Privy Council Appeal No. 28 of 1933.

Sri Raja Vasireddi Sri Chandra Mouleswara Prasada Bahadur Zamindar Garu - - - - - - *Appellant*

v.

The Secretary of State for India in Council and another - - *Respondents*

Same - - - - - - - - - *Appellant*

v.

The Secretary of State for India in Council and others - - *Respondents*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH APRIL, 1935.

Present at the Hearing:

LORD ATKIN.
LORD WRIGHT.
LORD ALNESS.
SIR JOHN WALLIS.
SIR SHADI LAL.

[*Delivered by* SIR SHADI LAL.]

This is a consolidated appeal from a judgment and two decrees of the High Court of Judicature at Madras dated the 1st February, 1929, which reversed the judgments and decrees of the Court of the Subordinate Judge at Bezwada and dismissed two suits brought by the plaintiff.

The plaintiff, who has preferred this appeal, is the zamindar of a permanently settled estate called Chintalapatu Vantu (also known as Muktyala), which is situate in the Kistna District of the Madras Presidency. The circumstances, which led to the institution of the suits, may be shortly stated. The remuneration of the village officers employed in the permanently settled estates and certain other estates within the Presidency of Madras consisted of grants of lands or assignments of revenue payable in respect

of lands. This mode of remunerating the services of village officers, which was sanctioned by ancient practice, continued in force for more than a century ; but it was subsequently found to be objectionable. The Government consequently decided to pay, in lieu thereof, certain salaries and allowances in cash, and was empowered by a statute of the Madras Legislative Council called the Madras Proprietary Estates' Village Service Act (Madras Act II of 1894) to establish in each district the village service fund, from which the payment was to be made. The village officers receiving remuneration in cash were no longer entitled to keep the lands which had been granted to them for the performance of their duties, and the statute, therefore, authorised the Government to enfranchise those lands from the condition of service by the imposition of quit rent. The operative part of section 17, which conferred this authority, is in these terms :—

> " If the remuneration of a village office consists in whole or in part of lands, or assignments of revenue payable in respect of lands, granted or continued in respect of or annexed to such village office by the State, the Government may enfranchise the said lands from the condition of service by the imposition of quit-rent under the rules for the time being in force in respect of the enfranchisement of village-service inams in villages not permanently settled or under such rules as the Government may lay down in this behalf ; such enfranchisement shall take effect on or after the date fixed in the notification issued under section 19 for the levy of a Village Service cess.

The section is not happily worded, but there can be little doubt that in the case of a grant of land made or continued by the State in respect of, or annexed to, a village office, it empowers the Government to free the land from the liability of service and to impose instead a quit rent to be paid by the village officer. The legislature did not, however, intend to deprive a private proprietor of his right to recover the land, if it was granted by him or his predecessor in interest. This is made clear by a proviso to that section, which expressly states that " any lands or emoluments derived from lands which may have been granted by the proprietor for the remuneration of village service and which are still so held or enjoyed may be resumed by the grantor or his representative."

Now, it is common ground that two plots of land, which were situate in the villages of Kisara and Peddavaram, were enfranchised under the aforesaid section ; and the orders of enfranchisement were made by the revenue officer in 1908. The lands were in the occupation of two village officers who were called *Karnams*, and performed the duties of village accountants or patwaris. Neither of these village officers was ejected from the land, but was allowed to hold it on payment of a quit rent. The appellant claimed both the plots of land to be his property, but his claim was rejected by the revenue officer who conducted the enquiry. After waiting for nearly 12 years, he instituted the

present suits to establish his title to the lands in question. The Trial Judge allowed the claim, but on appeal by the Secretary of State for India, the High Court have dissented from that conclusion and dismissed both the suits.

The main question raised on this appeal is whether the lands were granted to the *Karnams* by the appellant's ancestor. This was the ground, upon which he based his claim; and there can be no doubt that, if that ground be established, he would be entitled under the proviso referred to above to recover the property. It is, however, clear, and, indeed, it is not disputed, that it is for him to prove that the grants were made by his predecessor.

