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special leave. That is why we propose to express no opinion on the merits of the plea of mala fides which the appellant wanted to raise before us.

The result is, the appeal is allowed and the order of detention passed against the appellant is set aside on the ground that the service of the order is invalid and is outside the scope of Rule 30(1)(b) of the Rules. We accordingly direct that the appellant should be released forthwith.

Appeal allowed.

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September 12

STATE OF ANDHRA PRADESH

v.

GUNDUGOLA VENKATA SURYANARAYANA GARU

(A. K. SARKAR, J. C. SHAH AND RAGHUBAR DAYAL, JJ.)

Civil Procedure Code, S. 80, O. 1. r. 8.—Notice under 80, Civil Procedure Code by two persons but suit filed by one—Validity of suit—Representative suit—Requirements of—Meaning of 'Estate' —Madras Estates Land Act, 1908, S. 3(2)(*d*)—*Madras Estates Rent Reduction Act,* 1947.

The Government of Madras applied the provisions of the Madras Estates Rent Reduction Act, 1947 to the lands in the village Mallinadhapuram on the ground that the grant was of the whole village and hence an estate within the meaning of S. 3(2)(d) of the Madras Estates Land Act, 1908. The respondent and another person served a notice under S. 80 of the Code of Civil Procedure upon the Government of the State of Madras in which they challenged the above mentioned notification and asked the Government not to act upon it. Out of the two persons who gave the notice, the respondent alone filed the suit. The trial court held that the original grant was not of the entire village and was not so confirmed or recognised by the Government of the Province of Madras and therefore as it was not on "estate" within the meaning of S. 3(2)(d) of the Madras Estates Land Act the Madras Rent Reduction Act, 1947 did not apply to it. But the suit was dismissed on the ground that although two persons had given the notice under S. 80 of the Code of Civil Procedure, only one person had filed the suit. The High Court agreed with the trial court that the grant was not of an entire village but it also held that the notice was not defective and the suit was maintainable as it was a representative suit and the permission of the

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court under Order 1, r. 8 had been obtained in this case. The High Court granted the respondent the relief prayed for by him. Against the order of the High Court, the appellant appealed to this Court.

HELD, (i) The suit was not liable to be dismissed. There was in the circumstances of the case no illegality even though notice was given by two persons and the suit was filed by only one. The right to institute a representative suit can be exercised by one or more persons having an interest which is common with others and that right can be exercised with the permission of the court. If the court grants permission to one person to institute a representative suit and if the person had served the notice under S. 80, the circumstances that another person had joined him in serving the notice but did not join him in the suit, is not a sufficient ground for regarding the suit as defective.

(ii) The permission of the court has to be obtained for instituting a representative suit and not for serving the notice. The Code of Civil Procedure contains no machinery for granting permission to a party seeking to serve a notice upon the Government or a public servant.

(iii) The lands in dispute did not constitute an estate within the meaning of S. 3(2)(d) of the Madras Estates Land Act, 1908, and therefore the Madras Rent Reduction Act, 1947 did not apply to them. *Vellavan Chettiar and others* v. *The Government of the Province of Madras and another*, L. R. 74 I. A. 223 and *Government of the Province of Bombay* v. *Pestonji Ardeshir Wadia and others*, L. R. 76 I. A. 85.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 483 of 1961.

Appeal from the judgment and decree dated April 1, 1959 of the Andhra Pradesh High Court in Appeal Suit No. 583 of 1954.

K. Bhimashankaram, B.R.G.K. Achar and *R. N. Sachthey*, for the appellant.

September 12, 1963. The Judgment of the court was delivered by

Shah, J.

SHAH J.—Two questions fall to be determined in this appeal :

(1) whether the suit instituted by the respondent G.V. Suryanarayana Garu against the State of Madras was liable to be dismissed because of absence of identity between the persons who served the notice under s. 80 Code of Civil Procedure, 1908 and the person who sued; and

(2) whether the lands in dispute covered by title deed No. 279 Mallinadhapuram constitute an "estate" within the meaning of s. 3(2) (d) of the Madras Estates Land Act, 1908.

