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February 20.

GONDUMOGULA TATAYYA

v.

PENUMATCHA ANANDA VIJAYA VENKATARAMA TIMMA JAGAPATHIRAJU (AND CONNECTED APPEALS)

(S. K. DAS, M. HIDAYATULLAH and J.C. SHAH, JJ.)

Inam Lands—Leases—Right of occupancy—Minor inams—Whether estates—Test—Madras Estates Land Act, 1908 (Mad. 1 of 1908), as amended, s. 3(2)(d) and Explanation (1).

The respondents were holders of inams in a village called Goteru, one of the Mokhasa villages which were included in the assets of the Zamindari at the time of the permanent settlement in 1802. The inams themselves were pre-settlement inams and were not included in the assets of the Zamindari. The respondents had leased out some of the lands comprised in their inams to the appellant for a fixed period, and in the suits instituted against the latter after the expiry of the period of the leases for ejecting them from the holdings in their possessions, they pleaded, *inter alia*, that they had got occupancy rights in the suit lands inasmuch as the inams were part of an estate and that, therefore, they were not liable to be ejected. They contended that by reason of the amendments made in s. 3(2)(d) of the Madras Estates Land Act, 1908, in 1936 and 1945, these minor inams being within the village of Goteru were estates under s. 3(2)(d), read with Explanation (1) of the Act. It was not disputed that Goteru village was included in the *Mokhasa* sanad of 1802 and that the Mokhasa grant was an estate.

Held, that the minor inams in the present case were not grants of whole villages and were not, therefore, estates within the meaning of s. 3(2)(d) of the Madras Estates Land, 1908.

The crucial test to find out whether a grant amounted to an estate as defined under s. 3(2)(d) of the Act was whether at the time of the grant the subject matter was a whole village or only a part of it. If it was only a part of a village, then the amending Act made no difference and such a part would not be an estate within the meaning of the term; but if the grant was of the whole village and a named one, then it would be an estate.

District Board, Tanjore v. *M. K. Noor Mohamed Rowther*, A.I.R. 1953 S.C. 446 and *Mantravadi Bhavanarayana* v. *Mervgu Venkatadu*, I.L.R. [1954] Mad. 116, relied on and applied.

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CIVIL APPELLATE JURISDICTION : C. As. Nos. 631 to 645 of 1960.

Appeals by special leave from the judgment and decree dated April 20, 1954, of the Madras High Court in Second Appeals Nos. 1228 to 1242 of 1949.

R. Mahalingier and *Ganpat Rai*, for the appellants.

A. V. Viswanatha Sastri and *T. V. R. Tatachari*, for the respondents.

1962. February 20. The Judgment of the Court was delivered by

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S. K. DAS, J.—These are fifteen appeals by special leave. They have been heard together as they arise common question of law and fact and this judgment will govern them all.

These appeals arise out of fifteen suits filed by certain inamdars (respondents herein) of a village called Goteru for ejecting the tenants, who are the appellants before us, from various holdings in their possession after the expiry of the period of their leases and for other reliefs, such as, arrears of rent and damages. The lands lie in village Goteru, one of the villages in the Nuzvid zamindari. Goteru, Komaravaram and Surampudi are three *Mokhasa* villages in the said zamindari. It was admitted that the *Mokhasas* were included in the assets of the zamindari at the time of the permanent settlement in 1802. The case of the inamdars respondents was that in eight of the suits the land was a *Karnam* service inam and in seven suits the land was a *Sarvadumbala* inam. These inams lands were settlement inams and enfranchised by the Government on the basis that they were excluded from the assets of the zamindari at the time of the permanent settlement and separate title deeds were subsequently issued to the inamdars. According to the inamdars these inam lands were not "estates"

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within the meaning of s. 3 (2) of the Madras Estates Lands Act, 1908 (Madras Act I of 1908), and the inamdars were entitled to both *Melvaram* and *Kudivaram* therein ; the respondents leased out these lands to the appellants for a fixed period under an express contract with the appellants, who were the lessees concerned, that they would quit and deliver possession at the end of their lease periods; the appellants, however, did not vacate the lands, but continued to be in possession. Twelve acres and 52 cents of the suit lands were *Karnam* service inam and the rest *Sarvadumbala* inam.

