PRIVY COUNCIL.

SEETHAYYA AND OTHERS—APPELLANTS,

1929, February 14.

v.

SUBRAMANYA SOMAYAJULU AND ANOTHER—RESPONDENTS (AND CONNECTED APPEALS).*

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Madras Estates Land Act (1 *of* 1908), *sec.* 3 (2) (*d*)—*Indian Evidence Act* (1 *of* 1872), *ss.* 65, 90—*Shrotriyam grant—Construction of grant—Whether grant of land or revenue only—Grant by Despandyas—"Mauje"—Secondary evidence of grant—Copy more than* 30 *years old—Authentication by indorsement.*

In 1689 an agraharam village was granted as shrotriyam at six pagodas, the grant stating "as we have granted the said agraharam you should enjoy the same from son to grandson paying the shrotriyam thereon and be happy." The grant was by Despandyas, revenue officers or farmers of revenue under the paramount authority, to Brahmins, who did not reside in the village granted, but about two miles away. The village was described in the grant as a "*mauje*", a Telugu form of "*mauza*." The grant had been recognized by the British Government, and it was admitted that the grantees had not owned the *kudivaram.*

Held, that having regard to the terms of the grant and to the circumstances above stated, the grant was of the land-revenue only; consequently by the Madras Estates Land Act, 1908, section 8 (2) (*d*), the village was an estate under that Act, and suits to eject ryots could not be brought in the Civil Court.

A shrotriyam grant may grant the *kudivaram* as well as the *melvaram*: the statement to the contrary in Wilson's Glossary was based upon decisions which have since been questioned.

The word "mauje" in a Telugu document indicates a village in which there were peasant proprietors owning cultivable lands. Observation of SADASIVA AYYAR, J., in *Venkata*

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* *Present*:—Lord PHILLIMORE, Lord BLANESBURGH, Lord ATKIN, Lord SALVESEN and Sir LANCELOT SANDERSON.

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Sastrulu v. *Sitaramudu*, (1912) I.L.R., 38 Mad., 891, 892, to that effect accepted as correct.

The original grant was lost, but there was produced from the custody of respondents, successors to the grantees, a document in Telugu purporting to be a copy of the grant and of a translation of a Persian Dumbala of 1765. The document bore the following indorsement, signed by three predecessors of the respondents "Originals have been retained by us and copies have been filed, 1858."

Held, that the document was properly admitted under the Indian Evidence Act, sections 65, 96, as secondary evidence of the terms of the grant, the statement in the indorsement authenticating the copy being evidence as a statement by a deceased person in a document relating to a relevant fact, also as an admission by the respondents' predecessors.

CONSOLIDATED APPEAL (No. 47 of 1925) from orders of the High Court (April 5, 1922) in an appeal under the Letters Patent, reversing orders of a Division Bench which had affirmed orders of the Principal District Munsif of Tenali.

The respondents brought suits in the Munsif's Court to eject the appellants who were ryots from lands in the agraharam village of Arepalli. The question in the litigation was whether the village constituted an estate within the Madras Estates Land Act, 1908, in which case the Revenue Courts had exclusive jurisdiction in the suits by section 189 of the Act. It was contended by the defendants that the village was an estate within section 3, sub-section (2) (*d*), which is set out in the present judgment, and the substantial question arising was whether the inam grant to the plaintiffs' predecessors included, as they contended, the *kudivaram*, or was, as the defendants contended, merely of the *melvaram*, or land-revenue.

The original grant was lost but there was produced from the custody of certain of the plaintiffs a document (Exhibit I) which was more than thirty years old and

purported to contain a copy of the grant of 1689. This document appears in the judgment of their Lordships.

The District Munsif who first tried the suits (N. Gopalakrishna Rao) held that the Civil Court had not jurisdiction; he ordered the return of the plaints for presentation in the Revenue Court. The plaintiffs appealed to the District Court, and the appeals were transferred to the High Court, which held that the grants were presumably grants of the land, and called for revised findings on all the issues upon the evidence.

The suits then came before another District Munsif who held that Exhibit I was inadmissible in evidence, and that the village was not an estate within the Act, and found that the plaintiff was entitled to ejectment.

The appeals were then heard together by AYLING, Offg. C.J., and ODGERS, J. The former held that Exhibit I was admissible in evidence, and that upon its true construction the respondents' predecessors had acquired only the *melvaram*; he accordingly was of opinion that the Civil Courts had no jurisdiction. ODGERS, J., was of the contrary opinion upon both points. Accordingly the decision of the first Munsif returning the plaints was affirmed under section 98 of the Code of Civil Procedure.

