Narra Seetharamayya Varma And Ors. vs Kosaraju Venka Girayya By Lrs And Ors. on 8 April, 1983

Equivalent citations: AIR1983SC608, 1983(1)SCALE373, (1983)3SCC21, AIR 1983 SUPREME COURT 608, 1983 UJ (SC) 425 1983 (3) SCC 21, 1983 (3) SCC 21

Bench: D.A. Desai, O. Chinnappa Reddy

JUDGMENT

Chinnappa Reddy, J.

1. The question for consideration in each one of these appeals is whether the land of the extent of Ac. 1.71 in RS No. 169/1 of Urutuvu village was 'ryoti land' in an 'Estate' within the meaning of these expressions in the Madras Estates Land Act. The answer to the question depends on the answer to the question whether Urutuvu village was an Estate within the meaning of Section 3(2)(d) of the Madras Estates Land Act. The question arises this way. The respondents sued to recover rent alleged to be due to them from the appellants in respect of this land. If the land was ryoti land within an Estate, the Civil Court would have no jurisdiction to entertain the suits; only a Revenue Court would have jurisdiction to entertain them. If the land is not ryoti land in an Estate, the Civil Court would have jurisdiction to entertain the suits. After a long drawn out litigation in the course of which the parties to the actions made two earlier excursions to the High Court, the High Court of Andhra Pradesh, reversing the judgment of the Lower Appellate Court, decreed the suits for rent holding that the land was not ryoti land in an Estate. The ryots have appealed to this Court under Article 136 of the Constitution.

2. It is pertinent to mention here that Urutuvu has also been notified as an Inam Estate and taken over under the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948 on January 10, 1961. The effect of the notification has also to be considered, but it may not be necessary to do so in the view that we propose to take.

3. As we said, the High Court in second appeal reversed the judgment of the Lower Appellate Court. The Lower Appellate Court, on a consideration of the documentary evidence and the facts and circumstances of the case, found that Urutuvu was an Estate within the meaning of Section 3(2)(d) of the Estates Land Act as amended by Act XXXV of 1956. The Lower Appellate Court placed particular reliance upon an earlier judgment of the Madras High Court in respect of the very village Urutuvu. In that case, the High Court had held that Urutuvu village was an Estate within the meaning of Section 3(2)(d) of the Estates Land Act. The High Court, in that case, had the great advantage of having before it the original grant which unfortunately is no longer available. The

Lover Appellate Court also referred to the amendment of Section 3(2)(d) by Act XXXV of 1956 which clarified the position. Due notice was taken of the circumstance that the burden was upon the plaintiffs to prove that the grantor had reserved some interest in the land and granted the minor inam subsequent to the grant of the named village. To our mind, there was no justification for the High Court to interfere in second appeal even if it was inclined to take a different view of the evidence. In fact, we do not consider that a different view then that taken by the Lower Appellate Court was possible. We notice that the High Court completely lost sight of the burden of proof and proceeded as if the burden was on the defendants to establish that Urutuvu was an Estate within the meaning of Section 3(2)(d) of the Estates Land Act and that the grantor had reserved no interest in the land at the time of the original grant. The burden was wrongly placed upon the defendants by the High Court and even if it was rightly placed on the defendants, we are satisfied that the burden was adequately discharged.

4. On the question of burden of proof, it is sufficient if we refer to ALURU KONDAYYA VS SINGARAJU RAMA RAO, where this Court approved the view taken by the Andhra Pradesh High Court in Nelluru Sundararama Reddy v. State of Andhra Pradesh, ILR (1956) AP 337 and State of Andhra Pradesh v. Korukonda Bhattam Appalacharyulu ILR (1959) AP 687 and the Madras High Court in Janakiramaraju v. Appalaswami ILR (1954) MADRAS 980 and Sri Vara-darajas wamivari Temple v. Sri Krishnappa Govinda & Ors. ILR (1958) MADRAS 1023. The view taken was that the explanation to Section 3(2)(d) raised a presumption where a grant was expressed to be of a named village, that the area which formed the subject matter of the grant should be deemed to be an Estate and it was for the party contending that the grant in question fell outside the definition of Section 3(2)(d) of the Act to prove that case either by showing that the minor inams not comprised in the grants were created contemporaneously with or subsequent to the grant of the village by the original grantor. The Court said, "...the language used by the Legislature in enacting Explanation (1) to Section 3(2)(d) expressly directs a presumption to be raised. That presumption arises when it is proved that grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate. Raising of the presumption is not subject to any other conditions. The Legislature has by the non-obstante clause affirmed that such presumption shall be raised even if it appears that in the grant are not included certain lands in the village which have before the grant of the named village been granted on service or other tenure or have been reserved for communal purposes."

5. The position was also further clarified by Explanation (1-A) to Section 3(2)(d) which was introduced by amending Act XXXV of 1956 to the effect:

> An inam village, hamlet or khandriga in an inam village granted in inam, shall be deemed to be an estate, even though it was confirmed or recognised on different dates, or by different title deeds or in favour of different persons.
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> This Explanation makes it clear that if the grant was of a named village, it will be deemed to be an Estate, notwithstanding the existence of minor inams which were confirmed or recognised by different title deeds, even in favour of different persons.

6. The High Court has clearly misinterpreted the entries in the Oake's Inam Register of 1797 AD. In the first column, the entry is 'Jruturu' and against the second column (the nature of the inam), the entry is 'Agraharam'. The names of grantor and grantee are mentioned in columns 4 and 5 and in column 10, the extent of land is mentioned as 37.12 khatties. The High Court wrongly thought that the entry in column 10 was 37.75 acres. Khatties were local measures in popular use in those days and if only the High Court had referred to the earlier judgments of the courts which had been placed before it, it would have discovered that the extent of land was mentioned in Khatties and not Acres. The comment of the High Court that it was difficult to hold that a grant which consisted only 37.75 acres could ever be thought of as grant of a whole village, was therefore misplaced. The entries in the Oake's register clearly show that Urutuvu Agraharam which was of the extent of 37-3/4 Khatties and bearing a Kattubadi of 30 Varahas had been granted to Anantachar-yulu by Nizam-ul-mulk by a sanad of Fasli 1142. The grant was clearly of a named village and without doubt it was an 'Estate' within the meaning of Section 3(2)(d) of the Estates Land Act. There is no evidence as to when the minor inam was granted, whether it was granted before the grant of the village, whether it was granted by the original grantor subsequent to the grant of the village or whether it was carved out of the original grant itself subsequent to the date of the original grant. The burden of establishing that Urutuvu inam village was not an 'Estate' within the meaning of Section 3(2)(d) was on the plaintiffs and the burden has not been discharged. As already mentioned by us, the Madras High Court, on an earlier occasion, had come to the conclusion, with the original grant before it, that Urutuvu inam village was an 'Estate' within the meaning of Section 3(2)(d) of the Estates Land Act. We have also referred to the fact that the village has also been notified as an 'Estate' under the Madras Estates (Abolition and Conversion into Ryotwari) Act. We have no option, but to allow the appeals, set aside the judgment of the High Court and restore that of the Lower Appellate Court. As the respondents have not chosen to contest the appeals, we do not award any costs.