APPELLATE JURISDICTION. (*a*)

Regular Appeal No. 19 *of* 1862.

ALAGAIYA TIRUCHITTAMBALÁ .....*Appellant.*

SÁMINÁDA PILLAI and others.....*Respondents.*

The mirásidár is the real proprietor of mirási land, but ryots may be entitled to the perpetual occupancy of mirási land, subject to the payment of the mirásidar's share, but such tenure generally depends upon long established usage and must be proved by satisfactory evidence.

Where the words of an agreement are plain and unambignous, they should not be explained away by extrinsic evidence, and still less by mere reasoning from probabilities.

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THIS was an appeal from the decision of G.T. Beauchamp, the Civil Judge of Tanjore, in Original Suit No. 5 of 1859. This suit was brought by the plaintiff as dharmakarttá of the Cri Panjanadicvarasvámi pagoda at Tiruvadi to recover two-thirds of certain lákhiráj lands called Parittikudi and Karuppur in the ta'aluk of Tiruvadi with svámibogam and produce from the defendants, by virtue of an agreement in Tamil made in April 1831 between them and the Government then in charge of the pagoda property. The following translation of the agreement (marked A) was filed in the Civil Court.

"Taram muchalká (agreement) executed in April 1831, to the Honourable Company's sarkár, by us Subba Pillai, Kuttaiya Muppan, Motte Muttu Muppan, Pachaiya Muppan, Sevaga Karappa Muppan and Ellaiya Peruma Muppan, 6 in all, the ulavadi kánikkudi (ryots entitled to cultivation) of the sarvamániyam villages Parittikudi and Karuppur, attached to the pagoda of Cri Panjanadicvara Svámi, a Tiruvadi in the ta'aluk of Tiruvadi, with our consent to the taram paisal (settlement) about the said villages.

"The following are the nanjey arable lands of the said villages, according to the survey in fasli 1238. Parittikkudi consists of 5 velis, 18 maus and $23\frac{1}{4}$ gulies of nanjey one-crop lands, and 6 velis, 1 mau and $34\frac{3}{8}$ gulies of two-crops lands, in all 12 velis, 8 maus and $57\frac{5}{8}$ gulies. Karuppur consists of 5 velis, 18 maus and $31\frac{1}{8}$ gulies of nanjey one-crop lands, and 1 veli, 1 mau and $71\frac{3}{16}$ gulies of two-crops lands, in all 7

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velis, and $4\frac{5}{16}$ gulies of lands. In all, the two villages consist of 19 velis, 8 maus and $61\frac{15}{16}$ gulies of nanjey one-crop and two-crop lands. The punjey lands of Parittikkudi are 14 maus, and $48\frac{31}{32}$ gulies, and those of Karuppur are 3 maus and $84\frac{17}{64}$ gulies, amounting in all to 18 maus and $33\frac{15}{64}$ gulies. Total nanjey and punjey lands are 20 velis, 6 maus and $95\frac{1}{64}$ gulies. The "kával varumánam" (watching-fee) payable thereon to the sarkár is Rupees 29-3-4½ for Parittikkudi, and Rupees 16-4-1$\frac{5}{16}$ for Karuppur, amounting in all to Rupees 45-7-5$\frac{13}{17}$ for both the villages. We shall pay the said amount to the sarkár; and exclusive of the ryot's share, svatantram (prequisites), &c., we shall from fasli 1240 continue paying for ever to the said pagoda an annual svámibogam (rent) of 750 pons, being the value (at 3½ panams per kalam, the jamábandi price of the said mágánam) of 1,535 kalams of paddy for Parittikkudi, and 865 kalams for Karuppur, in all 2,400 kalams of paddy for both the villages and also for the punjey lands, 11 pons and 9 panams for Parittikkudi, and 3 pons and 1 panam for Karuppur, in all 15 pons for the punjey lands, making a total of 765 pons or Rupees 1,190-0-0, for the nanjey and punjey lands. We shall pay the sarkár kával varumánam (watching-fee), according to the terms fixed for the same. The following are the terms for the payment of the svámibogam (rent) to the pagoda, *viz.*, Rupees 66-15-4 on the 5th November; Rupees 133-14-8 on the 5th December; Rupees 133-14-8 on the 5th January; Rupees 85-8-0 on the 5th February; Rupees 171-0-0 on the 5th March; Rupees 256-8-0 on the 5th April; Rupees 213-15-6 on the 5th May; and Rupees 128-3-10 on the 5th June; in all 8 terms for the payment of the svámibogam (rent), Rupees 1,190-0-0 to the pagoda. As we have thus agreed, we shall, so long as the said villages are in our possession, pay the sarkár kával varumánam (watching-fee) according to the terms fixed for the same, and the svámibogam (rent) to the pagoda according to the foresaid terms, the portion for the kadappu and kar lands within the end of January, and the other portion for the sambá and pisánam within the end of June, and obtain receipts for the same. If in default thereof, there should be any arrears, they may be realized by attaching and selling at auction a proportionate portion of our estates. If garden-crops, such as betel, plantain-trees, sugar-cane, tobacco, onions, garlicks, &c., should be cultivated