The appellants contended *inter alia* that the suit lands formed part of the *Mokhasa* of village Goteru and were included in the assets of the zamindari at the time of permanent settlement, that the inams were part of an estate and the appellant had acquired rights of occupancy in the lands in suit under the provisions of the Madras Estates Land Act. They also raised certain other pleas with which we are not now concerned. The main defence of the appellants was that they had got permanent occupancy rights in the suit lands and therefore, they were not liable to be ejected and the Civil Court had no jurisdiction to try the suits.

The learned District Munsif of Tanuku who tried the suits in the first instance dealt with them in three batches. He held in three separate judgments that the suit lands were pre-settlement minor inams, that they were not included in the assets of the zamindari at the time of the permanent settlement and that they were not "estates" within the meaning of the provisions of the Madras Estates Land Act. The learned Munsif also held that as there was a clear undertaking to vacate the lands at the expiry of the period of the leases, no notice to quit was necessary. In the result he decreed the suits. The tenants, appellants herein, then preferred fifteen appeals against the judgments and

decrees of the learned Munsif. These appeals were heard together by the learned Subordinate Judge of Eluru. By a common judgment delivered on March 29, 1948, the learned Subordinate Judge agreed with the learned Munsif in respect of all the findings and dismissed the appeals. Then, there were second appeals to the High Court of Judicature at Madras. In these second appeals only two points were urged on behalf of the appellants. The first point was that the finding of the courts below that the suit lands were excluded from the assets of the zamindari was vitiated by reason of the burden of proof being wrongly placed on the appellants. The second point was that the inamdars having concerned in the plaints that the tenants were holding over after the expiry of their leases, the inamdars were not entitled to recover possession without issuing notices to quit as required by law. With regard to the first point of the High Court pointed out that though it was settled law that the burden was upon the landlord to make out his right to evict a tenant from the holding, *Sarvadumbala* inams or inams granted for public services of a pre-settlement period were ordinarily excluded from the assets the of zamindari at the time of the permanent settlement except in some specific cases, where such lands were as an exception included in the assets of the zamindari, the exceptions being found in the four western *Palayams* of the zamindaries of Venkatagiri, Karvetnagar, Kalahasti, and Sydapur and the *Mokhasa* in Masulipatam district. Therefore, with regard to pre-settlement *Sarvadambala* inams or public service inams the person who alleged that they were included in assets of the zamindari had to prove that they were so included. The High Court then observed that the courts below did not base their judgments on onus of proof, but came to their conclusions on a consideration of the evidence given in the suits; therefore where the entire evidence was gone into,

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the question of burden of proof was immaterial. The High Court pointed out that the question whether the predecessors of the respondents herein were granted both the *varams* or *Melvaram* only was not raised before it and the contentions of the parties in the High Court centred round the only question whether the suit lands were pre-settlement inams excluded from the assets of the zamindari or whether they were included in those assets. The High Court pointed out that this was really a question of fact and in second appeal the High Court could not interfere with a finding of fact unless there were permissible grounds for such interference. The High Court held that there were no such permissible grounds. However, the High Court referred again to the documentary evidence given in the case, namely, Ex. A-1, extract from the register of village service inams in the unenfranchised Mokhasa village of Goteru, Ex. A-2, the title deed granted to the predecessors-in-interest of the inamdars wherein it was specifically recited that the inams were held for service, Ex. A-5, a settlement dated December 13, 1942, Ex. A-7, a register of service inams of Goteru dated December 13, 1949, Ex. A-6, public copy of the village account of Goteru, Ex. B-1, register of inams of village Goteru prepared in 1859, Ex. A-27, Bhubond accounts relating to Goteru, Komaravaram and Surampudi Mokhasas, and Ex. A-28 Zamabandi Pysala Chitta, etc., and came to the conclusion that the inams in question, both *Karnam* service inams and the *Sarvadumbala* inams, were per-settlement inams and the documents showed that they were not taken into consideration in determining the assets of the zamindari. On the second question of notice, the High Court came to the conclusion that the appellants herein were not tenants holding over but were persons who continued to be in possession without the consent of the inamdars after the termination

of the tenancy; that being the position, no notice was necessary and the suits for eviction were maintainable.