By order dated January 11, 1950 the Government of Madras applied the provisions of the Madras Estates Rent Reduction Act 30 of 1947 to the lands in the village Mallinadhapuram on the footing that the grant was of the whole village, and hence an estate within the meaning of s. 3(2)(d) of the Madras Estates Land Act, 1908, and thereby sought to prevent the Inamdars from collecting contractual or customary rent from the tenants who held the lands under the Inamdars.

G. V. Suryanarayana Guru and Prabha Yegneswara Sastri who collectively hold $2\frac{1}{4}$ out of the 8 *vrittis* constituting the inam thereupon served a notice under s. 80 Code of Civil Procedure upon the Government of the State of Madras. The notice recited that the cause of action for the proposed suit arose on the issue of the notification dated January 11, 1950 published in the Fort St. George Gazette on May 16, 1950 and on subsequent dates when the Government of Madras through its officers attempted to interfere with the collection of rent due from tenants, and called upon the Government of Madras to withdraw the notification and to refrain from collecting at reduced rates rent from the tenants and cultivators in Mallinadhapuram or otherwise interfering with the rights of ownership of the inamdars in Mallinadhapuram, and informed the Government that in default of compliance with the notice, a suit to establish the rights claimed would be filed against the State of Madras. The notice set out the names, description and place of residence of the plaintiff and Prabha Yegneswara Sastri. The Government of Madras failed to withdraw the notification, and G. V. Suryanarayana Garu alone instituted, for himself and on behalf of all Inamdars of Mallinadhapuram, Suit No. 45 of 1953 in the Court of the Subordinate Judge, Srikakulam against the State of Madras for a declaration that "the *agraharam* of Thungathampara *alias* Mallinadhapuram covered by T. D. No. 279 is not an estate within the meaning of Section 3(2)(d) of Madras Estates Land Act, and the Notification No. 2970 of the Government defendant published at page 1399 of

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Fort St. George Gazette under Madras Estates Rent Reduction Act XXX of 1947 and subsequent proceedings thereunder are therefore void, illegal and *ultra vires.*"

The State of Madras contended that the grant in favour of the predecessors of the Inamdars was of the entire village and of a named village which had been enfranchised as such under title deed No. 279 and on that account the village constituted an estate as defined in s. 3(2)(d) of the Madras Estates Land Act and also as defined in Madras Act XXX of 1947, and the plaintiff's claim was not maintainable. It was also contended that the notice served by the plaintiff under s. 80 Code of Civil Procedure was "not valid and proper in law".

The Trial Court held that the original grant in inam was not of the entire village, and was not so confirmed or recognized by the Government of the Province of Madras and therefore within the meaning of s. 3(2)(d) of the Madras Estates Land Act it was not an "estate", and the Madras Rent Reduction Act, 1947 had no application thereto, but the suit was still liable to be dismissed because the notice served by the plaintiff and Prabha Yegneswara Sastri was "invalid and defective inasmuch as the suit" was filed by the plaintiff alone.

In appeal the High Court of Andhra Pradesh at Guntur (which since the constitution of the State of Andhra was the proper Court to entertain the appeal) reversed the decree passed by the Trial Court. The learned Judges agreed with the Trial Court that the grant was not of an entire village or of a named village, and that the representative suit filed by the plaintiff for and on behalf of all the Inamdars, with the permission of the Court under O. 1 r. 8 of Code of Civil Procedure was not defective. The High Court accordingly granted to the plaintiff the relief claimed in the plaint.

