

PRIVY COUNCIL.

MAHARAJA OF JEYPORE, SINCE DECEASED (PLAINTIFF),
APPELLANT,

J.C.
1934.
March 20.

v.

RAJA LAKSHMINARASIMHA, SINCE DECEASED,
AND OTHERS (DEPENDANTS), RESPONDENTS.*

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Land Revenue—Transfer of portion of zamindari—Separate registration and apportionment of peishcush—Holders of transferred mokhasa and agraharam villages—Madras Land Revenue Assessment Act (I of 1876).

Upon an application under the Madras Land Revenue Assessment Act (I of 1876) for separate registration and apportionment of the peishcush in respect of a portion of a permanently-settled estate transferred to the applicant, the holders of transferred mokhasa and agraharam villages cannot object; so far as they are concerned the transfer is only the substitution of one zamindar for another, and in no way affects their rights. The presumption is that the villages are the property of the zamindar, but if the holders are in a position to rebut that presumption and wish to obtain separate registration, thereby making themselves directly liable for a portion of the peishcush, their right to do so will not be affected by the order applied for.

Decree of the High Court modified upon a compromise, made after appeal, by the appellant and respondent No. 1.

APPEAL (No. 22 of 1927) from a decree of the High Court (26th March 1923) affirming a decree of the Subordinate Judge of Vizagapatam (23rd July 1917).

The suit giving rise to the appeal was instituted by the appellant's father, since deceased, claiming under Madras Act I of 1876 separate registration and apportionment of the peishcush

* Present: Lord BLANESBURGH, Lord SALVESEN and Sir JOHN WALLIS.

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in respect of villages, part of the zamindari of Pachipenta, which the plaintiff had bought at a sale by the Court of the Agency Tracts in execution of a decree of the District Court made upon a mortgage of the zamindari. The zamindar and his two minor sons were defendants, also the holders of various mokhasa and agraaharam villages in the zamindari.

The High Court (SPENCER and DEVADOSS JJ.) dismissed the suit on the ground that the villages in suit were found to be situate in the jurisdiction of the Civil Court, and that therefore the Agency Court had no jurisdiction to sell them.

Pending the hearing of his appeal to the Privy Council the appellant entered into a compromise with the former zamindar, on behalf of himself and his two minor sons, whereby, *inter alia*, they formally transferred the suit villages to the appellant.

The facts appear more fully from the judgment of the Judicial Committee.

Upjohn K.C., Parikh and Subba Row for appellant.

Narasimham for respondents Nos. 2 to 11, 13 to 19 and 22 to 24.

Sidney Smith for respondent No. 21.

The former zamindar and his sons were not represented.

[Reference was made to *Vencataswara Yettiapah Naicker v. Alagoo Mootoo Servagaren*(1), *Ramabhadra Raju Bahadur v. Maharaja of Jey-pore*(2), *Nilkanth Balwant v. Vidya Narasinh*(3),

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

(2) (1919) I.L.R. 42 Mad. 813; L.R. 46 I.A. 151.

(3) (1930) I.L.R. 54 Bom. 495; L.R. 57 I.A. 194.

Code of Civil Procedure, 1908, section 1, sub-section 3, and Scheduled Districts Act, 1874.]

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The JUDGMENT of their Lordships was delivered by SIR JOHN WALLIS.—By a well-advised compromise made between the appellant, the Maharaja of Jeypore, a zamindar in the Madras Presidency, and the principal respondents, the Zamindar of Pachipenta and his two minor sons, and ordered to be recorded by an Order of His Majesty in Council of the 10th November 1932, the Maharaja has succeeded in perfecting his title to the greater part of the Pachipenta zamindari, which his father had purchased at a court sale held in execution of a mortgage decree obtained by the late Maharaja of Bobbili against the Zamindar of Pachipenta on the 14th April 1903, in Original Suit No. 1 of 1903 in the Court of the District Judge of Vizagapatam. Part only of the Pachipenta zamindari was within the jurisdiction of the District Court, the rest of the zamindari being situated in Hill or Agency Tracts of this District which, under a Governor-General's Act of 1839, were withdrawn from the jurisdiction of the Civil Courts owing to their disturbed and backward condition and are still administered by the Collector as Governor's Agent and his subordinates who discharge both judicial and executive duties. In the present case, the fact that part of the mortgaged property was situated within the jurisdiction of the District Judge was apparently deemed sufficient to give him jurisdiction as to the whole of the property in suit, and he made the usual decree for sale. After selling in execution of the decree four villages which were within his jurisdiction, the District Judge,

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purporting to act under the provisions of the Code of Civil Procedure, transferred the decree for further execution to the Court of the Agent of the Governor at Vizagapatam. The Agent's Court then proceeded to sell the rest of the zamindari, including certain villages which were within the jurisdiction of the District Judge. The Maharaja of Jeypore became the purchaser, and the sale to him was confirmed as appears from the certificate of sale on 2nd May 1908.