Appeals by the defendants under section 15 of the Letters Patent were heard together by SCHWABE, C.J., OLDFIELD, J. and COUTTS TROTTER, J. and were allowed. The learned Judges held that Exhibit I was admissible in evidence, but that it was equally consistent with the grant having been of the land-revenue or of the land itself; that therefore, under the decision of the Full Bench in *Muthu Goundan* v. *Perumal Iyen*(1), (which was

(1) (1920) I.L.R., 44 Mad., 588.

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subsequently disapproved by the Privy Council in *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*(1), the grant was to be presumed to have been of both varams; and that the evidence did not negative that presumption. The suits were accordingly remanded to be disposed of. The Letters Patent appeal is reported in *Somayajulu* v. *Seethayya*(2).

DeGruyther, K. C. and *Parikh* for the appellants.

Dunne, K. C. and *Narasimham* for the respondents.

Upon the admissibility of Exhibit I in evidence, reference was made to the Indian Evidence Act, 1872, sections 32, sub-sections (7), (63), (65), (90), (114); and upon the construction and effect of the grant to *Suryanarayana* v. *Patanna*(3), *Venkata Sastrula* v. *Seetharamudu*(4), *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*(1), also to *Venkatanarasimha Naidu* v. *Dandamudi Kotayya*(5), as to the relation between zamindars and ryots in pre-British days; to *Venkata Sastrulu* v. *Sitaramudu*(6), and to Wilson's Glossary, section 5 "mauza," as to "mauje", to Fifth Report, Madras, Vol. 2, p. 157, and Wilson's Glossary as to Despandyas; and to Baden-Powell's Land Systems of British India, Vol. 3, p. 134, as to sanads given by the Moghul to zamindars.

The JUDGMENT of their Lordships was delivered by

LORD ATKIN.

Lord ATKIN.—This is a consolidated appeal from the judgment of the High Court at Madras given in eleven suits of ejectment brought by the respondents against the respective appellants. Seven out of the eleven suits were instituted in 1913, and the only question

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(1) (1922) I.L.R., 45 Mad., 586; L.R., 49 I.A., 286.
(2) (1922) I.L.R., 46 Mad., 92.
(3) (1918) I.L.R., 41 Mad., 1012; L.R., 45 I.A., 209.
(4) (1919) I.L.R., 43 Mad., 166; L.R., 46 I.A., 123.
(5) (1897) I.L.R., 20 Mad., 299. (6) (1912) I.L.R., 38 Mad., 891, 892.

so far decided and the only question before the Board is whether the Civil Court in which the actions were brought had jurisdiction and not, as the appellants contend, the Revenue Courts. The determination of this question has required recourse on seven different occasions to the Courts and has occupied nine years in Madras. The case has taken six years more to reach the Board. Their Lordships deplore this delay, which was obviously much greater than was necessary, and reaches the borders of a scandal. They do not, however, propose to recapitulate the various stages in which the case toiled to and fro between the lower Courts and the High Court, or to apportion blame; but will address themselves at once to the question of jurisdiction. This question arises under the Madras Estates Land Act, 1908. By section 189 of this Act exclusive jurisdiction is given to the Revenue Courts to entertain all suits set out in Schedule A, which includes a suit to eject a *ryot*. This, by reference to section 6, involves the question whether the *ryot* holds land in the "estate" of a landholder, and we are thus brought to the definition of "estate", which by section 3 (*d*) means "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 or recognized by the British Government or any separated part of such village." The present respondents' claim under an *inam* grant made "about 250 years ago." The grant has been recognized by the British Government. In the course of these proceedings the respondents have admitted that they did not own the *kudivaram* before the grant, and that they did not acquire the *kudivaram* independently of and after the grant. The question of jurisdiction therefore depends upon whether the *inam*

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grant was of the "land revenue alone"; whether it granted the *melvaram* alone or also the *kudivaram*, *i.e.*, the land revenue alone or also the cultivator's share of the produce.

The principal question in the case is whether the terms of the original grant were proved, and, if so, what is the proper construction to be put upon them. The respondents' case was that the original grant was lost: its express terms were not proved; and that the proper inference from all the facts, including acts of ownership by themselves and their predecessors, was that under the grant they received the *kudivaram*. The appellants, on the other hand, said that the respondents had disclosed a copy of the original grant which the appellants tendered in evidence. They contended that the document in sufficiently plain terms gave the *melvaram* only. The respondents, while denying the admissibility of the copy, said that the grant on its true construction gave the *kudivaram* as well as the *melvaram*, or at any rate was so ambiguous as to admit extrinsic evidence leading to the same result.

