PRIVY COUNCIL.*

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (APPELLANT),

1920, December 16.

v.

SRINIVASA CHARIAR AND OTHERS (RESPONDENTS).

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

Inam—Shrotriyam—Construction of grant—Conveyance of minerals—Enfranchisement, effect of—Royalties on quarried stone—Madras Act VIII of 1869.

A village was granted as a shrotriyam inam in A.D. 1750 by the Nawab of the Carnatic. The grant, the terms of which appeared from a translation produced from a Government register, provided that its purpose was that the grantee having appropriated to his own use the produce of the seasons each year, might pray for the prosperity of the Empire, and that he should pay a fixed yearly sum to the Sirkar. The inam was enfranchised in 1865, there being given to the inamdars title-deeds which purported to convert the tenure into a permanent freehold upon payment of a quit-rent. After the enfranchisement the Madras Government requiring stones acquired part of the village from the shrotriyamdars under the Land Acquisition Act. In or about 1905 the Madras Government imposed and levied upon the shrotriyamdars royalties in respect of stone which they had quarried in the village.

Held (1) that upon the true construction of the grant the full right to the quarries and minerals did not pass to the grantee; (2) that the terms of the grant being in evidence neither the inam title-deeds nor the land acquisition proceedings were evidence as to its effect; (3) that having regard to Madras Act VIII of 1869, the inam title-deed could not vest in the inamdars a subject-matter not vested in them by the grant; (4) that consequently the Government was entitled to impose royalties on stone quarried in the village.

An inam grant may be no more than an assignment of revenue, and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of the case.

APPEAL from a judgment and decree of the High Court (ABDUR RAHIM, Offg. C.J., SESHAGIRI AYYAR and PHILLIPS, JJ.), dated March 7, 1916, affirming a decree of the District Judge of South Arcot (August 18, 1910) which affirmed a decree of the District Munsif of Tirukkōyilūr.

The suit was instituted in the Court of the District Munsif against the appellant by the respondents who were shrotriyamdars

* *Present*:—Lord MOULTON, Lord PHILLIMORE, Sir JOHN EDGE, Mr. AMEER ALI, and Sir LAWRENCE JENKINS.

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of the village of Kulloor. They claimed a declaration of their full rights to the rocks and hills within the village (except as to a portion acquired from them by the Madras Government in 1887), a refund of Rs. 89 paid by them for royalties levied by the Madras Government in respect of stone quarried from the village, and for other reliefs.

The respondents' title was based upon a shrotriyam grant made in 1750 by the Nawab of Carnatic to their predecessor-in-title. By their plaint, respondents further relied upon title-deeds granted by the Inam Commissioner, and upon the fact that in 1887 the Government being in need of stone had acquired part of their land under the Land Acquisition Act. They also pleaded that they had a prescriptive right, but upon that issue there were concurrent findings of fact against them.

The appellant by his written statement denied that there was any conveyance of the right of the State in regard to minerals by the original grant; he denied that there had been any recognition by the Government of an exclusive right to the minerals; he further submitted that it was not competent to the Inam Commissioner to concede to the shrotriyamdars any rights in excess of those originally granted.

Of the issues framed the two which were material to the Appeal appear from the judgment of their Lordships.

The respondents did not produce the original grant, but the appellant produced a register from the office of the Collector of South Arcot, an extract from which formed Exhibit I. This Exhibit included a translation of the parwana of A.D. 1750, stated in the extract to bear the seal of Nawab Anvur-ud-din, and to have been written at a date corresponding to A.D. 1750. The translation was as follows:—

"To the aumels present and future of the purgunna of Tricoloor, sirkar of Nesserut Ghur (Genjee). Be it known:—It has been represented to us that the entire village of Kulloor, in the purgunna aforesaid, has been established and enjoyed for a length of time by way of 'shrotrium,' for the yearly sum of 110 gory chuckrums, according to the sunnads of former princes, as a subsistence to Letchmi Narasumachary, zunardar (1) and that these sunnads have

(1) Wilson's Glossary: "Zannardar, the wearer of the characteristic thread or cord, especially a Brahman."

been lost; wherefore it is written, that the said village, provided it has been enjoyed according to the 'mamool sheedamed" shall be restored to the said zunardar, that, having appropriated to his own use the produce of the seasons, each year, he may be assiduous in offering up prayers for the lasting prosperity of the Empire, and let him pay regularly to the Sirkar the established amount of the 'shrotrium.' "

The Exhibit included a translation of a further document purporting to be of a date corresponding to A.D. 1793 by which the village was stated to have been established as a "perpetual shrotriyam," and to be thereby restored.

