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Court : Chennai

Decided On : Nov-06-1925

Reported in : (1927)52MLJ259

Appellant : Ramasami Kavundan and anr.

Respondent : Tirupathi Kavundan

Judgement :

Wallace, J.

1. The appellant urged two distinct lines of argument before us, first, that the villages in which the suit property is situated are not an estate within the meaning of the Madras Estates Land Act, but that nevertheless the plaintiff had occupancy rights in their lands, and secondly, that the villages are an estate and the plaintiffs had occupancy rights in their lands before the Act came into force or at least obtained it by virtue of Section 6 of the Act.

2. As to the first line of argument, it appears to me that it has been raised in this form for the first time in this Letters Patent Appeal. I have no doubt that before the Trial Court and the Lower Appellate Court and at the hearing in second appeal the only case on which the plaintiffs took their stand was that the suit villages form an estate and on that case the defendant took up the position that they were not an estate. A few stray observations in the District Munsif's judgment do not persuade me to the contrary, and the Subordinate Judge's finding is perfectly clear, namely, that the plaintiffs have occupancy in an estate. There is no unambiguous indication that in either of the first two Courts the plaintiffs put forward any alternative case. I am clear that we should be wrong in permitting the plaintiffs to abandon their original case, adopt what was the defendant's plea and raise it for the first time in a Letters Patent Appeal. The discussion of the plaintiffs case in the first Courts is all on the assumption that the principles of the Madras Estates Land Act will apply to the plaintiff lands, and there is no discussion of the question whether, apart from that Act at all and on the assumption that the jagir is not an estate the plaintiffs possess occupancy rights in the plaintiff lands.

3. As to the second line of argument, Devadoss, J., has held that the jagir is not an estate within the meaning of the Madras Estates Land Act and therefore the plaintiffs on the case on which they came into Court must fail. Plaintiffs have not been able to persuade me that this decision is wrong so far as it lays down that the jagir is not an inam within the meaning of Section 3, Clause (2)(d) of the Act. The problem has two aspects, whether the jagir falls under Section 3, Clause(2)(c) of the Act or whether it falls under (2)(d). To take the latter aspect first, the only point in plaintiffs' favour is that the grant, Exhibit A seems to speak of a 'beriz' and 'ryots' from which the plaintiffs would argue that there must have been occupancy rights at the time of the grant. As to this the plaintiffs have not chosen to file the original grant itself which is in Marathi. It is unsafe to base a decision on words merely used in a translation. On the other hand Exhibit A speaks of handing over the whole cultivated ayacut, poramboke and waste lands in the villages to the donee, and the Inam Commissioner further notes in Exhibit XIV that the jagirdar had to repair the tanks. It is difficult to hold that such language would have been used if the intention of the grantor was only to hand over the land revenue. Plaintiffs claim

that they have erected pucca buildings on the suit land and have alienated portions from time to time. As to this I note no act of this sort prior to the passing of the Estates Land Act in 1908 is proved, so that no proof is afforded by these acts that the plaintiffs were ryots in possession when the Act came into force. The oral evidence as to long possession does not help much in view of the fact that in 1860 the Inam Commissioner remarked that there was no permanent cultivation in the villages. It is also a point against the plaintiffs' contention that not a single patta or muchilika is produced from 1829, the date of the grant, up to date. It is incredible that if the plaintiffs were occupancy ryots prior to the passing of the Estates Land Act they would not possess some such document. I am, therefore, not prepared to differ from Devadoss, J., in holding that the plaint villages are not inam from which only the land revenue has been granted by the donor. The plaint jagir does not therefore come under Section 3, Clause (2)(d) of the Act.