The dispute in this appeal relates to an area of land covered by T.D. No. 279. It is common ground that in Hizri year 1143 the then Raja of Parlakimidi Veera Pratapa Rudranarayana Deo granted for maintenance as a hereditary inam certain lands to one Nagulakonda Shivaramdas. In course of time the lands were as a result of partitions and alienations divided into eight *vrittis.* The original grant is not forthcoming. In 1860 when the

Zamindari was under the management of the Court of Wards, survey proceedings were instituted according to the "block survey system" and the *agraharam* and the *jeroyiti* villages in the Zamindari were demarcated and measured in blocks. The District Collector recommended to the Court of Wards "that no claim to land as yet uncleared and untilled should be allowed until the grant clearly favoured the claim, and that the actual encrochments made upto the date of demarcation would fall within the cognizance of the Inam Commissioner". This recommendation of the Collector was approved by the Court of Wards on September 25, 1861. At the time of enfranchisement of the inam, the Inam Commissioner dealt with the cultivated area only and issued title deeds to the Inamdars excluding the jungle or the cultivable waste lying within demarcated limits according to the Block Survey of 1860. The Court of Wards had on behalf of the Zamindar claimed before the Inam Commissioner the waste and *banjar* lands not under cultivation as being the exclusive and reserved areas of the Zamindari. In the investigations made by the Inam Commissioner the entire area in the block survey of the inam land was not enfranchised, and certain *banjar* lands which were excluded from enfranchisement were treated as *Samasthanam jeroyiti,* and ever since the Block Survey of 1860 the *Samasthanam* derived agricultural income from the excluded lands. The Zamindar had got the *banjar* lands separately demarcated. An application by one Nagulakonda Jaggiah to obtain a grant on *patta* of 15 acres of *banjar* land submitted to the Estate Manager, and the *Jeroyiti patta* dated February 13, 1864 for a portion covered by block No. 23 lend support to the recognition of the right of the Zamindar to the *banjar* lands in the village.

In Ext. A-1 the Inam Fair Register it is recited in the remarks column that :

> "It appears that there was formerly a *mokhasa* in this estate which was known by the name of Tungatampara in the vicinity of the *Agrahar*. Under settlement and is that of Chorlangi and Gatta, that as the *mokhasa* fell into decay half century ago and as the above *agraharamdars* complained to the Zamindar Dugaraju that they are destitute of the

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sources of irrigation he formed a tank, including the lands of the *mokhasa* with head of it and ruled that 2/5 of the water should run to the fields of the *Agraharamdars* of Chorlangi, 2/5 to Gatta and 1/5 to the *agraharam* in question. As the tank was formed only half a century ago or subsequent to the permanent settlement, the right to it vests with the Zamindar and if any of the lands formed to have been brought under plough it will be liable to full assessment."

This indicates that the Zamindar had constructed the tank and his title thereto was recognised. The Assistant Inam Commissioner as recited in the Inam Fair Register had recommended by his letter dated November 30, 1865, confirmation of acres 149-59 cents only and not the entire area of the village, and this was approved by the Inam Commissioner by his final order. There is nothing in Ext. A-1 to support the contention that the original grant was of an entire village, and the inference that it was a grant of a part of the village is supported by the actings and dealings of the Zamindar with the waste and *banjar* lands, and by the recognition of his title to the tank, and the confirmation of a part only of the entire area. This inference is further supported by other documentary evidence. Exhibit A-3 which is the correspondence between 1864 and 1866 relating to the *banjar* lands shows that in the enfranchisement proceedings those lands were separated and that a *jeroyiti patta* was granted for the banjar lands by the Zamindari Manager. Similarly Exts. A-4 to A-8 show that the Inam Commissioner did not deal with the jungle land and hillocks in his final order dated November 30, 1865 and that the same were claimed by the Zamindar as belonging to him. Exhibit A-9 which is a note submitted by the Diwan of the Estate recited that in Block No. 23 of Mallinadhapuram *agraharam* the excluded *banjar* was not surveyed in the survey of 1860, and that it was separately surveyed, and the *banjar* was then included in the village Gulumuru. Exhibit A-7 which is the block survey list shows that the total extent of the village was acres 325-92 cents and out of that area acres 110-00 were recorded as belonging to the Zamindar as his *banjar* and *poramboke* lands for which he had issued *jeroyiti pattas*. Exhibits A-13

to A-20 also show that the *banjar* lands were granted on *jeroyiti pattas* by the Parlakimidi estate and were not regarded as part of the inam. The evidence therefore clearly establishes that the grant was not of the entire village and the Trial Court and the High Court were, in our judgment, right in declining to accept the case of the State.