In order to establish his title, the appellant had to state when the grants relied upon by him were made; and before the revenue officer, who conducted the proceedings for enfranchisement, and also in the plaints presented by him to the Trial Court, he definitely stated that the grants were made subsequent to the permanent settlement of 1802. Indeed, he attempted to show that the lands were granted in 1834; but the High Court and also the Subordinate Judge find that the attempt has failed, and that, not only there is no evidence to support the allegation of post-settlement grants, but there is ample documentary proof to refute it.

The appellant, having failed to establish that the lands were granted after 1802, shifted his position in the course of the arguments before the Subordinate Judge, and put forward a new ground of claim, namely, that the grants were made before the permanent settlement. The issue which now requires determination is whether the lands originally formed part of his estate and were given by his ancestor to the *Karnams* before 1802. On this point he has relied upon certain circumstances, which, in their Lordships' opinion, are inconclusive.

It appears that the disputed property is situated within the geographical limits of the appellant's estate, but that fact would not necessarily lead to the conclusion that the property was originally owned by his ancestor and given by him to the *Karnams*. It is not incompatible with the hypothesis that the grants of the lands had been made by the State to the village officers before the estate was conferred upon the zamindar. Moreover, the lands were exempted from the payment of land revenue before the settlement, and, as held by the High Court, the income derived from them was not included in the assets upon which the permanent land revenue was determined in respect of the zamindary in 1802. The *Karnams* have been in the enjoyment of the rents and profits for more than a century without making any payment either to the State or to the zamindar, and neither the revenue record nor any other document furnishes the slightest indication that the zamindar was, in any way, concerned with the ownership of the property.

The services performed by a *Karnam* are of a public character, but it is argued that the *Karnams* in question have been rendering private services to the zamindar. The documents, upon which this argument is founded, are of a comparatively recent date, and there is no evidence to show that such services were performed at any time before the settlement, or that the grants were made for rewarding those services. It cannot be disputed that the zamindar is a person of importance and authority in his estate ; and if the *Karnam* of a village within the estate does some private work in order to please the landed magnate, he does not thereby cease to be a public officer. Nor does that circumstance necessitate the inference that the land held by him is a grant from a private person.

It is true that in the case of an ancient grant made before 1802 it is well-nigh impossible, in the absence of the document granting the property, to discover with any reasonable certainty the date and other particulars of its origin ; and there can be no doubt that in the present case the duty of proving pre-settlement grants by the appellant's ancestor is a very difficult one to discharge. But the appellant himself has undertaken that task, and he cannot invoke its difficulty in order to relieve himself of the burden.

Their Lordships do not think that the evidence, to which their attention has been invited by the appellant, would, even if it stood unrebutted, sustain the proposition that the lands were granted by his ancestor to the *Karnams* either before, or after, the settlement of 1802. On the other hand, there are circumstances which throw doubt upon the genuineness of his claim. As stated above, it was only a few days before the expiry of the statutory period of limitation that he brought the present suits ; and this delay does not show that he was anxious to vindicate his rights of ownership. When he did institute the suits, he founded his title upon post-settlement grants, and this allegation has been demonstrated to be wholly wrong. It is clear that he himself was not sure of his ground, and his change of front at the last stage cannot but militate against his claim.

Upon an examination of the arguments presented to them, their Lordships have no hesitation in holding that the appellant has failed to discharge the onus of proving that the lands in dispute were granted to the *Karnams* by his predecessor in interest. On this finding the appeal must fail, and it is not necessary to consider whether the grants were made or continued by the State. Accordingly, their Lordships will humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

SRI RAJA VASIREDDI SRI CHANDRA MOULESWARA PRASADA BAHADUR ZAMINDAR GARU

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER.

SAME

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS.

(*Consolidated Appeals.*)

DELIVERED BY SIR SHADI LAL.

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

1935.