In the appeals before us learned Advocate for the appellants has not canvassed the question of notice. He has canvassed two points only: firstly, he has argued somewhat faintly that the finding of the courts below that the service inams were pre-settlement inams and were excluded from the assets of the zamindari was not a correct finding secondly, he has argued that by reason of the amendments made in s. 3 (2) (d) of the Madras Estates Land Act in 1936 and 1945, these minor inams constituted an estate within the meaning of the aforesaid provisions and under s. 6 of the said Act, the appellants had acquired a permanent right of occupancy in their holdings; therefore, they were not liable to be ejected and the Civil Court had no jurisdiction to deal with the suits.

As to the first point urged before us, it is sufficient to state that it relates to a question of fact on which there is a concurrent finding by the courts below and the appellants have not been able to satisfy us that there are any special reasons, such as, a manifest error of law in arriving at the finding, or a disregard of the judicial process or of principles of fair hearing etc., which would justify us in going behind such a concurrent finding. We must, therefore, proceed on the footing that the inams in question were pre-settlement inams, eight of them *Karnam* service inams and seven others *Sarvadumbala* inams.

This brings us to the second point urged before us. That point does not appear to have been agitated in the High Court. But as it relates to the interpretation of s. 3(2)(d), and Explanation(1) appended thereto, of the Madras Estates Land Act, we have allowed learned Advocate for the apellants to argue the point before us. Section 3(2)(d) and

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Explanation (1) appended thereto, is in these terms:

> "3. In this Act, unless there is something repugnant in the subject or context—
>
> .....
>
> (2) "Estate" means—
>
> .....
>
> (d) any inam village of which the grant has been made, confirmed or recognized by the Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.
>
> *Explanation* (1)—Where a grant as an inam is expressed to be of a named village, the area which forms the subject-matter of the grant shall be deemed to be an estate notwithstanding that it did not include certain lands in the village of that name which have already been granted on service or other tenure or been reserved for communal purposes.
>
> ....."

It is worthy of note here that when the Madras Estates Land Act was enacted for the first time in 1908 s. 3(2)(d) was as follows:

> "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 made, confirmed or recognized by the British Government or any separated part of such village."

Owing to a variety of reasons which it is not necessary to state here, there was an amendment by which cl. (d) as it originally stood was removed

and a fresh clause substituted by s. 2 (1) of the Madras Estates Land (Third Amendment) Act, 1936 (Madras Act XVIII of 1936). The old Explanations (1) and (2) were renumbered as Explanations (2) and (3) respectively and a new Explanation was inserted as Explanation (1) by s. 2(1) of the Madras Estates Land (Amendment) Act, 1945 (Madras Act II of 1945). The reasons why the amendments became necessary have been explained in the Full Bench decision of the Madras High Court in *Mantravadi Bhavanareyana* v. *Merugu Venkatadu*(1). In *Narayanaswami Nayudu* v. *Subramanyam*(2) it was observed by the Madras High Court that the existence of service inam was very common in villages and that where there was a subsequent grant of the village, to hold that such grant was not an estate as defined in s. 3(2)(d) by reason of the existence of minor inams would result in the exclusion of *agraharams, shrotriyams* and *mokhasa* villages from the operation of the Act and that could not have been the intention of the Legislature. In that decision Srinivasa Ayyangar, J., observed:

> "The definition in sub-section 3, clause (d) was obviously intended to exclude from the definition of 'Estate' what are known as minor inams, namely, particular extents of land in a particular village as contrasted with the grant of the whole village by its boundaries. The latter are known as 'whole inam villages'. The existence of 'minor inams' in whole inam villages is very common and if these inam villages do not come within the definition of 'Estate' almost all the agraharam, shrotriyam and mokhasa villages will be excluded. This certainly cannot have been the intention of the Legislature."