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in the nanjey or punjey lands of the said villages, in any year by means of irrigation, we shall submit to the sarkár a true account of the same for the year in which such cultivation may be held, and pay the revenue proportionate thereto. If we should cultivate any of the waste-lands of the said villages, we shall pay the revenue of those lands for the year in which they may be so cultivated. As to the supply of servants for the repair of the said villages, we shall act according to the customs that prevailed hitherto ; and we shall ourselves conduct the kudimarammattu (repairs by ryots), &c., necessary for the said villages. As to the supply of servants to bear the "edupadi sámán" (things in frequent use) during the daily and annual festivals, and those called Panchaparvam of the said pagoda,we shall carefully and without delay supply the servants, &c., as usual. If any loss should arise in any year in consequence of inundation or draught caused by Divine agency, the sarkár should inspect the same and make a reasonable remission as usual. If we should cultivate any táladi lands of the said villages in addition to those mentioned in this muchalká (agreement), we shall pay the táladi revenue proportionate to those lands. Thus is this taram muchalká (agreement) executed with our free will and consent to act up to the above terms. The svámibogam (rent) having been settled at 2,825 kalams of paddy according to the taram (sort), (we) the ryots contended, that the said amount could not be realized, and that we would not agree to the same; and thereupon it has been settled at 2,400 kalams of paddy per annum. If any body should hearafter put in darkhást (application), and offer more than the said amount, we shall either undertake to pay such (larger) amount if we chose to do so, or otherwise, give up the said lands to those who shall offer a larger amount. Thus is this taram muchalká (agreement) executed with our free will and consent.

(Signed) SUBBA PILLAI.

(,,) KUTTAIYA MUPPAN.

Mark of MOTTE MUTTU MUPPAN.

,, SEVAGA KARRAPPA MUPPAN.

,, PUCHAIYA MUPPAN.

,, ELLAIYA PERUMA MUPPAN.

(Signed) N. W. KINDERSLEY,

Civil Judge."

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a larger landlord's share having been offered, the defendants declined to pay the same, contending that they possessed an hereditary right to the perpetual tenure of the lands in dispute, and that the true construction of the agreement A was that the landlord's share alone was to be surrendered in case of failure to pay such larger sum as any third party might have agreed to pay. The Civil Judge held that the defendants possessed the hereditary right of occupancy which they set up, and that the agreement A could not mean that they should surrender such right. He decreed, however, the payment of the advanced rate from the season next after that in which it was first demanded.

The plaintiff now appealed against this decree for the following reasons amongst others.

"I. Because the document A is binding on the defendants and the Court below has placed a wrong construction upon it.

"II. Because, be the defendants what they may, and their tenure what it may, they have voluntarily contracted to give the plaintiff possession upon certain contingencies, which contingencies it is admitted have happened ; that is to say, a higher rent has been offered and the defendants have declined to pay the same."