4. As to whether the villages are an unsettled jagir, it appears to me that the plaintiffs have a much stronger case, and on this point I differ from the learned Judge from whose decision this appeal is filed. It has first of all to be decided whether they are a jagir at all. The learned Judge has dismissed this claim merely on the ground that to call a village a jagir is not sufficient to constitute it a jagir. No doubt this is true but when, as in this case, the granting authority is the Government who presumably in 1829 were perfectly aware of the nature and constituent elements of a jagir and the Government styles the villages in the grant deed as a jagir, and its own officers have consistently adopted that nomenclature (see the Inam Commissioner's Report, Ex. XIV, and the Salem District Manual, 1883, Vol. I, page 503, where the suit villages are styled unenfranchised jagirs) there are, in my opinion, strong grounds for holding that the grant was the grant of a jagir. Further it is plain from Exhibit A as noted above that the grant was not of the village beriz but of the village as a whole, its cultivated ayacut, waste lands and poramboke, and the ryots in it are directed to conform to the orders of the grantee. The learned Judge appreciates these points and emphasizes them for the purpose of showing that the grant was not a grant of melvaram only. But it seems to me that he has failed to take these points into consideration when he discusses whether or not the villages are a jagir. Exhibit A further shows that the grant was made as a reward for past services rendered to the Government.

5. Now the distinguishing feature of a jagir in olden days, although the distinction between a jagir and an inam in these days is becoming obscured, was that it was a grant of landed property for life or for a definite number of lives in lieu of pension for services, usually military, rendered to Government in order that the grantee may maintain a certain dignity and state--see Baden-Powell's Land Systems of British India, Vol. I, pages 180 and 257, Soundararaja Aiyangar's Land Tenures in the Madras Presidency, page 217, Ram Narayan Singh v. Ram Saran Lal (1918) 36 MLJ 344(a decision of the Privy Council) and Sam v. Ramalinga Mudaliar : (1916)30MLJ600 . The word 'jagir' primarily points to 'occupancy' as remarked by the Privy Council in Sakina Bai v. Fatima Begum (1918) MWN 384. The mere fact that this jagir fell within the scope of proceedings before the Inam Commissioner does not indicate that this was merely an inam, for the Inam Commissioner was authorised to enfranchise even jagirs--see Maclean's Manual of Administration, Vol. I, page 167. The Inam Commissioner in his report Ex. XIV throughout styles this property as a jagir. Hence I find no difficulty in holding that the suit villages are a jagir. The opinion of the Lower Appellate Court that the term 'jagir' in Section 3, Clause 2(c) must be limited to jagirs granted before the advent of the East India Company appears to me to have no foundation either in statute or in authority.

6. The suit villages being a jagir, the next question is whether it is an unsettled jagir. The appellant contends that the adjective 'unsettled' in the definition does not qualify 'jagir' but I cannot accept that view. If that had been the intention, one would have expected the definition to have run, 'Any jagir or unsettled palaiyam.' A comparison of this definition with that in Section 4(c) of the Madras Proprietary Estates' Village Service Act (II of 1894) which is almost identical, indicates that a 'settled jagir' would come under the heading of a 'permanently settled estate' already provided for in Sub-section (a) and therefore unnecessary for inclusion in Sub-section (c). I am clear that in the case of jagirs, Sub-section (c) applies only to 'unsettled' jagirs, whatever that term may import.

7. Now there is no doubt what the term ordinarily means in the case of a palaiyam. It is a palaiyam for which

no sannad has been issued under Regulation XXV of 1802--vide Maclean's Manual of Administration, Vol. I, p. 120, para. 122. It is noted in that paragraph also that there were a few palaiyams held for police services which were treated as inam and enfranchised, but it does not appear that any of these survived unsettled until 1908. Hence the term 'unsettled' as applied to palaiyams in that Act means 'not held under a permanent settlement,' see also *The Collector of Trichinopoly v. Lakka-mani* (1874) LRI IA 293. It is possible to argue that in the case of jagirs it may mean also not enfranchised by the Inam Commissioner and this view obtains some support from some observations of Sadasiva Aiyar, J., in *The Secretary of State for India v. Srinivasachariar* (1914) 15 MLT 277. where he quotes Bhashyam Aiyangar, J. from *Gunnayan v. Kamakshi Aiyar* (1902) 26 MLJ 640. But it is not necessary to go further into this point since this jagir is neither permanently settled nor enfranchised by the Inam Commissioner. The Inam Commissioner no doubt in Ex. XIV agreed to 'settle' the jagir in the name of one of the ten sharers who alone among the sharers was willing to have it enfranchised. But it appears that this proposal was not accepted by the Government and that the jagir remains unenfranchised--see Salem District Manual at the page quoted above, and the attempt of the Government to resume the jagir noted by the Subordinate Judge in para. 8 of his judgment in A.S. No. 30 of 1921. The villages therefore are prima facie an unsettled jagir, and therefore an estate within the meaning of Sub-section (c).

