

APPELLATE CIVIL

Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

1920,
October, 22.

ELVARANTI VENKATAPPA CHARYULU AND THREE
OTHERS (PLAINTIFFS), APPELLANTS,

v.

TIRUMALA REDDI ROYAPA REDDI AND OTHERS
(DEFENDANTS), RESPONDENTS.*

Absolute Inam—Confirmation of inam to endure for two lives by Government—Lands in occupation of tenants since 1818—Resumption of inam and grant of ryotwari patta by Government—Grant of ryotwari patta, whether affects tenants' occupancy rights.

The resumption of an absolute inam by the Government and the grant by them of a ryotwari patta do not put an end to the occupancy rights owned or acquired by the tenants in the land.

SECOND APPEAL against the decree of S. VENKATA SUBBA RAO, Additional Temporary Subordinate Judge of Guntūr, in Appeal Suit No. 152 of 1915, preferred against the decree of the District Munsif of Narasaraopet, in Original Suit No. 603 of 1913.

The material facts are set out in the judgment.

P. Narayanamurti and *B. Somayya* for appellants.

V. Ramadoss for respondents.

The Court delivered the following JUDGMENT :

The Subordinate Judge has discussed the evidence at some length and in arriving at a finding he has allowed himself, not unnaturally, to be influenced by the decisions of this Court laying down that the presumption in inam grants is that it is the melvaram alone that is granted. The decisions he refers to have since been overruled by the Judicial Committee, vide *Suryanarayana v. Patanna*(1) and *Upadrastha Venkata Sastrulu v. Divi Seetharamudu*(2). We are therefore unable to accept his finding. We must ask the Subordinate Judge to return a fresh finding on issues 3 and 4, in the light of the observations contained in

* Second Appeal No. 208 of 1919.

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

(2) (1920) I.L.R., 48 Mad., 116 (P.O.) ; L.R., 46 I.A., 123.

the judgments of the Judicial Committee. No fresh evidence will be taken. Finding is to be submitted within six weeks and seven days will be allowed for filing objections.

[In compliance with the above order the Subordinate Judge submitted findings to the effect that the plaintiffs had not proved their right to eject the defendants from the suit lands and that defendants had established their occupancy rights in the lands.]

This Second Appeal coming on for final hearing the Court delivered the following JUDGMENT:

We accept the finding. In effect it comes to this, the inam was granted before 1800 by a zamindar; it was a perpetual grant: whether there were tenants on the land at the time of the grant is not clear; but that there can hardly be any doubt that as early as 1818 the land was in the occupancy of tenants, and from 1853 of the present defendants.

Further, on the facts stated by the Subordinate Judge and on his conclusions, we draw the inference that before the Inam Commissioner issued Exhibit F in 1860, the tenants had acquired a right of occupancy. The Subordinate Judge holds that they continued to enjoy the right down to the year 1912 when the Government granted a ryotwari patta to the plaintiff in respect of the land. It should be stated that in Exhibit F, issued by the Inam Commissioner, there was a clause to this effect:

“This inam is tax-free, and confirmed for two lives only, but it is not otherwise transferable; and on the expiration of the limited term above mentioned it will lapse to the estate.”

On the expiry of the two lives without direct lineal descendants, the Government issued the ryotwari patta in favour of the plaintiff who was the nearest reversioner to the last male holder; we are clear that the plaintiff should not be regarded as a stranger. The grant to him has the same effect as if it were made to the last male holder.

Now the question is whether the plaintiff is entitled to eject the defendants. The argument strongly pressed before us related to the effect of the grant of the ryotwari patta by Government. Reliance was placed on the judgment of SADASIVA AYYAR, J., in *Subramania Aiyar v. Onnappa Koundan*(1) for the proposition

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that the grant of the ryotwari patta put an end to the occupancy right of the defendant. Before examining the case cited, we shall consider the principle underlying this proposition.

There can be no doubt that the right which an occupancy ryot has is an interest in property. If that is so, ordinarily that right cannot be put an end to by a person holding a co-ordinate interest in that property or by those who acquire or resume such right. Neither the person to whom the rights of the landlord pass, nor the person who acquires the tenant's right can voluntarily terminate the right of the other, nor can the fact that the Government standing in the shoes of the landlord purported to grant a ryotwari patta make any difference. What the Government resumed and could have resumed is only the right of the inamdar. They had given him the option in 1860 to convert the inam into a freehold. In case he failed to exercise the option, they promised, as a matter of grace, to continue the inam for two more lives. Neither the act of resumption, nor the promise to continue the inam for two lives, affect in any way the rights of the tenants. The Government never purported to resume that right. By Act VIII of 1868, the Government removed the misconception which was widely entertained that the grant of an inam patta by the Government affected the rights of tenants or of third parties. That declaration of policy is equally applicable to the present case and is in accordance with the first principles of jurisprudence. In exercising the rights of resumption as against part-owner of a land, the resumer cannot interfere with the rights of the other part-owner. In continuing as a matter of grace the inam for two more lives and in subsequently resuming the inam, the Government could not and did not terminate or resume the rights possessed by the tenants.

Now, as regards the decision quoted, Mr. Justice SPENCER, the other learned Judge, based his conclusion on facts. SADASIYA AYYAR, J., found that the tenants were not on the land when the grant was made, but that they acquired rights of occupancy subsequently. There may be cases where the acquisition by prescription of rights of occupancy will be terminated by the resumption of the inam. For example, if the grant was for a fixed period or for a specified life or lives; then the acquisition of an adverse interest in the property may not affect the right of

the grantor who is entitled to the property on the termination of the life or at the end of the period. The intermediate acquisition of prescriptive rights could not prejudice his paramount rights. Examples of this kind are to be found in the acquisition by prescription against widows and other life estate owners. *Swaminatha Mudali v. Saravana Mudali*(1) is an illustration in point. In that case, there was a grant for 99 years. It was held that the acquisition of occupancy rights during that period did not affect the rights of the Government when it sought to resume the land at the end of the period. This case does not support the proposition for which SADASIVA AYYAR, J., quoted it. *Hattikuxur Narain Rao v. Andar Sayad Abbas Sahib*(2), another of the cases which the learned Judge relied on, proceeded on the principle that the provisions of section 116 of the Evidence Act can in certain cases be also applied conversely. We do not think that *Ammu v. Ramakishna Sastri*(3) and *Subbaraya v. Krishnappa*(4), enunciates any principle derogatory of the rights of persons against whom no resumption was in terms made or indicated. Therefore, if SADASIVA AYYAR, J., intended to lay down that in all cases of prescription, even when the owner of the property in respect of which the adverse holding takes effect is the absolute grantee of the inam, where there is a resumption of the inam by Government and the issue of a ryotwari patta, the rights of the tenants are wiped out, we are unable respectfully to accept the proposition.

Moreover, in *Seturatnam Aiyer v. Venkatachela Goundan*(5) their Lordships of the Judicial Committee held that it is possible to acquire even against a ryotwari pattadar rights of occupancy. It therefore does not necessarily follow that the Government by granting such a patta intended to put an end to the rights of tenants already existing.

We are of opinion that the fact that the plaintiff obtained from Government a ryotwari patta did not enable him to eject the defendants. In this view, the Second Appeal fails and is dismissed with costs.

K.R.

(1) (1917) 33 M.L.J., 370.

(2) (1915) 28 M.L.J., 44.

(3) (1879) I.L.R., 2 Mad., 226.

(4) (1889) I.L.R., 12 Mad., 422.

(5) (1920) I.L.R., 43 Mad., 567 (P.C.).