The document tendered was a Telugu document purporting to be a copy of two documents. The first was a document making a grant of the village in question to the predecessor of the plaintiffs for 6 pagodas, setting out the boundaries and signed by the grantors. The second was a Telugu translation of a Persian Dumbala, dated 1765 A.D., increasing the revenue to be paid by the holders from 6 to 25 pagodas. The document contains the endorsement "originals have been retained with us and copies have been filed, 1858," signed by the then predecessors of the respondents, one of whom Ponnapalli China Ramaswami was a plaintiff to some of the original suits now before the Board, but died at an

advanced age during the proceedings. Their Lordships agree with the learned CHIEF JUSTICE and his colleagues in the High Court that the document was admissible as evidence of the terms of the lost original. The document is over 30 years old and is produced from proper custody. By section 90 of the Evidence Act of 1872 the Court may therefore presume the signatures authenticating the copy to be genuine. The statement to which the signatures are appended, viz., that the document is a copy of the original, appears to be evidence both for the reason given by the CHIEF JUSTICE, *i.e.*, as a statement made by a deceased person in a document relating to a relevant fact, and also as an admission made by a party and a predecessor-in-title of the parties.

The document, being admissible, is secondary evidence of the terms of the original grant. The Court therefore must proceed upon the footing that the express terms of the original written grant are before it, and must proceed to construe them. Some confusion has been introduced into the case by conflicting decisions as to presumptions to be made in construing such a grant. The original District Munsif held that there was a presumption that such a grant did not give the *kudivaram*.

The High Court, relying on a decision of a full Bench of the Court in *Muthu Goundan* v. *Perumal Iyen*(1) took the view that the presumption was that both the *melvaram* and *kudivaram* are included. It is, however, made clear by the subsequent decision of this Board in *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*(2) that there is no presumption either way, and

(1) (1920) I.L.R., 44 Mad., 588.
(2) (1922) I.L.R., 45 Mad., 586, 607; L.R., 49 I.A., 286, 303.

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that each case must be decided on its own circumstances. The document is in the following terms :—

Deed of gift executed and given on the 15th day of Adhika Chaitra Suddam of the year Parabhava, corresponding to 1610 of the Era of Salivahana, in favour of Ponnapalli Annappa Garu, who is eager in performing the six acts, viz.: Yagna, Yajana, Adhyayana, Adhyapaka, Dana and Pratigraha, by Puligadda Mallaparaju, Lakaraju Perraju, and Mazumdar Papanna, Rajas of Komaravole, and residents of Nizampatam.

As we have granted to you the shrotriyam of Arepalli *agraharam* village, Nizampatam *taluk*, in the name of Siva on the occasion of the lunar eclipse, for 6 pagodas, you shall enjoy the same accordingly from son to grandson and shall live happily.

(The usual Sanskrit *sloka* omitted.)

Signatures of the Rajas :—

(Signed) Mallaparaju.

(Signed) Perraju

(illegible).

Memorandum of the description of the boundaries for the *agraharam* executed and given on the 9th day of Chaitra Bahulam of the year Parabhava corresponding to 1610 of the Era of Salivahana in favour of Ponnapalli Annappa Garu who is eager in performing the six acts, viz.: Yagna, Yajana, Adhyayana, Adhyapaka, Dana and Pratigraha, by Puligadda Mallaparaju, Lakaraju Perraju, Mazumdaru Papanna Garu, Rajas of Komaravole, residents of Nizampatam.

As we have granted to you Arepalli *agraharam* attached to Nizampatam, fixing a shrotriyam of 6 pagodas thereon, particulars of the boundaries which have been shown in respect thereof are as follows :—

North-west.—Cherukumilli Pronnapalli village boundary lying to the north of the Kudali (meeting place) of Cherukumilli and Arumbaka—Patugattu roughly.

North-east.—The village boundary of Nadimpalli and Rajavole.

East.—From the village boundary of the aforesaid Rajavole roughly through the middle portion and through the channel

forming the village boundary of Dhulipudi, roughly Bagirevugunta.

South-east.—The Kudali (meeting place) of Nagaram and Dhulipudi.

South.—To the south of Chavutavalu, roughly Turukalaguntalu through the middle of Chittupaggala Katta and on the southern side of Vadanadum and through the middle of Peddaputtalu, the Kudali of Balusulapalem and Pudivada roughly.

South-west.—Jammulagunta boundary through the middle portion of Nallavada.

West.—Arumbaka through the *patu gattu* of the said village and through the middle of the *vada* and through Kudali and through Chavata Dibbalu and through Daggulamadugu roughly.

As we have granted to you the said *agraharam*, you should enjoy the same from son to grandson paying the shrotriyam thereon and be happy.

(The usual Sanskrit *sloka* omitted.)

Signatures of Rajas :—

(Signed) Mallaparaju.
(Signed) Papanna
(illegible).