8. Mr. Ramachandra Aiyar contends that it was not the policy of the framers of the Act to confer occupancy rights wholesale on all cultivating tenants in any unsettled jagir, and he contends for the restriction of the definition therefore to jagirs in which there were already occupancy ryots, that is, jagirs in which the grantee did not hold the kudivaram; in other words, that as regards jagirs the Act intended not to confer new occupancy rights but only to confirm existing ones. But that theory I cannot accept, and it is opposed to the ruling of the Privy Council in *Sivaprakasa Pandara Sannadhi v. Veerama Reddi* (1922) 43 MLJ 640. Had that been the idea, a jagir would have fallen more appropriately into Sub-clause (d). Whatever may be predicated or negatived regarding the unsettled palaiyam must equally be so regarding the unsettled jagir, and the palaiyam, as I have indicated above, at any rate when the Act I of 1908 was passed was never a grant of land revenue alone nor could it be enfranchised. The only form of settlement applicable to it was a permanent settlement. It is therefore clear that in any palaiyam not permanently settled it was the intention of the framers of the Act to lay down that the cultivating tenants in possession at the time of the coming into force of the Act should acquire occupancy rights even though they did not have such rights before. There is no difficulty therefore in accepting such an intention in the case of unsettled jagirs also. It follows that on the date of the coming into force of the Act all ryots in possession of ryoti land not old waste in unsettled jagirs acquired occupancy rights in their holdings.

9. The suit villages have been held to be an unsettled jagir. The plaintiffs in O.S. Nos. 63, 64 and 84 have been found by both the Judges of fact in this case to have been in enjoyment of their present holdings at the time Act I of 1908 came into force. Therefore by that Act they gained occupancy rights whether or not they possessed them before. I would therefore allow the appeals and set aside the judgment of Devadoss, J., and restore that of the Subordinate Judge in all four suits with costs to the appellants throughout.

Madhavan Nair, J.

10. These are appeals under Section 15 of the Letters Patent against the judgment and decree of Devadoss, J., which set aside the decree of the Subordinate Judge of Vellore in A.S. Nos. 30, 31 and 32 of 1921 and dismissed the plaintiffs' suits.

11. The facts necessary for the decision of these appeals are very simple. The plaintiffs (appellants) claimed permanent rights of occupancy in the two suit villages. Before us they claimed such rights on the ground (1) that they had the rights before the passing of the Estates Land Act and (2) if that claim was found against them they stated that such rights were granted to them by the Estates Land Act either under Clause (c) or Clause (d), Sub-section (2) of Section 3. According to these clauses, 'estate' means any unsettled palaiyam or jagir--see Clause (c)--or any village of which the land revenue alone has been granted in inam to a person not owning the kudivaram thereof provided that the grant has been confirmed or recognised by the British

Government, or any separated part of such village--see Clause (d). According to their latter claim, plaintiffs state that the suit villages form an unsettled jagir under Clause (c), or an inam as mentioned in Clause (d). I am satisfied, from the pleadings and the judgments of the Courts below and the absence of an issue on the question, that the first ground of their claim, viz., that they had perfected rights of permanent occupancy before the Estates Land Act came into force, was not specifically put forward for consideration in the Courts below, though the mention of some incidents of the rights claimed on that basis may be detected in the judgments. We cannot allow the question to be raised for the first time before us in Letters Patent Appeal. As regards the second ground of their claim, Devadoss, J., has held that the suit villages do not constitute a jagir and also cannot be considered to be an inam within Clause (d). I agree with the learned Judge in his view that the lands do not fall within Clause (d) but I differ from him on the question whether the suit lands form a jagir within the meaning of Clause (c) and the plaintiffs are, therefore, entitled to claim permanent rights of occupancy.

