

APPELLATE JURISDICTION (a)

*Special Appeal No. 15 of 1862.*SUBBARAYULU NAYAK *Appellant.*RAM REDDI..... *Respondent.*

Regulation XXV of 1802 strictly restrains the alienation of proprietary rights except in manner therein provided, and invalidates a disposal or transfer of such rights as against the Government and the heirs and successors of the proprietor making the disposal or transfer.

Semle such alienation would be valid against the proprietor himself.

A permanent lease is as much within the operation of the Regulations XXV and XXX of 1802 as an absolute transfer by gift or sale.

THIS was a special appeal from the decision of J. W. Cherry, the Civil Judge of Salem, in Appeal Suit No. 175 of 1860. 1863.
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The principal ground of appeal was that a permanent lease, which had been upheld by the Civil Judge, was invalid as not being in accordance with clauses 2 and 3 of section 4 of Reg. XXX of 1832 (which provide that "Pattás and muchalkás shall contain the date of the month, and the year on which they may be executed; the names and situation of the contracting parties" and that "Pattás for village-rents shall contain the names of the village, the extent of the land therein, the amount of the rent per annum, the period of the kists which proprietors or farmers of land shall be compellable to adjust according to the time of reaping or of selling the produce of the land and the coin in which the rent is to be paid"), nor with section 5 of the same Regulation, which enacts that "Pattás and muchalkás shall be regularly required and registered by the karanam of the village in which the land engaged for are situated."

Branson for the appellant, the eighth defendant, cited *Special Appeal* No. 210 of 1861 (b), and referred to the clauses and section above set out, and also to the following sections of Reg. XXV of 1802 :

(a) Present Scotland, C. J. and Frere, J.

(b) *Mad. S. J.* 1862, p. 19.

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VIII. Proprietors of land shall be at free liberty to transfer, without the previous consent of the Government, or of any other authority, to whomever they may think proper, by sale, gift or otherwise, their proprietary right on the whole or in any part of their Zamindáris ; such transfers of land shall be valid, and shall be respected by the Court of Judicature and by the officers of Government ; provided they shall not be repugnant to the Muhammadan or to the Hindu laws, or to the regulations of the British Government. But unless such sale, gift or transfer shall have been regularly registered at the office of the collector, and unless the public assessment shall have been previously determined and fixed on such separated portions of land by the collector, such sale, gift or transfer shall be of no legal force or effect, nor shall such transaction exempt a Zamindar from the payment of any part of the public land tax assessed on the entire Zamindari previously to the whole such transfer, but the whole Zamindari shall continue to be answerable for the total land tax, in the same manner as if no such transaction had occurred."

XII. It shall not be competent to proprietors of land to appropriate any part of a landed estate permanently assessed, to religious or charitable, or to any other purposes, by which it may be intended to exempt such lands from bearing their portion of the public tax ; nor shall it be competent to a proprietor of land to resume lands, or to fix a new assessment on lands which may be allotted (at the time when such proprietor may become possessed of the estate in which lands are situated) to religious or to charitable purposes under the denominations of Devasthána or Devadáyam, of Brahmádáyam or Agraháram, of Yaumiá, Jivadána or Madad-ma'ásh, of Pirán, Fakirán, or any other description of exempted lands described under the general term of Lá-khiráj, unless the consent of the Government shall have been previously obtained for that purpose."

Mayne, (Srinivasachariyxr with him) for the respondent,
 the plaintiff.

The facts and arguments sufficiently appear from the judgment, which was delivered by.

SCOTLAND, C. J. :—This was a suit for the recovery of the three villages of Pulláneri Bommináykkamputti and Virapamputti, forming a portion of the Tiriyála muththá, in the ta'aluk of Tiruppattur, to which the plaintiff claims to be entitled under a permanent lease or puttá executed in 1838 by the first defendant, Venkata Pillai since deceased, and his brother Ranga Pillai, the father of the second, third and fourth defendants, who died some years prior to the commencement of the suit. These persons, with another brother, Virarágava Pillai, the husband of the fifth and father-in-law of the sixth and seventh defendants, were, it appears, proprietors of the muththá, and had before the date of the lease divided between them the enjoyment of the village of which the muththá consisted. The plaintiff entered and was in possession under the lease until 1842, when he was dispossessed; and in 1852 he brought the present suit, which was subsequently transferred in the year 1856 to the subordinate Court.