(1) I. L. R. [1954] Madras 116. (2) (1915) I. L. R. 39 Madras 683,

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This interpretation of s. 3(2)(d) was accepted without question until the decision in *Ademma* v. *Satyadhyana Thirtha Swamivaru* (1) where for the first time a different note was struck. It was held therein that where portions of the estate had previously been granted as minor inams, a subsequent grant of the rest of the village was not of an estate as it was not of the whole village. The Legislature thereupon intervened and enacted Explanation (1) with the object of restoring the view of the law which had been held before the decision in *Ademma* v. *Satyadhyana Thirtha Swamivaru*(1). The crucial test to find out whether the subject matter of a grant falls within the definition of an estate under s. 3(2)(d) of the Act is whether at the time of the grant the subject-matter was a whole village or only a part of a village. If at the time of the grant it was only a part of a village, then the amending Act makes no difference to this and such a part would not be an estate within the meaning of the term. But if the grant was of the whole village and a named one, then it would be an estate. Learned Advocate for the appellants has referred us to the *Mokhasa* sanad of December 8, 1802. That sanad gives a list of villages which Goteru is one. The argument of learned Advocate for the appellants is that the inam lands being within village Goteru, they also are "estates" within the meaning of s. 3(2)(d) read with Explanation (1). It appears to us that this argument is clearly erroneous. There is no doubt that the Mokhasa grant is an estate within the meaning of the s. 3 (2) of the Madras Estates Land Act, and that is not disputed before us. That does not however, mean that the minor inams would also constitute an estate within the meaning of s. 3 (2) (d). As was pointed out in *Mantravadi Bhavanarayana* v. *Merugu Venkatadu*(2),

(1) [1943] 2 M. L. J. 239. (2) I. L. R. [1954] Madras 116.

the crucial test is whether at the time of the grant the subject-matter was a whole village or only part of a village. In *District Board, Tanjore* v. *M. K. Noor Mohamed Rowther* (1) this Court observed that "Any inam village" in s. 3(2)(d) meant a whole village granted in inam and not anything less than a village however big a part it might be of that village. In other words the grant must either comprise the whole area of a village or must be so expressed as is tantamount to the grant of a named village as a whole, even though it does not comprise the whole of the village area, and the latter case, in order to come within the scope of the definition it must fulfil the conditions; (a) the words of the grant should expressly (and not by implication) make it a grant of a particular village as such by name and not a grant of a defined specific area only; and (b) that the area excluded had already been granted for service or other tenure; or (c) that it had been reserved for communal purposes. The minor inams under consideration in these suits were pre-settlement inams and the finding which cannot now be challenged is that they were excluded from the assets of the zamindari at the time of the permanent settlement in 1802, though the *Mokhasas* were not so excluded. That being the position, the minor inams were not grants of whole villages and were not estates within the meaning of s. 3(2)(d) of the Madras Estates Land Act. Therefore, the appellants cannot claim the benefit of s. 6 of the said Act.

Learned Advocate for the appellants also addressed us at some length on the beneficent nature of the provisions of the Madras Estates Land Act and submitted that the appellants herein should not be deprived of the benefits of that Act. But the appellants must satisfy us first that they come within the protection or benefits of the Act. If the lands which they held were not an "estate"

(1) A. I. R. [1953] S.C. 446.

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within the meaning of the Act, then there can be no question of giving them the benefit of the Act. In our opinion, there is no substance in the second point urged on behalf of the appellants.

In the result the appeals fail and are dismissed with cost; one hearing fee.

Appeals dismissed.