The Inam Register under date October 21, 1861 (Exhibit J), in the column "Description of inam" stated:

"for the personal benefit of the holders. The register of 1815 also states that the grant was made for subsistence. The terms of the parwana are 'darooje maddah maish.' (1) "

The three inam title-deeds (Exhibit A) were all dated July 22, 1865. Two of them (which referred to lands which had been alienated from the family of the original grantee) contain the following clause, inserted in consideration of an increased quit-rent:—

"The inam is confirmed to you in freehold. In other words, the land will be your own absolute property to hold or dispose of as you think proper, subject only to the payment of the abovementioned quit-rent."

The third title-deed referred to land still in the possession of the family of the grantee and contained the following passages:

"(2) This inam is subject to a jodi or quit-rent of Rs. 293-12-5 per annum and is hereditary, but it is not otherwise transferable; and in the event of the failure of lineal heirs, it will lapse to the State. (3) On your agreeing to pay an anual quit-rent of Rs. 360, three hundred and sixty, inclusive of the jodi already charged on the land as abovestated, your inam tenure will be converted into a permanent freehold; in which case the land will be your own absolute property to hold or dispose of as you think proper, subject only to the payment of the abovementioned quit-rent."

Each of the title-deeds gave the grantee the option of commuting the quit-rent at 20 years' purchase and the third title-deed

(1) I.e., "for personal subsistence."

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contained a statement that whereas the tenure had been converted into a freehold on the terms offered in clause (3) the inam was thereby confirmed to the holder "as freehold in perpetuity subject only to the payment of the annual quit-rent."

By Madras Act VIII of 1869 it was enacted that:

"nothing contained in any title-deed heretofore issued to any inamholder shall be deemed to define, limit, infringe, or destroy the rights of any description of holders or occupiers of the lands from which any inam is derived or drawn, or to affect the interests of any persons other than the inamholder named in the title-deed; and nothing contained in Madras Act IV of 1862 or in Madras Act IV of 1866 shall be deemed to confer on any inamholder any right to land which he would not otherwise possess."

The respondents or their predecessors-in-title had by the year 1903 begun to lease for money the right of quarrying. In or about the year 1905, the Government of Madras insisted on seigniorage being paid in respect of stone so quarried in accordance with their rules relating to minerals, and refused to allow quarrying without permission being obtained from Government; thereupon, the respondents on March 16, 1908, instituted the present suit.

The District Munsif passed a decree in favour of the respondents. While inclined to hold on the first issue that the original grant by implication carried with it the right to the stone-quarries and minerals in the village, he held that there was nothing in that grant to prevent the State from claiming its share of the produce of the minerals by way of revenue.

On the second issue he held that at the time of the inam settlement the demands of the State by way of revenue were fixed by agreement for all time and could not thereafter be increased, and that, as the agreement was within the powers of the Inam Commissioner, it gave the respondents freedom from further taxation by way of revenue.

An Appeal by the appellant to the District Court of South Arcot was dismissed on the ground that as Government was estopped by the inam title-deeds from denying the respondents' title to the lands in question, issues (1) and (2) must be found against the appellant.

The appellant then appealed to the High Court, but the two judges who heard the appeal differed, SPENCER, J., being of opinion

that the Appeal should be allowed, and SADASIVA AYYAR, J., being of opinion that it should be dismissed. Accordingly under section 98, sub-section (2), of the Civil Procedure Code, the Appeal stood dismissed. SPENCER, J., agreed with the District Munsif's finding on the first issue, and pointed out that, having regard to Madras Act VIII of 1869, all that the Inam Commissioner could effect by the act of enfranchisement in 1862 was to exchange the reversionary right of Government for a quit-rent and to give an indefeasible right to property, and that his action could not affect the rights of Government over minerals. SADASIVA AYYAR, J., agreed with the judgment under Appeal, holding that the inam title-deeds gave or recognized a freehold title to land which left Government no right to impose further revenue burdens on the inam estate, whether as royalty or assessment.

The appellant appealed to the full Court under clause (15) of the Letters Patent, but the Appeal was dismissed on August 7, 1916. SESHAGIRI AYYAR, J., with whose judgment ABDUR RAHIM, Offg. C.J., and PHILLIPS, J., agreed, held that the effect of the grant of 1750 was to pass to the grantee all interest that the grantor had in the soil; he was, however, of opinion that if the grant did not convey the whole interest, the enfranchisement did not enlarge the rights of the holders.

The judgments in the High Court are reported in I.L.R., 40 Mad., 268.

