

Privy Council Appeal No. 22 of 1927.

Sri Sri Sri Ramachandra Deo Maharajulungaru, Maharajah of
Jeypore, since deceased (now represented by Rajah Sri Sri Sri
Vikrama Deo Varma Garu) - - - - - *Appellant*

v.

Sri Rajah Tyada Pusapati Rudra Sri Lakshiminarasimha Sadru-
sannamarat Dugaraj Dakshinakavat Dugaraj Bahadur, since
deceased, and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH MARCH 1934.

Present at the Hearing :

LORD BLANESBURGH.

LORD SALVESEN.

SIR JOHN WALLIS.

[*Delivered by* SIR JOHN WALLIS.]

By a well-advised compromise made between the appellant, the Maharajah of Jeypore, a zemindary in the Madras Presidency, and the principal respondents, the zemindar of Pachipenta and his two minor sons and ordered to be recorded by an Order of His Majesty in Council of the 10th November, 1932, the Maharajah has succeeded in perfecting his title to the greater part of the Pachipenta zemindary, which his father had purchased at a Court sale held in execution of a mortgage decree obtained by the late Maharajah of Bobbili against the Zemindar of Pachipenta on the 14th April, 1903, in O.S. 1 of 1903 in the Court of the District Judge of Vizagapatam. Part only of the Pachipenta zemindary was within the jurisdiction of the District Court, the rest of the zemindary being situated in Hill or Agency Tracts of this District which, under a Governor-General's Act of 1839, were withdrawn from the jurisdiction of the Civil Courts owing to their disturbed and backward condition and are still administered by the

Collector as Governor's Agent and his subordinates who discharge both judicial and executive duties. In the present case, the fact that part of the mortgaged property was situated within the jurisdiction of the District Judge was apparently deemed sufficient to give him jurisdiction as to the whole of the property in suit, and he made the usual decree for sale. After selling in execution of the decree four villages which were within his jurisdiction, the District Judge, purporting to act under the provisions of the Civil Procedure Code, transferred the decree for further execution to the Court of the Agent of the Governor at Vizagapatam. The Agent's Court then proceeded to sell the rest of the zemindary, including certain villages which were within the jurisdiction of the District Judge. The Maharajah of Jeypore became the purchaser, and the sale to him was confirmed as appears from the certificate of sale on the 2nd May, 1908.

The purchaser's troubles then began. An objection that the villages did not include certain hamlets was decided in his favour on 21st March, 1912, by the Madras High Court on a reference made to it under the Agency Rules.

The Maharajah then, on 21st August, 1913, applied, under Madras Act 1 of 1876, to the Collector of Vizagapatam for registration in his name of the properties purchased by him in the register of the permanent settlement holders, and for apportionment of the peishcush, or permanently settled revenue due thereon. This order was necessary to make him the registered proprietor, and secure a reduction of the peishcush. On the 10th May, 1915, the Collector made the order as to 69 jeroyati villages or villages in the purchaser's possession, but held that as regards the mokhasa and agra-haram villages he had only purchased a right to collect the kuttubadi or quit-rents issuing out of such villages and had not become their owner, so as to be entitled to separate registration under Act 1 of 1876. On the 17th June, 1915, the Collector refused to review this order, and referred the Maharajah to a separate suit.

As some of the villages in question were in the jurisdiction of the District Court and some in the jurisdiction of the Agent's Court, the Maharajah proceeded to file suits for separate registration in both Courts. In the Court of the Agent the Special Assistant Agent, Mr. A. C. Duff, I.C.S., held that by the purchase at the Court sale the auction purchaser had acquired the ownership of these villages and not merely the right to collect kuttubadi or quit-rent, and ordered separate registration as to the villages in the Agency Tracts.

In the suit in the Civil Court, which is the subject of this appeal, the Subordinate Judge took the other view, and held that the auction purchaser had only acquired the right to collect the kuttubadi arising out of the villages, and was not entitled to separate registration under Madras Act I of 1876. He accordingly dismissed the suit.

The High Court on appeal framed an additional issue as to how many of the mokhasa and agraharam villages included in the sale held by the Agent's Court were within the jurisdiction of the Civil Court. Being satisfied on the finding that the villages which are the subject of this suit were within that jurisdiction, they held, following the decision of the Board in *Ramabhadraraju Bahadur v. Maharajah of Jeypore* 46 I.A. 151, that the Agency Court had no jurisdiction to sell them and that no title had passed to the auction purchaser, and dismissed this suit for separate registration on that ground.

It is unnecessary to consider these questions, because the compromise which has been entered into between the appellant, as representative of the auction purchaser and respondents 1 to 3, the Zemindar of Pachipenta and his two sons affirms the title acquired by the auction purchaser to the properties included in schedule A of the compromise, and that title being now in the plaintiff, he is entitled to separate registration of such properties under Madras Act 1 of 1876.

The objection taken by some of the respondents, who are the owners of mokhasa villages in the zemindary that they are entitled to object to the separate registration of the villages as they were not parties to the compromise is, in their Lordships' opinion, based on a misconception. The effect of the permanent settlement of the land revenue made with the predecessor of the Zemindar of Pachipenta pursuant to Madras Regulation XXV of 1802 was that he was recognised by the Government as the proprietor of that zemindary for the purposes of that Regulation, and that, as such, he engaged with the Government for the payment of the permanently-settled land revenue of the lands included in the zemindary. Under section 8 of the Regulation, he has full powers of transfer but is not relieved from his obligation to pay the full land revenue or peishcush until the transfer has been registered and the peishcush duly apportioned; and by Madras Act 1 of 1876 either alienor or alienee may apply for separate registration of any portion of a permanently-settled estate which has been transferred and for its separate assessment to peishcush.

In their Lordships' opinion the holders of mokhasa or agraharan villages in the zemindary have no right to object to the transfer by a zemindar of the whole or part of his zemindary, or to the separate registration and apportionment which is necessary to give full effect to it. So far as they are concerned, it is a mere substitution of one zemindar for another, and in no way affects their rights. It is well settled that these villages, being situated in the zemindary, are presumably the property of the zemindar, but if the holders are in a position to rebut this presumption and should desire to obtain separate registration and thereby make themselves directly liable for a portion of the Government peishcush, their right to do so will not be affected by this case.

Their Lordships therefore, giving effect to the compromise which has been reached, are of opinion that the decree of the lower Court should be modified by giving the plaintiff a declaration of his right to separate registration and apportionment of peishcush in respect of the properties comprised in paragraphs 1 to 5 of the compromise, and by setting aside, pursuant to the compromise, the orders as to costs made in the courts below in favour of the first defendant and his representative. As regards the costs of this appeal, the justice of the case will be met if the respondents who have filed cases and appeared by counsel have one set of costs between them. Their Lordships will humbly advise His Majesty accordingly.

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In the Privy Council.

SRI SRI RAMACHANDRA DEO MAHARA-
JULUNGARU MAHARAJAH OF JEYPORE,
since deceased (now represented by RAJAH SRI
SRI SRI VIKRAMA DEO VARMA GARU)

or.

SRI RAJAH TVADA PUSAPATI RUDRA SRI
LAKSHMINARASIMHA SADRUSANNAMA-
RAT DUGARAJ DAKSHINAKAVYAT DUGA-
RAJ BAHADUR, since deceased, and others.

DELIVERED BY SIR JOHN WALLIS.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.2

1934.