PRIVY COUNCIL.*

1919, February 21 and March 17.

UPADRASHTA VENKATA SASTRULU (PLAINTIFF),

v.

DIVI SEETHARAMUDU AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature at Madras.]

Madras Estates Land Act, 1908, *sec.* 3, *sub-sec.* 2 (*d*) *and sec.* 189—*Grant of inam village—Leases by inamdars to tenants—Claim by tenants to rights of occupancy—Presumption as to transfer of kudivaram—Suits in Civil Court for ejectment—'Estate' under Estates Land Act—No evidence of any permanent occupancy rights—Jurisdiction.*

The appellant was the inamdar of a village consisting of both cultivated and waste lands, and he held it under a grant made to his ancestor in 1748, and since confirmed and recognized by the British Government. To suits in the Civil Court for ejectment against tenants of waste lands the defence was that the respondents had permanent rights of occupancy, and that as the inam village was an 'estate' under section 3, sub-section (2), clause (*d*) of the Madras Estates Land Act, 1908, the Civil Court had no jurisdiction to entertain the suits.

Held, that since the decision of the Board in *Suryanarayana* v. *Patanna*, (1918) I.L.R., 41 Mad., 1012 (P.C.), which was decided subsequently to the judgment now appealed from, there was no presumption of law that an inam grant of a village did not include the kudivaram. Each case must be considered on its own facts, and in order to ascertain the effect of the grant, resort must be had to the terms of the grant, and to the whole circumstances, so far as they could now be ascertained.

Held, having regard to the facts, the terms of the grant, the history of the estate, and the conclusions to be drawn from the other documentary evidence in the case, they were all inconsistent with the existence of any permanent occupancy rights, and lead to the conclusion that the inam grant carried not the land revenue alone but the whole proprietary interest in the property. The lands in suit therefore were not an 'estate' within the meaning of the Act, and section 189 did not apply. The Civil Courts consequently had jurisdiction to entertain the suits.

CONSOLIDATED APPEAL No. 48 of 1917 from the judgment and decree (18th March 1914) of the High Court of Madras which affirmed the judgment and decree (2nd August 1911) of the District Judge of Kistna, which reversed the judgment and decree (22nd November 1919) of the District Munsif of Gudivāda which was in favour of the plaintiff.

Present:—Viscount HALDANE, Viscount CAVE, Lord PHILLIMORE and Sir JOHN EDGE.

The suits which gave rise to the present appeal were suits for ejectment, brought by the appellant who was the owner of part of the inam village of Billapadu. The defendants were lessees from him but their leases had expired. Their defence was that they were entitled to retain possession notwithstanding the expiry of their leases, and they set up a special defence to the suits, namely, that the lands in suit constituted an 'estate', or 'part of an estate,' under the Madras Estates Land Act, 1908, and consequently the jurisdiction of the Civil Court was excluded by that Act, and that was the chief point in dispute.

The village of Billapadu agraharam was granted to the ancestors of the appellant in 1748, and in 1783 the grant was confirmed by the holder of the zamindari within which it was situated. Subsequently the Government recognized and confirmed the grant, and an inam title deed was issued by the Commissioner on 27th June 1865.

The documents evidencing the grant of the village refer to it as sarva (entire) agraharam and contained no indication that the grantee was to enjoy thereunder the land revenue thereof alone without the other rights of proprietorship. The village consisted of 300 acres. It has not been shown whether or not the grantee was already in occupation of any and what portions of the land at the date of the grant—and there was no evidence to suggest that there were any tenants in the village holding lands with any rights of permanent occupancy by custom or otherwise. It was admitted that 60 acres which are the lands in question in this litigation were then unoccupied waste lands. These 60 acres were for a time in the occupation of other tenants (without any right of permanent occupancy), but were surrendered by them at the end of Fasli 1313 (March 1904) and remained for a time untenanted. The defendants came in in Fasli 1317 (1907) under the leases in suit each of which contained a clause to the following effect.

"Except the right of cultivating the said lands for Fasli 1317 according to this khat, we the tenants have no other right whatever thereto. So we agree to your taking possession of the lands at the end of March 1908, along with the land ploughed for seed beds without any need for a notice from you, or a relinquishment from us."