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The eighth and ninth defendants pleaded amongst other things that their father acquired a portion of the muththá including the three villages now in question, by purchase from the proprietors Venkata Pillai and Virarágava Pillai in the year 1842, that the lease on which the plaintiff's claim is based, is of an illegal character, and that it had been expressly disallowed by the Collector.

The Subordinate Judge considered that the plaintiff had proved his right to recover under the permanent lease, and passed judgment in his favour. This decision was confirmed on appeal by the Civil Judge.

The eighth defendant has now preferred a special appeal against this latter judgment, upon the grounds, amongst others, that the lease of 1838 was not in accordance with clauses 2 and 3, section 4 and section 5 of Regulation XXX of 1802, and therefore invalid in point of law; and that at all events all right and title of the plaintiff under the lease ceased upon the death of the parties making it, and consequently the plaintiff could not succeed in his claim to recover possession.

Upon neither of these grounds have the Courts below given any opinion, though the points appear to have been

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raised. The judgment of the Subordinate Judge deals simply as regards the plaintiff's case with the question of the genuineness of the lease in point of fact ; and the Civil Judge seems, so far as we can observe from his rather unsatisfactory judgment, to have done the same.

Considering first the more substantial ground of objection ; the question is whether the lease though in terms expressed to be a permanent one, was invalid and ineffectual in point of law to continue to the plaintiff his rights as lessee as against the legal successors of the proprietors who granted it ? In other words, whether upon the death of such proprietors, the lease did not altogether cease to have any valid operation ? We are of opinion that it did. There is nothing before us as to the original grant of the *muththá*, or shewing how it became vested in the late proprietors. The case is left to be decided entirely upon the provisions contained in the Regulations of 1802—the proprietary right to the *muththá* being regarded as a permanent one under such Regulations. There can be no doubt that the force and effect of law must be given to these Regulations as embodying the provisions intended to govern and preserve the permanent proprietary rights *thereby* vested in *zeminárs* and other land-holders, their heirs and successors, as well as to secure to the Government a fixed public land-revenue. Regulation XXV more particularly defines the nature and extent of the proprietary rights conferred ; and when sections 8 and 12 are considered with its other provisions and the subsequent Regulations, it is clear that a restriction upon the alienation of proprietary rights, except in the manner therein specially provided, is strictly imposed, and so as to invalidate the legal effect of a disposal or transfer of such proprietary rights, as against the Government and the heirs and successors of the proprietor making the disposal or transfer. This construction of the Regulations is supported by the observations of the Court in the case No. 6 of 1821(*a*), in giving judgment upon the point for decision in that case, (which is a different point from the present) namely, that notwithstanding the Regulations, the grant of the proprietary right was valid and binding as against the

(*a*) Sel. De. c. S. U. 218.

zamindár himself. Against that judgment, it appears from a note in the first volume of *Morley's Digest*, p. 624, an appeal was instituted but not proceeded with, and we find that the case was relied upon in the argument before the Privy Council of the appeal case *Raja Row Vencatta Niladry Row v. Vatchavoy Vencataputty Raz*, and a full note of it is appended to the report of the appeal case in 3 Knapp's P.C. Rep. 27. Another case relied upon for the appellant was *Special Appeal No. 210 of 1861(a)*, and certainly it seems to have been taken for granted in that case that the grant by the former zamindár was invalid, unless, as was unsuccessfully contended, it could be considered as waste within the meaning of section 15 of Regulation XXX. In the present case there is no ground whatever for saying that the permanent lease is brought within any of the exceptions or enabling provisions contained in the Regulation; and we think that a lease so affecting the permanent proprietary rights of the heir and successor in the land, must be considered quite as much within the operation of the Regulations as an absolute transfer by gift or sale, and therefore that any title or interest that the plaintiff had under it, has altogether ceased.

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With respect to the point taken by Mr. Mayne, that the eighth defendant (the appellant) could not be heard to object to the validity of the lease, as he himself claimed under a subsequent sale made by the late proprietors, we are of opinion that upon the ground upheld by our present decision that the plaintiff had failed to make out an existing legal right entitling him to recover possession of the villages, the eighth defendant was entitled to rely upon the objection quite independently of the title in himself.

With regard to the other objections raised to the validity of the lease on the ground of non-compliance in several particulars with the requirements of the Regulations, it becomes unnecessary for us after the decision just expressed to give any opinion.

Upon the whole, then, our judgment is that the plaintiff's right to maintain the suit altogether fails, and that the decree of the Civil Judge must be reversed with costs to be paid by the plaintiff.

Appeal allowed.

(a) *Mad. S. D. 1862, p 19.*