-liability to separate registration and assessment—Proprietor or owner under Regulation* (*XXV of* 1802) *—Madras Hereditary Village Offices Act* (*III of* 1895).

Grantees, holding under perpetual grants subject to payment to the zamindar (the grantor) of a small rent under the name of jodi, kattubadi or poruppu, are not liable to have their lands separately registered and to have separate assessment imposed upon them, under the provisions of the Madras Act I of 1876.

A permanent lessee is not included in the term "owner" as used in section 2 of the Madras Assessment of Land Revenue Act (I of 1876).

A permanent lessee is not a proprietor or owner under Regulation XXV of 1802 or the Madras Hereditary Village Offices Act (III of 1895).

Venkateswara Yettiappah Naicker v. *Alagoo Mootoo Servagaren* (1861) 8 M.I.A., 327, *Hari Narayan Singh* v. *Sriram Chakravarti* (1910) 37 I.A., 156, *Durga Prasad Singh* v. *Braja Nath Bose* (1911) 39 I.A., 133 and *Kshetrabaro Bissoyi* v. *Sobhanapuram Harikristna Naidu* (1910) I.L.R., 33 Mad., 340, followed.

Robert Fischer v. *The Secretary of State for India in Council* (1899) I.L.R., 22 Mad., 270 (P.C.), distinguished.

Kamalammal v. *Raju Naicker* (1896) I.L.R., 19 Mad., 308, distinguished.

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* Appeal No. 224 of 1909.

MAHARAJA OF VIZIANAGARAM v. THE COLLECTOR OF VIZAGAPATAM.

APPEAL against the decree of D. RAGHAVENDRA RAO, the Subordinate Judge of Vizagapatam, in Original Suit No. 34 of 1906.

The facts of the case appear from the judgment.

S. Srinivasa Ayyangar and *K. V. Krishnaswami Ayyar* for the appellant.

The *Government Pleader* for the first respondent.

The Honourable Mr. *B. N. Sarma* for thirty-sixth respondent.

V. Ramesam for respondents Nos. 2 to 15, 20 to 45, 52 to 61 and 66 to 70.

S. Duraiswami Ayyar for the seventy-first respondent.

WALLIS, OFFG. C.J., AND KUMARASWAMI SASTRIYAR, J.

The judgment of the Court was delivered by WALLIS, OFFG. C.J.—We think the Subordinate Judge in this case was right. The first question relates to the nature of the interest at present enjoyed by the defendants. By a deed, dated the 1st June 1808, the predecessor of the present plaintiff granted a mokhasa patta to three individuals of three villages without reserving any rent. There is no doubt, and it has been so held in some cases in this Court, such tenures were formerly believed to be resumable on the death of the grantor. On the death of the grantor in this case when the estate came under the management of the Collector as manager in 1845 three villages were resumed. That is to say, the villages were attached or kept under zufit and the profits of the villages were enjoyed apparently by the zamindar for some years. Then in the year 1853, a petition was put in (Exhibit B) stating that the villages had been granted on service tenure to the ancestors of the petitioners and that the zamindar had been pleased to release them from attachment "to be enjoyed by us, nine sons of the aforesaid Vijia Gopalrazu (one of the grantees). I agreed to pay a kattubadi of Rs. 300 a year newly fixed." Then Exhibit C is an order of the zamindar giving effect to this arrangement and Exhibit D is a further order addressed to the office amin and it says "Inasmuch as the said village were not formerly charged with kattubadi and as Seetharama Razu, one of the sons of Vijiagopala Razu (that is to say, one of the original grantees) presented a sanad to us stating that the nine sons of late Kakarlapudi Vijiagopala Razu would pay the kattubadi of Rs. 300 every year from the current fasli year 1263 and enjoy the same as before, and act in obedience to the orders of the sircar, the said three villages