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The previous history of the village shows that tenancies had been short and the holdings constantly changed hands, and also that the rates of rent frequently varied. Except for two instances which the defendants sought unsuccessfully to establish, no serious attempts were made to show that the tenancies had been in any way transferred by the tenants. And it was proved that when tenanted lands were compulsorily acquired by Government, the occupants advanced no claim to share in the compensation. Apart from the Estates Land Act, the defendants were held to have no right of permanent occupancy.

The following sections of that Act were referred to in the course of the hearing; 'Estate' is referred to as meaning (*inter alia*) in section 3, sub-section (2), clause (*d*) as

"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 made, confirmed or recognized by the British Government, or any separate part of such village."

Section 8, the last paragraph, enacts that:

"Notwithstanding anything contained in this section, where, before or after the commencement of this Act, the kudivaram interest in any land comprised in an estate falling within clause (*d*) of sub-section (2) of section 3 has been or is acquired by the inamdar, such land shall cease to be part of the estate."

The defendants refused to vacate the lands on the expiry of the leases on 30th March 1908, and the inamdar filed the present suits on 2nd December 1908 and prayed for a decree for possession. The defence was as stated above.

The District Munsif decided in favour of the appellant, holding that the village and the lands in suit were not an 'estate' or 'part of an estate' within the definition above quoted.

On appeal the District Judge cited various cases decided by the Madras and Bombay High Courts as establishing a legal presumption that an inamdar has not the kudivaram in his lands. He relied on the case of *Suryanarayana* v. *Patanna*(1) as supporting such a presumption; that case however since the District Judge's decision has been reversed by the Judicial Committee. The District Judge made a decree that the plaints should be returned for presentation in the Revenue Court.

(1) (1918) I.L.R., 41 Mad., 1012 (P.C.)

On appeal the High Court (SADASIVA AYYAR and SESHAGIRI AYYAR, JJ.) affirmed the decree of the District Judge. The High Court's judgment will be found reported in *Venkata Sastrulu* v. *Seetaramudu*(1).

ON THIS APPEAL, which was heard ex parte.

Kenworthy Brown, for the appellant, contended that neither was the village as a whole, nor were the lands in suit an 'estate' within the definition contained in section 3, sub-section (2), clause (*d*) of the Estates Land Act, 1908. The judgment of the High Court now appealed from, and also that of the District Judge rested on presumptions which were not warranted by law, or by the evidence. There was no such legal presumption, as they relied upon, that the inamdar had not the kudivaram interest in his lands: that question was now concluded by the case decided by the Board in 1918, *Suryanarayana* v. *Patanna*(2). The respondents had not proved that Billapadu is a village of which the land revenue alone had been granted on inam to a person not owning the kudivaram thereof. If the kudivaram was not included in the grant it was acquired by the inamdar when the tenancies were surrendered in 1904. It was shown by the admitted facts that the grantee took an absolute proprietorship in the lands. The respondent had no rights in them apart from the leases in which their respective tenancies originated and which have expired. The case comes within the exception to section 8 of the Act. Reference was made to *Ponnusamy Padayachi* v. *Karuppadaya*(3); Madras Regulation XXXI of 1802; and Wilson's Glossary, 'inam', 'agraharam' and 'mauza'. The respondents had established by evidence no fact which excluded the jurisdiction of the Civil Courts to try the suits.

The JUDGMENT of their Lordships was delivered by

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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

(1) (1915) I.L.R., 38 Mad., 891. (2) (1918) I.L.R., 41 Mad., 1012 (P.C.)
(3) (1915) I.L.R., 38 Mad., 843.

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he set aside the decision of the Munsif of Gudivāda 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 Gudivāda 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 recognized 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 jeroyaty 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 the 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 recognized by the British Government, or any separated part of such village."

The term 'kudivaram' is not defined in the Act; but in *Suryanaruyana* v. *Patanna*(1) 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 Brahman, is *prima 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*(1) 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 zamindars 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, etc. So you shall cultivate

(1) (1918) I.L.R., 41 Mad., 1012 (P.C.); s.c. L.R., 45 I.A., 209.

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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, Esq., the Collector, by officials of the district, dated 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 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 *agraharamdar*, 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.

Appeal allowed.

Solicitor for the appellant: *Douglas Grant.*

J.V.W.