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Court : Chennai

Decided On : Dec-01-1926

Reported in : AIR1927Mad404; (1927)52MLJ253

Appellant : Devaguptapu Chendramma and anr.

Respondent : Devaguptapu Narasimham and ors.

Judgement :

1. Defendants 1 and 2 are the appellants. The facts of the case, which are undisputed, are briefly these. The plaintiffs are the nearest reversioners of one Venkataraju in whose favour (with others) three inam title deeds were issued in 1906 and 1907. Plaintiffs' suit was to recover possession of the share of Venkataraju. The first two Courts found that, as Venkataraju was dead on the day when these title deeds were signed by the Commissioner, he obtained no rights in the suit property and therefore the plaintiffs as his heirs have got no right. In this view their suit was dismissed. In second appeal this decision was set aside by Phillips, J.

2. The title deed runs as follows:

Title deed granted to (1) Devaguptapu Subbarayudu, (2) Deva-guptaput Chendramma, (3) Devaguptapu Venkataraju and four others as per register,

3. and it recites,

The inam is now confirmed to you, your representatives and assigns, to hold or dispose of as you or they think proper.

4. The question is whether this is a grant to Venkataraju, his representatives and assigns, or whether these words are merely words of limitation as contended for by the appellants. The learned Judge held that these words were not mere words of limitation, that they were ambiguous and that by the use of these words the Government intended 'to secure the grant to the heirs of the deceased grantee.' In this view he held that though Venkataraju was dead, the plaintiffs as his heirs are entitled to the properties covered by the grant. To show that in cases like the present the Government intends to secure the grant to the heirs of the grantee, reference was made to the Board's Standing Order No. 52(2) which runs as follows:

Cases where title deeds have been issued by the Inam Commissioner but not delivered to the parties'.... 'In case of the death of the holder of an enfranchised inam before the actual delivery to him of the title deed, the deed should, in the first place, be entrusted to the revenue authorities for safe custody. The Collector should make the enquiry as to who is the party entitled, as heir of the deceased, to receive the deed, and is enjoined to hand it over, exactly as received, to the heir of the deceased.

5. In our opinion, the Board's Standing Order No. 52(2) has no application to the facts of the present case. The words of the order show that it applies only to cases where the grantee dies after the actual grant, i.e., after the execution and signature of the deed by the Commissioner, but before the actual delivery of the document to him. Though the grantee dies before the actual delivery, he having become 'the holder of an enfranchised inam' by the title having been executed and actually signed by the Commissioner in his favour, the 'order' states that the Collector after making an enquiry should hand the deed to the heir of the deceased. As in this case it is admitted that Venkataraju died before the title-deed was signed by the Inam Commissioner, he had not become the holder of an enfranchised inam before his death and therefore the main condition for the application of the Standing Order fails.

6. We have no doubt that the words of the title-deed already referred to are mere words of limitation, that is, they were merely intended to express the absolute estate which the Government proposed to confer upon Venkataraju. This construction is supported by the decision in Lal Ram Singh v. Deputy Commissioner of Partabgarh (1923) ILR 45 A 596 (P.C.). In that case the holder of an Oudh Taluqa executed a deed of settlement which provided that after the deaths of the executant, and the son and widow of his eldest son (to each of whom a life-interest was given), his second son 1 and his heirs and representatives shall succeed to the entire estate....' Their Lordships of the Privy.

7. Council held that--

the words 'heirs and representatives' (in this deed) are to be treated as words of limitation and not of purchase that is,. they were merely intended to express the absolute estate which it was proposed to give to Lachman as distinguished from the life-estate which had preceded it.

Where there is a grant to a man and his heirs and nothing to control the ordinary meaning of the words, the grantee takes an absolute interest'--sec Dosibai v. Ishvardas Jagjivandas (1891) ILR 15 B 222 (P.C.).

8. We therefore hold that the title-deed in this case did not grant any estate to the heirs of Venkataraju, and, as he was dead before it was actually executed and signed by the Inam Commissioner, the plaintiffs cannot as his heirs obtain any rights under it. We must therefore set aside the decision of the learned Judge and restore that of the Subordinate Judge with costs here and before the learned Judge.

9. It was argued by the respondent that as the plaintiffs as the sons of Subbarayudu, one of the grantee under the title deed, are entitled to that right to some share of the property, though a smaller one, they should be allowed to amend the plaint and that the Lower Court should be asked to consider their claim for possession on this ground. We cannot accede to this request. The suit was based upon the plaintiffs' claim as rever-sioners of Venkataraju. What the plaintiffs are now asking us is to allow them to base their claim for possession upon their

own right. It is admitted that the title-deed was originally-granted in favour of seven grantees. The representatives of all the grantees are not before us. In these circumstances we think it is not proper to allow the plaintiffs to amend the plaint at this stage.

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