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should be released from attachment and given to the nine persons of the family to be enjoyed by all the members of the said family." Now the three villages have been enjoyed for the past sixty years subject to the payment of this kattubadi without any question being raised about it, and we must take it, that the tenure on which they held is that they should hold the land subject to an annual payment of this kattubadi of Rs. 300 and that in effect there was a re-grant of the three villages in 1853. Those are the terms of the tenure with which we have to deal. Subsequently some years ago the zamindar sought to resume these villages and instituted a suit for that purpose, which was dismissed. He is now seeking to take advantage of Act I of 1876 for the purpose of getting these three villages separately registered in the names of the descendants of the grantees, and having a proportionate peshkash or Government revenue charged upon them, thus entirely altering the terms upon which they had been held for so many years by the grantees; which terms are: that they should enjoy the villages on a payment of Rs. 300 kattubadi annually, leaving the zamindar to pay the proportionate peshkash which, as the mere fact of the institution of this suit shows, is probably a considerably larger sum. Now there are, it is not denied, very numerous other villages in the Northern Circars and possibly elsewhere which are held on similar tenures and in which a similar operation might be attempted if the law allowed it. Therefore the question is one of considerable general importance, as to whether grantees holding on perpetual grants subject to the payment of a small rent under the name of *jodi, kattubadi* or *poruppu* are liable to have their lands separately registered under this Act and separate assessment imposed upon them. Now the history of the question is that Regulation XXV of 1802 provided that proprietors of land should be at liberty to transfer without the consent of Government and such transfers should be valid, but that "unless such sale, gift or transfer shall have been regularly registered at the office of the Collector, and unless the public assessment shall have been previously determined and fixed on such separated portions of land by the Collector, such sale, gift or transfer shall be of no legal force or effect, nor shall such transaction exempt a zamindar from the payment of any part of the public land tax assessed on the entire zamindari previously

to such transfer, but the whole zamindari shall continue to be answerable for the total land tax in the same manner as if no such transaction had occurred." Notwithstanding the generality of the language of the latter part of this section, it has been held by the Privy Council in the Ettiyapuram case *Venkateswara Yettiappah Naicker* v. *Alagoo Moottoo Servagaren*(1), and elsewhere that this section does not affect the validity of transfers as between the parties but only saves the rights of Government. The Regulation also provided for the manner in which the proportionate assessment was to be fixed and in Regulation XXVI there was a provision as to the separate registration of portions of settled estates which had been alienated in a Court sale. So far as I know there was no specific legislative provision as to how separate registration was to be enforced in other cases, though no doubt the right to such separate registration was recognised in certain cases. In that state of things Act I of 1876 was passed. It is described as "*An Act to make better provision for the separate assessment of alienated portions of permanently-settled estates.*" And it says: "Whereas it is desirable to make better provision for the separate assessment to land revenue of portions of permanently-settled estates alienated by sale or otherwise; It is hereby enacted as follows:—

(1) The alienor or alienee of any portion of a permanently settled estate, or the representative of any such alienor or alienee, may apply to the Collector of the district in which such portion is situate for its registration in the name of the alienee and for its separate assessment in respect of land revenue.

(2) The Collector shall thereupon hold an enquiry as to who is the present owner of the property in respect of which the application is made."

So that what the Collector has to do is to find out who is the present owner, and the intention of the legislature is that it should be on : when there has been a change of ownership that separate registration and assessment should take place. Now the question is whether there can be said to have been a change of ownership by virtue of this grant of these three villages to the grantees subject to a reserved payment of a kattubadi or favourable rent of Rs. 300. Assuming that the

(1) (1861) 8 M.I.A., 327

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grant was a permanent one and was not liable to resumption we do not think that it can stand on any higher footing than a permanent lease. It is a grant subject to a reservation of annual money payment or rent. And therefore it seems to us to be of the character of a permanent lease. Now there is no authority for saying that a permanent lessee is included in the meaning of the term "owner" and if it had been intended to include such a person within the term "owner" we think there would have been a definition clause including him. Numerous authorities may be cited in support of this view. It was expressly held by the Privy Council that a permanent lease by a zamindar is not a transfer of his proprietary right within the meaning of section 8 of Regulation XXV of 1802, in the case *Venkateswara Yettiappah Naicker* v. *Alagoo Moottoo Servagaren*(1), where their Lordships observe: "This is not an alienation of the zamindari or any part of it. It is a perpetual lease of a distinct portion of a zamindari, which constituted a distinct portion before the appellant's title to the zamindari accrued, and such an estate could not without great violence to the language be considered as a transfer within the words of the Regulation." The reference is section 8 of Regulation XXV of 1802 which deals with the transfer by the proprietors of their proprietary right, and is therefore express authority for the proposition that a perpetual lease is not a transfer of property, right or ownership and does not constitute the lessee, the proprietor or owner within the meaning of Regulation XXV of 1802. As already pointed out Act I of 1876 is supplementary to Regulation XXV of 1802 which must be read together. The same view has been taken in *Kshetrabaro Bissoyi* v. *Sobhanapuram Harikrishna Naidu*(2), with regard to the language of Act III of 1895, section 5. There the learned Judges say: "The question then remains whether the grant of a permanent lease is a transfer of ownership and, following the ruling of the Privy Council which we have just referred to the learned Judges held that a permanent lease is not a transfer of the proprietary right or ownership. We may refer also to two recent decisions of the Privy Council, one *Hari Narayan Singh* v. *Sriram Chakravarti*(3) and another *Durga Prasad Singh* v. *Braja Nath*

(1) (1861) 8 M.I.A., 327 at p. 338. (2) (1910) I.L.R., 33 Mad., 340.
(3) (1910) 37 I.A., 136.