A copy of the Telugu translation written on the right-hand side of the Dumbala written in the Persian language :—

Having fixed a shrotriyam of 25 pagodas (twenty-five pagodas) as fixed rent for next fasli 1172 in respect of *maluva* and *motarfa, libabu* and tobacco of Arepalli village, *sircar* Nizampatam, a cowle has been given by Nageshwara Dikshitulu, Somanna, Subbanna, Somayajulu and others (illegible) referred to in cowle for the coming fasli 1172. Without allowing it to remain (illegible), rich *ryots* should be permanently selected to (illegible) satisfaction and cultivation should be carried on extensively and the produce should be tendered to the *sircar* in season.

30th Mahazulahali 1175.
Hizra.

Originals have been retained with us and copies have been filed. 1858 (torn).

(Signed) Ponnapalli China Ramaswami.
(Signed) Ponnapalli Suryanarayana Somayajulu.
(Signed) Lakshmipathi.

A copy of the Dumbala, a rough sketch of the village and a copy of the *kyfiat* of the villagers have been filed.

The learned Principal District Munsif of Tenali, who decided that he had no jurisdiction, delivered a careful and able judgment with which, on the point of construction, their Lordships, except on the question of presumption, find themselves substantially in accord. He relied on four main points :—

1. The grant purports to be a grant "of Shrotriyam" or "as Shrotriyam." Shrotriyam, according to Wilson's Glossary, means "a grant of lands or a village held at favourable rate, properly an assignment of land or revenue to a Brahmin learned in the *Vedas*, but latterly applied to similar assignments to native servants of Government, Civil or Military, and both Hindus and Muhammadans, as a reward for past services. A shrotriyam grant gives no right over the lands and the grantee cannot interfere with the occupants as long as they pay the established rents." If the above definition were accepted in its full terms, the case would be concluded in favour of the appellants. But the learned CHIEF JUSTICE in his judgment points out reasons for supposing that Mr. Wilson in the last sentence was purporting to give the effect of legal decisions which since his time have been questioned, and their Lordships are not prepared to differ from the view that a shrotriyam grant may in fact grant the *kudivaram* as well as the *melvaram*. But in this case the document itself in the final recital uses the term again. "As we have granted to you the said *agraharam*, you should enjoy the same from son to

grandson, paying the shrotriyam thereon and be happy." In this phrase the term can only mean revenue, and though their Lordships could not consider this consideration in itself conclusive, it points to the construction contended for by the appellants. It is not without significance, though it is later than the document under construction, that the same use of the term is found in the translation of the Persian order "having fixed a shrotriyam of 25 pagodas, etc."

2. The grant was of a *mouje*. Their Lordships accept the view expressed by SADASIVA AYYAR, J., in *Venkata Sastrulu* v. *Sitharamudu*(1) that the phrase indicates "a village in which there were peasant proprietors owning cultivable lands even then." Probably no more weight should be attached to this than may be borne by the circumstance that the village granted was presumably a revenue producing village, some of the lands of which were already occupied. Their Lordships cannot accept the view favoured by the CHIEF JUSTICE that the word in the particular context merely means a defined place.

3. It is agreed that the grantors were *Despandyas* who were revenue officers or farmers of revenue under the paramount authority. It is pointed out that this fact does not exclude the possibility of the grantors being themselves personally possessed of the land, *i.e*, of the *kudivaram* rights. This no doubt is so, but the strong probability is that they granted that which in their position as *Despandyas* they would possess, viz., the rights over the revenue.

4. The Brahmans represented by the grantee were learned Brahmans apparently not resident in the village

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(1) (1912) I.L.R., 38 Mad., 891.

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granted, but resident about two miles away. This circumstance by itself is by no means conclusive. At the same time it appears to their Lordships to make it more probable that the grant was in the nature of an endowment of revenue rather than of land for the purposes of cultivation.

The learned CHIEF JUSTICE deals with each of those points separately, and as to each of them finds the point inconclusive, and apart from the presumption upon which he relies, finds the document equally consistent with a grant of both *varams* as of the *melvaram* only. In their Lordships' opinion this is to ignore the weight which is obtained from the effect of the whole. Taking into account all the considerations mentioned, their Lordships are of opinion that they lead strongly to the conclusion that the grant was of the *melvaram* only, and they so construe the document.

In view of the admissions made for the purposes of these cases that the respondents did not acquire the *kudivaram* subsequently to the grant, it becomes unnecessary to consider the subsequent acts of the parties, and the inferences to be drawn from them. The document is unambiguous and the rights given by it must be determined by its words. It follows that the decree of the High Court on the Letters Patent Appeal, dated the 5th April 1922, must be set aside, and the decree of the High Court, dated the 19th October 1921, be restored. The appellants should have their costs of the Letters Patent Appeal and before this Board. Their Lordships will humbly advise His Majesty accordingly.

Solicitor for appellants : *H.S.L. Polak.*

Solicitors for respondents : *Douglas Grant* and *Dold.*

A.M.T.