The purchaser's troubles then began. An objection that the villages did not include certain hamlets was decided in his favour on 21st March 1912 by the Madras High Court on a reference made to it under the Agency Rules.

The Maharaja then, on 21st August 1913, applied, under Madras Act I of 1876, to the Collector of Vizagapatam for registration in his name of the properties purchased by him in the register of the permanent settlement holders, and the apportionment of the peishcush, or permanently settled revenue due thereon. This order was necessary to make him the registered proprietor, and secure a reduction of the peishcush. On 10th May 1915, the Collector made the order as to sixty-nine jeroyati villages or villages in the purchaser's possession, but held that as regards the mokhasa and agrapharam villages he had only purchased a right to collect the kattubadi or quit-rents issuing out of such villages and had not become their owner, so as to be entitled to separate registration under Act I of 1876. On 17th June 1915, the Collector refused to review this order, and referred the Maharaja to a separate suit.

As some of the villages in question were in the jurisdiction of the District Court and some in the jurisdiction of the Agent's Court, the Maharaja proceeded to file suits for separate registration in both Courts. In the Court of the Agent, the Special Assistant Agent, Mr. A. C. Duff, I.C.S., held that by the purchase at the court sale the auction purchaser had acquired the ownership of these villages and not merely the right to collect kattubadi or quit-rent, and ordered separate registration as to the villages in the Agency Tracts.

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In the suit in the Civil Court, which is the subject of this appeal, the Subordinate Judge took the other view, and held that the auction purchaser had only acquired the right to collect the kattubadi arising out of the villages, and was not entitled to separate registration under Madras Act I of 1876. He accordingly dismissed the suit.

The High Court on appeal framed an additional issue as to how many of the mokhasa and agraharam villages included in the sale held by the Agent's Court were within the jurisdiction of the Civil Court. Being satisfied on the finding that the villages which are the subject of this suit were within that jurisdiction, they held, following the decision of the Board in *Rama-bhadra Raju Bahadur v. Maharaja of Jeypore*(1), that the Agency Court had no jurisdiction to sell them and that no title had passed to the auction purchaser, and dismissed this suit for separate registration on that ground.

It is unnecessary to consider these questions, because the compromise which has been entered into between the appellants, as representative of

(1) (1919) I.L.R. 42 Mad. 813; L.R. 46 I.A. 151.

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the auction purchaser, and respondents 1 to 3, the Zamindar of Pachipenta and his two sons, affirms the title acquired by the purchaser to the properties included in schedule A of the compromise, and that title being now in the plaintiff, he is entitled to separate registration of such properties under Madras Act I of 1876.

The objection taken by some of the respondents, who are the owners of mokhasa villages in the zamindari, that they are entitled to object to the separate registration of the villages as they were not parties to the compromise is, in their Lordships' opinion, based on a misconception. The effect of the permanent settlement of the land revenue made with the predecessor of the Zamindar of Pachipenta pursuant to Madras Regulation XXV of 1802 was that he was recognized by the Government as the proprietor of that zamindari for the purposes of that Regulation, and that, as such, he engaged with the Government for the payment of the permanently-settled land revenue of the lands included in the zamindari. Under section 8 of the Regulation, he has full powers of transfer but is not relieved from his obligation to pay the full land revenue or peishcush until the transfer has been registered and the peishcush duly apportioned; and by Madras Act I of 1876 either alienor or alienee may apply for separate registration of any portion of a permanently-settled estate which has been transferred and for its separate assessment to peishcush.

In their Lordships' opinion the holders of mokhasa or agraharam villages in the zamindari have no right to object to the transfer by a zamindar of the whole or part of his zamindari,

or to the separate registration and apportionment which is necessary to give full effect to it. So far as they are concerned, it is a mere substitution of one zamindar for another, and in no way affects their rights. It is well settled that these villages, being situated in the zamindari, are presumably the property of the zamindar, but if the holders are in a position to rebut this presumption and should desire to obtain separate registration and thereby make themselves directly liable for a portion of the Government peishcush, their right to do so will not be affected by this case.

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Their Lordships therefore, giving effect to the compromise which has been reached, are of opinion that the decree of the lower Court should be modified by giving the plaintiff a declaration of his right to separate registration and apportionment of peishcush in respect of the properties comprised in paragraphs 1 to 5 of the compromise, and by setting aside, pursuant to the compromise, the orders as to costs made in the Courts below in favour of the first defendant and his representative. As regards the costs of this appeal, the justice of the case will be met if the respondents who have filed cases and appeared by Counsel have one set of costs between them. Their Lordships will humbly advise His Majesty accordingly.

Solicitors for appellant: *Hy. S. L. Polak & Co.*

Solicitors for respondents : *Harold Shephard ;
T. L. Wilson & Co.*

A.M.T.