Bose(1), in which it was held that a permanent grant at a favourable rent—of the nature of the kattubadi reserved in this case—was not a transfer of ownership so as to deprive the grantor of his mining rights in the land which are incidental to his character of owner. And in the first case *Hari Narayan Singh* v. *Sriram Chakravarti*(2), his right is distinctly based upon his possessing the character of owner. The Subordinate Judge has quoted various authorities to the same effect in his judgment: "Markby in his Elements of Law (5th edition) observes: 'However numerous and extensive may be the detached rights, however insignificant may be the residue, it is the holder of this residue of right whom we always consider as the owner.'" This is of course from the legal point of view. From the economic point of view a permanent lease on a condition of fixity of tenure may no doubt be spoken of as a condition of divided ownerships, but we are merely considering the accepted meaning of the word owner in the language of the law. The decision of the Privy Council in the Fischer's case [*Robert Fischer* v. *The Secretary of State for India in Council*(3)], does not affect the present case, because there what was contemplated from the first was an out-and-out gift of the village to Mr. Fischer to be separately registered and according to the construction put upon the various documents their Lordships came to the conclusion that the *peshkash* or *poruppu*, as it was called in different documents, was only intended to be a temporary payment to the zamindar pending the separate registration and assessment which was contemplated from the very first. With regard to the case in *Kamalammal* v. *Raju Naicker*(4) and the observations there cited, we may point out that that was a case of gift and obviously where there is a case of gift, that is a case of out-and-out alienation, and the donee becomes the owner. But those cases are quite different from the present case which is, in our opinion, merely that of a permanent lease at a favourable rent. We think that it would be giving an extension, which was never intended and which would be of very dangerous consequence, to the Act I of 1876, if we were to hold that the creation of a perpetual lease at a favourable rent rendered the lessee the

(1) (1911) 39 I.A., 133. (2) (1910) 37 I.A., 186.
(3) (1899) I.L.R., 22 Mad., 270 (P.C). (4) (1896) I.L.R., 19 Mad., 308.

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owner so as to subject him to the liability of having the land included in the lease separately registered and separately assessed. I may also add that a decision to the same effect has already been given by this Court by Mr. Justice MILLER and Mr. Justice MUNRO in an unreported case—*Sanyasi Naidu* v. *Maharaja of Bobbili Samastanam*(1).

WALLIS, OFFG. C.J., AND KUMARASWAMI SASTRIYAR, J.

In the result the appeal fails and is dismissed with costs. No order as to costs of the Secretary of State.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Spencer.

1914, August 3 and 7.

P. ALWAR CHETTY (PLAINTIFF), APPELLANT,

v

P. CHIDAMBARA MUDALI AND SIX OTHERS (DEFENDANTS), RESPONDENTS.*

Administrator-General's Act (II of 1874), ss. 20, 52 and 54—Grant of Letters of Administration to the Administrator-General—Vesting of the estate in him—Sale by him of lands for his commission without sanction of Court, validity of.

A grant of Letters of Administration under section 20 of Administrator-General's Act to the Administrator-General in respect of the estate of a deceased Hindu vests the estate in the Administrator-General and enables him to dispose of immoveable property without the consent of the Court.

The administration cannot be treated as closed until every act necessary for its completion has been done. Hence, a sale by the Administrator-General of some immoveable property of the deceased, for the purpose of realising the commission due to him under the Act, is a valid sale in the course of administration and it takes precedence over a prior sale effected by the heir of the deceased.

APPEAL from the judgment and decree of WHITE, C.J., in Civil Suit No. 144 of 1915.

The following facts are taken from the judgment of SPENCER, J.:—

"Upon the death of one Rajamanicka Mudali, the father "of the first defendant, the Administrator-General was directed "by an order of Mr. Justice BODDAM upon a petition presented to "him on the Original Side, to take out Letters of Administration

(1) Appeal No. 141 of 1905.

* Original Side Appeal No. 61 of 1906.