12. The short question for our consideration is whether the suit villages constitute an 'unsettled jagir' within the meaning of Clause (c), Sub-section (2) of Section 3 of the Estates I and Act. The sannad, Ex. A, describes that the suit villages were granted to Muhammad Moosa Saheb as 'jagir for three generations' as 'the person who rendered help to the Government of the Honourable East India Company.' Originally the grant seems to have been an assignment of Rs. 1,710-3-7 from the collections of several villages. It appears that afterwards on account of a request from the grantees the grant was converted into a grant of two villages as shown by the following extract from the sannad:

You have made a request that Kollankuttai village may be left in your possession and that the village of Vellakuttai might be given in exchange for the other six villages, and we have received the order of Government.... We have therefore entered as belonging to Government the aforesaid six villages and have assigned as jagir the two villages, namely Kollankuttai as previously and Vellakuttai in their stead having an average beriz of Rs. 1,544-12-2 the total ayakat under cultivation including the porambokes, jamabandi, kattumaniam and inam, excluding therefrom the money profits, the six items namely mangavari profession taxes.... You may take possession of the aforesaid two villages, namely Kollankuttai as before and Vellaikuttai and obtain receipts.

13. I agree with Devadoss, J., in his opinion that by the sannad was granted not merely the land revenue but the entire lands of the two villages as well and that there were cultivating tenants in possession of the villages at the time of the grant. Mr. Ramachandra Aiyar argues (1) that the term 'jagir' in Clause (c), Sub-section (2) of Section 3 of the Estates Land Act is confined to assignments of land revenue alone of lands in which tenants had already existing rights of occupancy, meaning thereby, as I understand him, that under the Act it was not intended to grant any new right of occupancy to cultivating tenants in a 'jagir,' (2) that even if the villages in this case constitute a 'jagir' the 'jagir' cannot be called an 'unsettled jagir'. As regards the meaning of the term 'jagir' and the description of its incidents, we have been referred to Maclean's Manual of Administration. Vol. I, page 167, para. 203, Glossary, Vol. III, page 308, various passages in Baden-Powell's Land Tenures, Vol. I, pages 189, 190, 257, Sakina Bai v. Fatima Begum (1918) 30 MLJ and also to Sam v. Ramalinga Mudaliar : (1916)30MLJ600 . in which there is an exhaustive discussion of the nature of the jagir tenure and its incidents. From the authorities referred to above, it appears that (1) by the mere use of the term 'jagir' a village cannot be said to be an 'estate;' (2) the jagir must be taken prima facie to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary obviously its duration can be limited as in the case before us; (3) in its origin the jagir was connected with some special public service, such as the maintenance of troops and the like, or at least if no such condition is imposed, it was a reward of land for some service to the State conferred upon some State official in recognition of his position see Sam v. Ramalinga Mudaliar : (1916)30MLJ600 and the jagir primarily points to 'occupancy' see Mt. Sakina Bai v. Kanis Fatima Begam 22 CWN 577 Having regard to these features, it cannot be disputed that what was granted to Moosa Saheb under the sannad was a jagir. The grant was so treated by the officers of the Government also. The Inam Commissioner (see Ex. XIV) refers to these villages as jagirs and to the grantees as jagirdars. The fact that they

were subjected to proceedings under the Inam Commissioner does not mean much as the Commissioner had jurisdiction to deal with jagirs as well. In the Salem District Manual, Vol.11, these villages are described as 'jagirs unenfranchised' (page 503, Vol. II).