Dunne, K.C., and *E. B. Raikes* for the appellant.—The grant of 1750 did not convey the minerals, including stone quarries, to the grantees, or deprive the Nawab of the right to levy dues upon stone quarried there. The grant was merely of the annual produce of the soil for the subsistence of successive shrotriyamdars; it was inalienable, leaving a reversionary interest in the grantor. The minerals did not pass under the grant in the absence of express words: *Hari Narayan Singh* v. *Sriram Chakravarti*(1), *Durga Prasad Singh* v. *Braja Nath Bose*(2), *Sashi Bhushan Misra* v. *Jyoti Prasad Singh Deo*(3), *Raghunath Roy Marwari* v. *Raja of Jheria*(4). The judgment appealed from erroneously treated the inamdars as being in the

(1) (1910) L.R., 37 I.A., 136; s.c., I.L.R., 37 Calc., 723 (P.C.).
(2) (1912) L.R., 39 I.A., 133; s.c., I.L.R., 39 Calc., 696 (P.C.).
(3) (1916) L.R., 44 I.A., 46; s.c., I.L.R., 44 Calc., 585 (P.C.).
(4) (1919) L.R., 46 I.A., 158; s.c., I.L.R., 47 Calc., 95 (P.C.).

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same position as zamindars. It was assumed that zamindars have the unrestricted right to minerals in their zamindaris, but that has never been admitted by the Government. The present case depends entirely upon the construction of the grant of 1750. If the grant did not convey the minerals the inam title-deeds could not do so, having regard to Madras Act VIII of 1869. By the enfranchisement the Government merely gave up its reversionary rights in exchange for the payment of a quit-rent. The enfranchisement affected the quality of the inamdars' title in the subject-matter conveyed to them by the grant, but did not add subject-matter not previously conveyed. The acquisition of stone by the Government cannot affect the real rights of the parties. (Reference was also made to Wilson's Glossary, s.v. "shrotriyam.")

De Gruyther, K.C., and *Kenworthy Brown* for the respondents.—With regard to the ownership of the minerals the inamdars were in the same position as zamindars. They had an absolute hereditary and alienable right. The inam register shows that the inamdars were registered under section 15 of Madras Regulation XXXI of 1802; their rights were those of Lakhiraj proprietors in Bengal [Reference was made to Madras Regulation XXV of 1802, sections 8, 12; Field's Bengal Regulations, page 36, section 33; *Collector of Trichinopoly* v. *Lekkamani*(1).] The grant was not merely a grant of the royal revenue, because there was no person paying revenue; further, under such a grant there is no right to possession. The shrotriyamdars being in the position of zamindars, the four decisions of the Board referred to for the appellant show that the minerals passed to them, since the basis of those decisions is that the zamindars were entitled to the minerals. Those decisions are not authorities with regard to the construction of the grant because they were cases of leases. There was in this case a great preponderance of judicial opinion in India that the grant, carried the minerals, although according to Indian decisions there was a presumption that the grant was merely of the royal revenue; under recent decisions of the Board that presumption does not exist: *Suryanarayana* v. *Patanna*(2), *Upadrashta*

(1) (1874) L.R., 1 I.A., 282.
(2) (1918) L.R., 45 I.A., 209; s.c., I.L.R., 41 Mad., 1012 (P.C.).

Venkata Sastrulu v. *Divi Seetharamudu*(1). Even if the original grant did not vest the soil of the village in the shrotriyamdars the inam title-deeds did so. Having regard to the statute 32 and 33 Vict., c. 29, the deeds gave them a statutory title. The terms of Madras Act VIII of 1869 do not preclude the title-deeds from being construed as conveying an estate greater than that previously held. Reference was also made to *Vaman Janardan Joshi* v. *The Collector of Thana and the Conservator of Forests*(2); *Gunnaiyan* v. *Kamakchi Ayyar*(3); Board of Revenue Standing Orders, 1890, Schedule 1, Order 15; and to the Inam Commission Rules, II of 1859, rules 2, 3, 5, 12, 24, 28.

Dunne, K.C. in reply.—The decisions of the Board which have been referred to cannot be treated as authorities that zamindars have, as against the Government, the right to minerals. The Government was not a party in any of the cases. The appendix to the record in *Durga Prasad Singh* v. *Braja Nath Bose*(4) shows that the attitude of the Government then was that it did not wish to interfere, even if it had the right to the minerals; accordingly it was held to be unnecessary to join the Government as a party. The contention based upon the inamdars being registered under Madras Regulation XXXI of 1802 was not pleaded or argued below; the entries in the inam register do not show that these lands were revenue free. Reference was made to rule 5 of the Inam Commission Rules.