Norton for the appellant, the plaintiff.

Branson for the respondents, the first, second, fifth and seventh defendants.

The Court delivered the following

JUDGMENT :—This was a suit brought by the plaintiff, as trustee of a pagoda, to recover certain lands from the defendants, in virtue of an agreement made by them with Government when in charge of the pagoda property. The ground was that a larger sum as landlord's share had been offered by a third party, and that the defendants had refused to pay it.

The defendants did not deny that they had refused to pay a larger landlord's share, but contended that they possessed an hereditary right to the perpetual tenure of these lands,

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and that the true construction of the agreement sued upon was that the landlord's share alone was to be surrendered in case of failure to pay such larger sum as any third party might have agreed to pay.

The Civil Judge decided that the defendants possessed the hereditary right of perpetual cultivation for which they contended, and that the true meaning of the agreement could not be that the defendants should surrender such hereditary right. But he decreed the payment of the enhanced rate from the season subsequent to that in which it was first demanded.

It is indisputable that there is such a right of occupancy as that for which the defendants contend. The mirásidár being the real proprietor of the land, there are instances of the possession by ryots of a title to the perpetual occupancy of lands subject to the payment of the mirásidár's share, to be ascertained by reference to the class of land and the amount derivable from neighbouring lands of the same class. This tenure, however, depends for the most part upon long-established usage or custom and should be proved by satisfactory evidence. Where, too, it exists, the rights incident to it are well understood, and the mere existence, as in this case, of a special agreement defining the terms of the ryots' holding is in itself opposed to the title which the defendants in this case have asserted. The use of a particular term in revenue-accounts does not afford any very strong argument either on the one side or on the other. There is great laxity in the use of these revenue-terms, and it will be found that those employing them often attach no very definite ideas to them. We should, however, feel some difficulty, upon the evidence property receivable in this case, apart from the terms of the special agreement in 1831, if it were necessary for the decision of the case precisely to determine the rights possessed by these defendants previously to the time when such agreement was entered into by them. But we think that effect must be given to that agreement, and that upon a proper construction of its terms the plaintiff is entitled to succeed. The execution of the agreement is admitted. It is not alleged that it was made in circumstances rendering it impeachable. On the contrary the contention of the defendants is merely that on its ture construction the plaintiff is not entitled to the relief sought.

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The true construction of the agreement depends upon the ordinary meaning of the words used, and if those words are plain and unambiguous, it is quite clear that they must not be explained away by extrinsic evidence, and still less by mere reasoning from probabilities. There is no duty of a court of justice more imperative than that of upholding contracts into which parties have voluntarily entered under no mistake of fact. The agreement recites that Government and the ryots being at issue as to the share payable by the ryots holding these lands, a certain rate had been fixed and that the ryots agreed to pay it for ever. The ryots further covenanted that in case of an additional sum being offered by any one else, they should have the option of paying that enhanced rate, or if they declined that they should surrender the lands to the offierer of the higher rate.

The argument that the only thing to be surrendered was the landlord's share is quite inconsistent with the stipulation that the lands are in case of refusal to be surrendered. It is manifest that if the result of their failure to pay the enhanced rent was merely to be a recurrence to an annual rent determinable by custom, very different language would have been employed. There can be no words more inappropriate to the expression of such a stipulation than those here used; while no words can be more appropriate to the expression of the meaning for which the plaintiff contends. In summing up the terms to which they had agreed, the ryots say that "so long as the villages shall remain in their possession," they will pay certain dues. These words plainly point to the contingency of cessation to be enjoyed and followed, as they are, by words distinctly specifying the circumstances on which that contingency shall arise, there can, we think, be no doubt that the true meaning of this agreement is, that on an enhanced rent being offered, and the ryots refusing to pay it, they are bound to surrender the lands to the person so offering. The decree of the Court will therefore, be, in modification of that of the Court below, that the defendants surrender these lands to the plaintiff with rent at the rate decreed by the Civil Court.

We think that the defendants must also pay the costs of the appeal.

Appeal allowed.