

Chunilal Jamnadas Vs. Bhanumati

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Court : Mumbai

Decided On : Sep-05-1911

Reported in : (1911)13BOMLR1053; 12Ind.Cas.727

Judge : Beaman and ;Hayward, JJ.

Appeal No. : First Appeal No. 209 of 1910

Appellant : Chunilal Jamnadas

Respondent : Bhanumati

Judgement :

Hayward, J.

1. The appellant decree-holder complains that the respondents judgment-debtors have wrongly been held to be agriculturists within the meaning of the Dekkhan Agriculturists Relief Act and have wrongly had the execution of the decree against them transferred for execution to the Collector in accordance with the notification of Government under Section 320 of the old Civil Procedure Code (Act XIV of 1882) now Section 68 of the new Civil Procedure Code (Act V of 1908).

2. The lower appellate Court held that the respondents were agriculturists because they were holders of certain service Inam land and were grantees of the soil and not merely grantees of a share of the revenue upon a true construction of their

Sanad, and so were not excepted from the definition of agriculturist by Explanation (b) to Section 2 of the Dekkhan Agriculturists Relief Act. The lower appellate Court admitted that prima facie the Sanad was a grant not of the soil but of a share of the revenue, but held on a consideration of certain circumstances previous and subsequent to the Sanad that the true construction of the grant was that it was one of the soil.

3. Now it appears to us that what we must mainly look to is the terms of the Sanad and that the previous and subsequent circumstances are not in this case of any real assistance to us in construing its terms. The main terms of the Sanad are as follows:--

Whereas certain emoluments are now entered in the Government accounts as the service Watan of the Majmudari--of Taluka Viramgam--in the Ahmedabad Collectorate; and whereas the holders of the said Watan have agreed to the annual deduction there from as below stated in consideration of Government foregoing the service which they have a right to demand, it is hereby declared that:'--

'1st:--The Watan as now confirmed, and below specified, shall be continued subject to certain conditions hereditarily without demand of service, and without any further deduction there from on account of service and without objection or question on the part of Government as to the rights of any holders thereof, so long as there shall remain in existence any legal heir to the Watan whether lineal, collateral or adopted within the limits of the Watandar's family and whether descended in the male or female line.'

'2nd:--When all the recorded sharers-in the Watan agree to request it, the general privilege of adopting at any time any person out of the Watandar's family who can be legally adopted, and of transferring the Watan or any recognized share thereof, by sale, mortgage &c.; as private property, will be granted by the Government to the Watan on the payment from that time forward, in perpetuity of an annual Nazerana of one anna in each Rupee of the total emoluments of the Watan as now confirmed and from the date of the imposition of this Nazerana the whole Watan or the recognized shares thereof will be converted into private property heritable and

transferable in all legal modes.

4. Then follows a table showing the name of the Watan to be Majmudari, the amount of land to be the village assessed at 1,650 rupees of which Rs. 825 is deducted in lieu of service and Rs. 825 is confirmed as emoluments to the grantees.

5. Now it appears to us that the first clause of this Sanad clearly does not go the length of granting anything more than a share of the revenue and this is made clearer by a consideration of the second clause which lays down that in certain circumstances the grant may be converted into private property. It is admitted that no such conversion has taken place. If it had, then possibly there might have been room for the argument that the grant had been converted into a grant of the soil.

6. The distinction between a grant of a share of the revenue and a grant of the soil has been pointed out in the case of *Ramchandra v. Venkatrao* ILR (1882) 6 Bom 508 where Melvill J. quoted with approval these remarks in certain other cases of Westropp C.J.: 'Sanadi grants in Inam...are, generally speaking, more properly described as alienations of the royal share in the produce of land, i. e., of land-revenue, than grants of land' and again 'if words are employed in a grant, which expressly, or by necessary implication, indicate that Government intends that, so far as it may have any ownership in the soil, that ownership may pass to the grantee, neither Government nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass.... In the sanad in evidence here, whosoever framed it, was apparently determined that no ambiguity should exist as to what the force of the term 'village' might be'; and, in order to be explicit, he added to the grant of the village in Inam the words 'including the waters, the trees, the stones, (including quarries), the mines, and the hidden treasures therein.'" These remarks were again noticed with approval by Jenkins C. J. in the case of *Rajya v. Balkrishna Gangadhar* ILR (1905) 29 Bom. 415, 7 Bom. L.R. 439. We think, therefore, that the grant in this particular case must be held to be a grant of a share of the revenue and not a grant of the soil; and that, therefore, the fact that this village is held by the judgment-debtors does not entitle them to be held to be agriculturists in view of Expln. (b) to Section

2 of the Dekkhan Agriculturists Relief Act.

7. We accordingly set aside the order of the lower Court transferring the execution of the decree to the Collector and direct it to dispose of the execution application according to law. Costs of the execution up to date and of this appeal to be borne by the respondents.

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