The JUDGMENT of their Lordships was delivered by

Sir LAWRENCE JENKINS.

Sir LAWRENCE JENKINS.—The suit out of which the present Appeal arises was brought by the shrotriyamdars of the village Kulloor in the Madras Presidency in order to establish their unfettered right to quarry stone in the lands of the village without payment of any royalty in respect thereof. Their claim has succeeded in all the Indian Courts, and the present Appeal has been preferred from an appellate decree of the Madras High Court, dated March 7, 1916, by the defendant to the suit, the Secretary of State for India in Council.

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(1) (1919) L.R., 46 I.A., 123; s.c., I.L.R., 43 Mad., 166 (P.C.).
(2) (1869) 6 Bom. H.C.R. (A.C.J.), 191. (3) (1903) I.L.R., 26 Mad., 339.
(4) (1912) L.R., 39 I.A., 133; s.c., I.L.R., 39 Calc., 696 (P.C.).

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The title alleged by the plaintiffs in their plaint is a grant about 160 years ago of the village as inam to their predecessors-in-title by the Government that existed prior to the British Government. The plaint then alleges undisputed enjoyment, an admission of their title at the time of the inam settlement of the village, the acquisition of a prescriptive right, and proceedings under the Land Acquisition Act.

On the strength of this grant, and these subsequent events, they claimed a decree "establishing the full rights of the plaintiffs, the shrotriyamdars of the said village" to the rocks and hills within its boundaries. The defendant, by his written statement did not dispute that there was a grant of the village, but he traversed the statement that there was any conveyance of the right of the State to the minerals in the village. He also contested the other matters on which the plaintiffs relied.

In these circumstances the suit came on for settlement of issues, and it was ordered that the following issues should be tried:

"(1) Was there an outright grant of Kulloor village as inam to the plaintiff's predecessors-in-title by the Government prior to the British rule as alleged, and did the grant include the right in regard to minerals also in the village? And is this grant, if true, binding on the defendant? (2) Was the exclusive right to take the minerals in the village free of taxation conferred expressly or by implication on the plaintiffs' predecessors-in-title at the time of the inam settlement; if this right had been conceded by the Inam Commissioner in excess of what had been allowed by the original grant, was it within the scope of the authority of the Inam Commissioner to have done so; if not, whether the action of the Inam Commissioner is binding on the defendant?"

There were other issues, but they need not now be considered.

The findings of the Courts on these issues, and their decrees, are in the plaintiff's favour, and in accordance with them the appellate decree of March 7, 1916, was passed.

The burden of establishing the grant is on the plaintiffs, by whom it is asserted, and it is for them to show that it contained terms apt to vest in their predecessors the quarries, and the full right to work them. Though the grant is not disputed by the defendant, when it came to proving its terms at the trial, the plaintiffs were in this difficulty, that the original

grant could not be produced by them. The defendant, however, produced a register containing an English translation of a parwana which purports to be a copy of a parwana written in 1750 (Exhibit I). Its genuineness is conceded and the document was properly admitted in evidence by the Court of first instance as evidence of the terms of the original grant. In the circumstances of this case it is the best evidence of those terms, and it is on the true construction of the terms so evidenced that the rights of the plaintiffs must depend. And in so saying their Lordships do not overlook what has been urged as to the effect of subsequent proceedings and conduct.

The document recites (1) that the entire village Kulloor had been enjoyed for a length of time by way of shrotriyam for a yearly sum; (2) that it was so enjoyed according to the sanads of former princes; (3) that it was granted as a subsistence to Letchmi Narasumachary, zannadar; and (4) that the original sanads had been lost. It then records that the village was restored to the said zannadar, and that the purpose of the restoration was that, having appropriated to his own use the produce of the seasons each year, the zannadar might be assiduous in offering up prayers for the lasting prosperity of the Empire. The obligation was then imposed on him of paying regularly to the sirkar, the established amount of the shrotriyam. It was a condition of this restoration that the village had been enjoyed according to the mamool sheedamed.

Can then the plaintiffs successfully claim that under these terms the full right to the quarries and minerals passed to them?

Their Lordships think not. The grant was of a village in inam, and the rules of English law as to real property in England can afford no guidance as to what passed. A grant of this description may be no more than an assignment of revenue, and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of each case. There is nothing here to suggest that the original grant contained words sometimes employed in Indian documents, where it is the intention that the inam grant of a village should create such an interest in land as would vest the minerals in the grantee. Nor does

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the language suggest that any further benefit to the grantee was contemplated or intended than such as might be derived from the ordinary use of the land for the purposes of cultivation. It was not a complete transfer for value of all that was in the grantor; the interest bestowed was merely something carved out of his larger interest which still remained in him as a reversion: the grantor was the ruling power, the grantee a Brahman whose assiduous prayers were engaged: a jodi was reserved and the purpose of the grant was to ensure the subsistence of the grantee by the appropriation to his use of "the produce of the seasons each year."