In the notice served on the Government of Madras the plaintiff and Prabha Yegneswara Sastri claimed title to $2\frac{3}{4}$ *vrittis* out of 8 *vrittis* constituting the inam lands in Mallinadhapuram, and set out in detail the proceedings of the Inam Commissioner. They then proceeded to submit on diverse grounds that what was confirmed by the Inam Title Deed No. 279 was not an estate within the meaning of s. 3 (2)(d) of the Madras Estates Land Act, and that in applying the provisions of the Madras Estates Rent Reduction Act the State Government acted illegally. The notice then proceed to state that "this notice is therefore given to the Government to request them to refrain from taking any step or proceedings under the Rent Reduction Act, failing which my clients will be obliged to take legal proceedings in a Civil Court, on behalf of the Inamdars to establish their rights and to restrain the Government from taking any action under the Rent Reduction Act and interfere with my clients' rights to collect the usual and customary rents lawfully payable to Inamdars, under customary contract, or otherwise interfere with their right of ownership and possession of the lands covered by the Inam Title Deed No. 279 of Mallinadhapuram", and called upon the Government to withdraw the notification published in the Gazette dated May 16, 1950 and to refrain from attempting to collect at reduced rates the rent from the tenants and cultivators in Mallinadhapuram and otherwise interfering with the rights of ownership of the *agraharam* in Mallinadhapuram, and threatened that in default of compliance a suit would be filed by the inamdars in the Civil Court to establish "their rights and obtain necessary reliefs against the State of Madras".

Section 80 of the Code of Civil Procedure, (in so far as it is material for this appeal) provides, that no suit against the Government shall be instituted until the expiration of two months next after notice in writing has been delivered to or left at the office of the appropriate autho-

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rity stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims. In the present case the notice addressed to the Government of the State of Madras by two named persons sought to raise a grievance on behalf of all the Inamdars who were aggrieved by the issue of the notification under the Madars Act XXX of 1947. That is clear from the recitals which we have set out *verbatim* earlier and from the relief clause. The cause of action, the name, description and place of residence of both the persons who gave the notice and the relief claimed, were also set out. The suit was instituted more than two months after the date on which the notice was served. But it was filed by one out of the two persons who had served the notice, with the permission of the Court under O. 1 r. 8 Code of Civil Procedure, as a representative suit for and on behalf of all the Inamdars who were aggrieved by the order.

The object of the notice under s. 80 is to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position and if that course is justified to make amends or settle the claim out of Court. The section is imperative and must undoubtedly be strictly construed: failure to serve a notice complying with the requirements of the statute will entail dismissal of the suit. But the notice must be reasonably construed. Every venial error or defect cannot be permitted to be treated as a peg to hang a defence to defeat a just claim. In each case in considering whether the imperative provisions of the statute are complied with, the Court must face the following questions :

(1) whether the name, description and residence of the plaintiff are given so as to enable the authorities to identify the person serving the notice;

(2) whether the cause of action and the relief which the plaintiff claims are set out with sufficient particularity;

(3) whether the notice in writing has been delivered to or left at the office of the appropriate authority mentioned in the section; and

(4) whether the suit is instituted after the expiration of two months next after notice has been served,

and the plaint contains a statement that such a notice has been so delivered or left.

In construing the notice the Court cannot ignore the object of the Legislature—to give to the Government or the public servant concerned an opportunity to reconsider its or his legal position. If on a reasonable reading—but not so as to make undue assumptions—the plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or errors may be ignored.