14. Devadoss, J., points out that the term 'jagir' does not signify much but does not discuss the question any further, though while discussing the question of whether the grant falls within Clause (d) the learned Judge notes incidentally some features which would bring the suit villages within the term 'jagir'. The description of a jagir given by the authorities above referred to does not warrant the conclusion that jagirs, as contended for by Mr. Ramachandra Aiyar, are mere assignments of land revenue only. I do not see any reason why the term 'jagir' as used in Clause (c), Sub-section (2) of Section 3 of the Estates Land Act should be confined to mere assignments of land revenue alone. If that was the intention of the Legislature, appropriate words would have been used for that purpose. The Legislature probably recognised the claims made for permanent occupancy rights by cultivating tenants on jagirs of the kind described above by including within the term 'estate' such jagirs, provided they were 'unsettled'. Such an assumption does not conflict with the policy of the Estates Land Act.

Apart from the rules relating to procedure and the jurisdiction of the Revenue Courts, it created one new right in order to settle the constant disputes between landlord and tenants which had been going on for nearly a century; it gave occupancy rights to all ryots in occupation of lands within an 'estate' at the time of the passing of the Act.

15. See Sivaprakasa Pandara Sannadhi v. Veerama Reddi (1922) 43 MLJ 640. In my opinion, provided that the jagir is unsettled, cultivating tenants in possession of jagirs obtained permanent rights of occupancy under the Estates Land Act.

16. It is then argued for the appellants that 'unsettled' governs only 'palaiyam' and not 'jagir' as well and that if we should hold that it governs 'jagir' as well, then 'unsettled' means only 'not settled' under the Permanent Settlement Regulation: whereas the respondent contends that the word 'unsettled' governs 'jagir' as well and that a jagir cannot be described as an unsettled jagir, if it has been settled by the Inam Commissioner, though it may not have been settled under the Permanent Settlement Regulation. I have no doubt that the term 'unsettled' governs 'jagir' also. If the Legislature intended that the word 'unsettled' should qualify only 'palaiyam' and not 'jagir' the words of Clause (c) would have been more appropriately 'any jagir or unsettled palaiyam'. There is a definition of 'estate' in exactly similar terms in the Proprietary Estates' Village Service Act (Act II of 1894). See Section 4(c), and in giving illustrations of permanently settled estates in Clause (a) a zamindari, jagir, mita or palaiyam, is mentioned, suggesting thereby that 'jagir' in Clause (c) refers to an 'unsettled jagir' as 'settled jagir' has already been included in Clause (a), see also Survey and Boundaries Act, IV of 1897, Section 3(1), Clause (c).

17. The suit villages have admittedly not been settled under the Permanent Settlement Regulation; nor have they been enfranchised under the Inam Rules. It is true that these were subjected to proceedings by the Inam Commissioner, but they do not seem to have been enfranchised finally; see the judgment of the Subordinate Judge in A.S. No. 30 of 1921, para. 8. These villages Vellakuttai and Kollankuttai are as already pointed out, described as 'jagirs unenfranchised' in the Salem District Manual (see Vol. II, page 503). In the case of palaiyams 'unsettled' would mean not settled under the Permanent Settlement Regulation, XXV of 1802 (Maclean, Vol. I, p. 120, para. 122). Having regard to the fact that the two villages have not been settled either under the Permanent Settlement

18. Regulation or under the Inam Rules, a consideration of the question whether 'unsettled' in the case of jagirs refers to settlement under the Regulation or under the Inam Rules also does not arise in this case, though it may be mentioned that the contention, that 'settled' may mean 'settled under the Inam Rules also' receives support from the observations of Sadasiva Aiyar, J., in *The Secretary of State for India v. Srinivasachariar* (1914) 15 MLT 277 to the effect that inam settlement has got the same effect as the

permanent settlement.

19. In my opinion, the two villages in this case form an 'unsettled jagir' and, therefore, fall within the definition of the term 'estate' in Section 3, Sub-section (2) of the Estates Land Act, and the appellants who are the tenants of the villages can, therefore, claim rights of occupancy under the Estates Land Act. The judgment of Devadoss, J., is reversed and the Subordinate Judge's decree is restored with costs here and at the hearing before Devadoss, J.

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