The interest thus created was inalienable and heritable only by lineal heirs, so that on any occasion of forfeiture or extinction of lineal heirs the grantor or someone deriving title under him would come in by virtue of the reversion which had not been transferred. It does not accord with the scheme of such a grant that any person taking under it should have the power to consume its subject-matter by quarrying operations, even if an interest in land was created.

But then it is urged that subsequent events show that the shrotriyamdars acquired in one way or another an interest in the land of the village that entitles them to work the quarries without any obligation to make any payment to the Government. In support of this argument their Lordships' attention has been drawn to many matters and in particular to the title-deeds of the "A" series of Exhibits, the extract from the inam register (Exhibit J), the regulations, acts and standing orders relating to inams and a land acquisition proceeding. Had these materials stood alone they might well have been urged as suggesting an inference that the original grant was in terms that supported the plaintiffs' claim as to what passed under it. But in the clearer light afforded by Exhibit I they lose their evidentiary value and leave the terms as shown by that Exhibit in no degree obscured. No doubt words are to be found which are in a sense appropriate to the plaintiffs' claim, but they are used in a context to which they do not belong. Thus, to speak of "freehold" in the connexion in which it appears, is merely a piece of inapt drafting, and cannot be regarded as a correct description of the plaintiffs' rights in this village.

Even in this litigation there is the same incorrect use of words used, as where the payment demanded by the Government is spoken of as assessment, whereas the demand is for a payment in the nature of royalty for the use and consumption of that which belongs to the Government. Inaccuracies of this class can in no way assist the plaintiffs.

Apart from the contention that these materials furnish evidence of the terms of the grant, it is contended that a title was thereby created in the shrotriyamdars to the quarries. But it was rightly decided by the final Appellate Bench of the High Court that the title-deed of the Inam Commissioners conferred no higher title than was originally granted. There is language in the Act of 1862 that might possibly be read as having the effect for which the plaintiffs contend, but this was corrected by Act VIII of 1869, and it is now clear that though a larger interest was created, nothing done under the Inam Commission could vest in the inamdars a subject-matter not already belonging to them.

The land acquisition proceedings do not carry matters any further, for even without any title to the quarries it may well have been thought expedient, especially in the view then held, to proceed under the Act for the purpose of acquiring such interest as the shrotriyamdars might have in the surface. And at most these proceedings can amount to no more than action taken under a misapprehension of the Government's legal rights, and this could not make the law one way or the other, nor could it affect the Government's title. As affecting the quarries none of these matters had any creative or disentitling force.

It must be conceded that expressions, which are ambiguous and to some extent compromising, are used, and the reason for this is not far to seek. The Government of Madras have not always adhered to the view they now hold. Thus in the Standing Orders (Ed. 1890), it is declared that "the State lays no claim to minerals in enfranchised inam lands." But this view was changed, and in the edition of 1907 it is laid down that "claims should be made to the State's share in all mineral produce in lands held on inam tenure" of the description there given.

Authorities dealing with the relative rights of a zamindar in Bengal and those holding by subordinate tenure from him

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were brought to their Lordships' notice, and were claimed by the appellant as conclusive in his favour. They refrain, however, from discussing them as this case turns on the true construction of the particular grant which is the foundation of the plaintiffs' claim in this suit.

Their Lordships therefore hold that this Appeal should be allowed. The ordinary consequence would be that the costs here and in the Indian Courts should be thrown on the unsuccessful respondents. But there are circumstances in this case which induce their Lordships to depart from this rule. The value of the subject-matter in litigation is far below the appealable value and it was as a matter of favour that the defendant was permitted to appeal, as this apparently was regarded as a case of general importance. Moreover, the respondents' resistance to the Government's demand was not unreasonable in view of the latter's earlier attitude in reference to minerals.

Their Lordships therefore think that there should be no order as to the costs either here or below.

Their Lordships accordingly will humbly advise His Majesty to allow this Appeal, and to dismiss the suit. There will be no order as to the costs of this Appeal or of the lower Courts, except that each side must bear its own.

Solicitor for appellant: *Solicitor, India Office.*

Solicitor for respondents: *Douglas Grant.*

A.M.T.