The notice in the present suit was served by the plaintiff and Yegneswara Sastri. They raised a grievance about the notification issued by the Government of Madras on May 16, 1950: it was not an individual grievance of the two persons who served the notice but of all the Inamdars or *agrahamdars*. The relief for which the suit was intended to be filed was also not restricted to their personal claim. The notice stated the cause of action arising in favour of all the Inamdars, and it is not disputed that the notice set out the relief which would be claimable by all the Inamdars or on their behalf in default of compliance with the requisition. The plaintiff it is true alone filed the suit, but he was permitted to sue for and on behalf of all the Inamdars by an order of the Court under O. 1 r. 8 Code of Civil Procedure. The requirements as to the cause of action, the name, description and place of residence of the plaintiff was therefore complied with and the relief which the plaintiff claimed was duly set out in the notice. The only departure from the notice was that two persons served a notice under s. 80 informing the Government that proceedings would be started, in default of compliance with the requisition, for violation of the rights of the Inamdars, and one person only out of the two instituted the suit. That in our judgment is not a defect which brings the case within the terms of s. 80. The right to institute a representative action may be exercised by one or more persons having an interest which is common with the others but it can only be exercised with the permission of the Court. If the Court grants permission to one person to institute such a representative action and if that person had served the notice under s. 80, the circumstance that another person had joined him in serving the notice but did not effectuate that notice by joining in the suit, would not in our judg-

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ment be a sufficient ground for regarding the suit as defective.

Counsel for the State of Andhra Pradesh said that a person who seeks to institute a suit in a representative capacity must establish that he had obtained sanction of the persons interested on whose behalf the suit is proposed to be instituted, and when it is to be instituted against the Government or against a public officer, before serving the notice he must, beside obtaining the authority from all the persons so interested, set out in the notice the names, descriptions, and places of residence of all the persons sought to be represented by him. But there is nothing in s. 80 of the Code or O. 1 r. 8 Code of Civil Procedure which supports this submission, and there is inherent indication in O. 1 r. 8 to the contrary. To enable a person to file a suit in a representative capacity for and on behalf of numerous persons where they have the same interest, the only condition is the permission of the Court. The provision which requires that the Court shall in such a case give, at the plaintiff's expense, notice of the institution of the suit to all persons having the same interest, and the power reserved to the Court to entertain an application from any person on whose behalf or for whose benefit the suit is instituted, indicate that no previous sanction or authority of persons interested in the suit is required to be obtained before institution of the suit. Nor is there anything in s. 80 that notice of a proposed suit in a representative capacity may be served only after expressly obtaining the authority of persons whom he seeks to represent. Section 80 requires that the name, description and place of residence of the plaintiff must be set out in the notice and not of persons whom he seeks to represent. A suit filed with permission to sue for and on behalf of numerous persons having the same interest under O. 1 r. 8 is still a suit filed by the person who is permitted to sue as the plaintiff: the persons represented by him do not in virtue of the permission become plaintiffs in the suit. Such other persons would be bound by the decree in the suit, but that is because they are represented by the plaintiff, not because they are parties to the suit unless by express order of the Court they are permitted to be impleaded.

In the present case G. V. Suryanarayana Garu has

served the notice under s. 80 Code of Civil Procedure and he has also instituted the suit: the plaint complies with the requirements of s. 80, and the fact that Yegneswara Sastri had joined in serving the notice, but not in seeking permission of the Court, does not render the plaint and the proceedings in suit defective. The principle of the two decisions of the Privy Council: *Vellayan Chettiar and others* v. *The Government of the Province of Madras and another* (1) and *Government of the Province of Bombay* v. *Pestonji Ardeshir Wadia and others*(2) on which reliance was placed by counsel for the State has no bearing on the case before us. *Vellayan Chettiar's case* (1) was one in which notice was given by one plaintiff stating the cause of action, his name, description and place of his residence and the relief which he claimed, and that the suit was instituted by him and another. The Privy Council observed that :

> "The section according to its plain meaning, requires that there should be identity of the person who issues the notice with the person who brings the suit: see (*Venkata Rangiah Appa Rao* v. *Secretary of State*— I.L.R. 54 Mad. 416) and on appeal, A.I.R. 1935 Mad. 389. To hold otherwise would be to admit an implication or exception for which there is no justification."

Two persons had it is clear sued for a declaration that certain lands belonged to them, and for an order setting aside the decision of the Appellate Survey Officer in regard to those lands. It was found that one alone out of the two had served the notice. The relief claimed by the two persons was personal to them and the right thereto arose out of their title to the land claimed by them. It was held that without a proper notice the suit could not be instituted under s. 80, for to hold otherwise would be to admit an implication or exception for which there was no justification. In *Prestonji Ardeshir Wadia's case* (2) two trustees of a Trust served a notice in October 1933 upon the Government of Bombay under s. 80 intimating that the trustees intended to institute a suit against the Government on the cause of action and for the relief set out therein. One of the trustees died before the plaint was

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(2) L.R. 76 I.A. 85.

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lodged in Court, and two more trustees were appointed in the place of the deceased trustee. Thereafter the two new trustees and the surviving trustee filed the suit out of which the appeal arose which was decided by the Privy Council. No notice was served on the Government on behalf of the two new trustees. The Privy Council accepted the view of the High Court that where there were three plaintiffs, the names and addresses of all of them must be given in the notice. Their Lordships observed that:

> "the provisions of s. 80 of the Code are imperative and should be strictly complied with before it can be said that a notice valid in law has been served on the Government. In the present case it is not contended that any notice on behalf of plaintiffs 2 and 3 was served on the Government before the filing of the suit."

In both these cases the suit was instituted by two or more persons but not all had served the statutory notice. In the present case the person who instituted the suit had in fact served the notice. He had intimated the Government by the notice that a cause of action had arisen in favour of the Inamdars, and that proceedings would be started on behalf of the Inamdars for relief set out in the notice. The cause of action as set out in the notice remained unchanged in the suit, and it is not claimed that the relief set out in the plaint is different from the relief set out in the notice. The only discrepancy between the notice and the plaint is that the notice was given by two persons intimating that an action would be started against the Government for and on behalf of the Inamdars on the cause of action and relief set out therein, the action was instituted by one person but with the permission of the Court for and on behalf of the Inamdars on the same cause of action and for the same relief.

The other contention raised by counsel for the State of Andhra Pradesh that in a suit which is to be instituted against the State after notice under s. 80 Code of Civil Procedure, the plaintiff must first obtain the permission of the Court before serving a notice, is in our judgment futile. The permission of the Court has to be obtained for instituting a representative suit and not for serving the notice. The Code contains no machinery for granting permission

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to a party seeking to serve a notice upon the Government or a public servant.

The appeal fails and is dismissed. The respondent has not appeared before this Court and hence there will be no order as to costs.

Appeal dismissed

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Sept., 18

BABU LAL

v.

STATE OF UTTAR PRADESH AND OTHERS

(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, J. C. SHAH AND RAGHUBAR DAYAL, JJ.)

Code of Criminal Procedure, 1898(*Act* 5 *of* 1898), *ss.* 476, 479*A*—*Using forged document—Whether offence contemplated by s.* 479A(1)—*Interpretation of s.* 479A.

In a civil suit the appellant was examined as a witness and he tendered in evidence an agreement, which in the Munsiff's opinion was forged. The Munsiff, however, in his judgment did not record the opinion required for ordering the prosecution of the appellant under s. 479A of the Code of Criminal Procedure. Respondents 2 to 5, who were the plaintiffs in the suit, had applied, before the suit was disposed of, that action be taken against the appellant under s. 479A of the Code of Criminal Procedure. In disposing of the suit the Munsiff did not record the opinion which he was required to record if he desired that action should be taken against the appellant under s. 479A. But on the application of the Respondents, the Munsiff directed that complaint be made against the appellant in exercise of the powers vested under s. 476 Code of Criminal Procedure for the offence of fraudulently or dishonestly using as genuine a document which the appellant knew or had reason to believe to be forged. This order of the Munsiff was confirmed in appeal by the District Judge, and the revision to the High Court, too, was dismissed. In appeal by special leave,—

HELD: (i) Section 479A of the Code of Criminal Procedure excludes the jurisdiction of the Court to proceed under s. 476 to 479, only in respect of offences under s. 195(b) & (c) of the Code of Criminal Procedure where a person appearing before the Court or a witness has intentionally given false evidence in any stage of a judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding.