Buddala Gan Gayya and ors. Vs. Vennavalli Satyanarayana and ors.

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Court : Chennai

Decided On : Feb-11-1925

Reported in : 91Ind.Cas.503

Judge : Ramesam, J.

Appellant : Buddala Gan Gayya and ors.

Respondent : Vennavalli Satyanarayana and ors.

Judgement :

Ramesam, J.

1. The facts of this second appeal may be briefly, slated. One Varanasi Ramayya owned an inam measuring 2 acres 30 cents, in the suit village of Ramasingavaram. He sold half of it to P.W. No. 3 under Ex. A (14th December 1895). P.W. No. 3 sold half of his moiety (i.e., one-fourth) under Ex. C-1 to K. Lingamaraju who then sold it to plaintiff tinder Ex. B.P.W. No. 3 sold the other half of his moeity also to plaintiff under Ex. C. (21st April 1914). Thus whatever inam Ramayya had, passed to plaintiff The suit is for recovery pf that inam.

2. There is some doubt and confusion as to the identity of the inam. As will appear later on, the point is, in my opinion, not material. But I may indicate the nature of the doubt according to the Munsifs findings. The Subordinate Judge has given no finding. According to the District Munsif it appears that the Survey number of the inam according to the old Survey was No. 114. In the re-Settlement of the village in 1899 or 1901), Survey No. 114 is shown as 236 A. The rest of Survey No. 236 belongs to Government. The Munsif also says 'At the time of the sub-division Survey field No. 236A appears to have been shown as Survey held No. 236A-544'. Some of the Survey records show interpolations and corrections and show that Survey 236-A544 is south of Survey No. 104: but it is possible that the corrections represent the proper state of things, though it is not clear. The plaintiff's suit is for recovery of the land south of Survey No. 104.

3. The defendants plead that the land, south of Survey No. 101, is not 236A-544 but 236G and it belongs to Government. They plead no title of their own not even a right to possession under the authority of the true owner. In the written statement, they no doubt pleaded that Buddala people Cultivated it and sold it to 10th defendant but, nosale-deed is produced. In fact it was admitted before me that such part of the suit land, as was under the occupation of the defendants, was under their Sivajima cultivation, i.e., they are practically trespassers and have no right of any kind. When a person, who has no patta and is, therefore, not a raiyat, trespasses on a land belonging to Government, and cultivates it, the Government sometime imposes an

assessment (some what heavier than the usual settlement assessment). This is called Sivajima assessment. It amounts to a condoning of the act of trespass but does not amount to a recognition of any, right nor any undertaking on the part of the Government, to permit the Occupation for the future, though, as a matter of fact, the occupation may go on for years, and the trespass for each year being cosndoned; for that year by the recovery of the assessment. (S.C. 15 paras. 23, 24, 25). It is clear that defendants rights, even as such trespassers terminated with 1918 (see Ex. G).

4. Thus, the defendants have no substantial defence on the merits. When the original written statement was filed, at the most it amounted to a plea of jus tertii, i.e., the right of Government. In 1920 the plaint was amended by making the Government a party and para. 7(1) was added. The defendants agreed to the amendment and did not oppose it. The result of the amendment was that the Government whose title was pleaded by the defendant as jus tertii became a party to the suit and the Government does not support the other defendants and there is no jus tertii to be pleaded. A plea of jus tertii is no defence unless the defendant can show that the act complained of was done by the authority of the true owner Narayana Rao v. Dharmachar 26 M. 514, citing Graham v. Peat 6 R.R. 268, and Chambers v. Donaldson 10 R.R. 435. The situation is that plaintiff and Government are the two rival owners of the suit land and parties to the suit and it is a matter to be settled between them and no jus tertii is available for the other defendants. At this-stage, the Government recognised that the plaintiff is the owner of the suit land and plaintiff and Governnment have filed a compromise petition to that effect (vide p. 3 of the pleadings). The Government having found that the plaintiff was the owner of an inam and that they had recdgnised him to be the owner of an inam (see Exs. D, E, E-1, and J) but that there is some dispute as to its localisation, settled it in the way they liked it best and found most convenient:' (Ex. G). I do not see how there is any thing more to be pleaded by the other defendants or to be decided by the Courts after the settlement between the Government and plaintiff, the only two parties who are interested in the matter.

5. The learned Vakil for the defendants conceded before me that he cannot question the discretion of the lower Courts in allowing the amendment and especially as his clients agreed to it and did not oppose it. In the First Court, he contended that a plaint could not be allowed to be amended so as to enable the plaintiff to rely on a title created after the filing of the plaint. In the present case, no title has been created since the date of the plaint. That the plaintiff was always the owner of an inam. That there was an inam in Survey No. 236, not belonging to Government, admits of no doubt: (See Exs. D, E, E-1, G and J). That the plaintiff is the owner of it admits of no doubt (Exs. A, B, C, C-1). The only question in this case was about the situation of the inam. The question of localisation of the inam has been settled by the Government, the owner of the rest of the land who chose to accept such of the Survey records, as support the plaintiff. I do not see that this can be said to be a case of a title created after the filing of the plaint. Again, I do not see how the defendants can raise such a plea. They have no locus, standi in this case. They have no ownership or right to possession under the real owner (who is either plaintiff or Government). The plea of jus tertii ceased to be such after the Government was impleaded and supported the plaintiff. The principle that the possession is good against all but the true owner (which is merely another way of stating that a plea of jus tertii is a good defence) cannot avail the defendants as the third person is impleaded as a party and admitted the plaintiff's title to it. If the Government is transferred as a plaintiff, the defendants have no defence to urge.

6. Even apart from this, I do not think there is any general rule that an amendment cannot be allowed so as to implead a title acquired after the date of the plaint. There was no amendment of the plaint in Radhaykoer v. Ajodhya Das 7 C.L.J. 262 and Purkhit Panda v. Ananda Gaontia 8 C.L.J. 116, and otherwise the cases are very dissimilar and do not help the defendants. In Rai Charan Mandal v. Biswa Nath Mandal 20 C.L.J. 107 there was a devolution during the pendency of the suit and the principle that a Court may take notice of events which have happened since the institution of the suit to do complete justice between the parties was recognised. In the present case, the amendment by the addition of the Government as a party was made for the purpose of attaining finality, (see order, dated the 26th January 1921), and I have already shown that this is not at all a case when the plaintiff's title is acquired after the suit. Abdul Rahaman v. Sarafat Ali 20 C.W.N. 667, relied on by the Court below is a case of execution sale and does not help us. In Ramanadhan Chetti v. Pulikutti Servai 8 M.L.J. 121 : 7 Ind. Dec. 559, the amendment was asked at a very late stage i.e., in second appeal and was refused. In this case, the amendment was sought at the earliest possible stage, i.e., before the trial in the First Court was taken up and was granted. The Vakil for the appellant relies on Evans v. Bagshaw 18 W.R. 657 affirming Evans v. Bagshaw (1869) 8 Eq. 469. The case in Evans v. Bagshaw (1870) 5 Ch. 340 , was considered in Doraisami Pillai v. Chinnia Goundan 22 M.L.T. 538 : (1918) M.W.N. 89 : 7 L.W. 335. where Wallis, C.J. observed: 'There are no English decisions since the Judicature Act that such acourse is...incompetent and on the other hand as observed in Kisandas Rupchand v. Rachappa Vithoba 11 Bom. L.R. 1042, the discretion conferred under Order VI, Rule 17 of the C.P.C. and Order XXVIII, Rule 1 of the English Rules is very wide' and the amendment was allowed to stand. The same view was taken in Pendckkallu Thimmayya v. Pendekkallu Siddappa : AIR1925Mad63 , and again by Venkatasubba Rao, J., and myself in a recent judgment Valluru Appalasuri v. Sasapa Kaunanna. Nayuralu (1925) M.W.N. 622 : 49 M.L.J. 598. where it was observed that such an amendment ought to be allowed in all cases where there is no question of, change of jurisdiction or great delay in making the application, or depriving is opposite party of a defence otherwise available or the necessity of a fresh trial into facts. In the present case, if a fresh suit is filed, the defendants have absolutely no defence. The learned Vakil for the appellants at first suggested that he may apply for a grant for the suit land on darkhast; but when it was pointed out that this is not a darkhast case and the question is one of the localisation of an inam to which the plaintiff is admittedly entitled, he withdrew the suggestion and could not suggest any other defence.

7. It is also contended that the compromise between the plaintiff and Government does not amount to a conveyance. But this point does not arise on the view I have taken of the facts of the case. The compromise has only the effect of localising the plaintiff's admitted inam and no more. Nor has Dharanikanta Lahiri v. Gahar All Khan (1913) M.W.N. 157 : 17 C.W.N. 389 : 17 C.L.J. 277 : 15 Bom. L.R. 445 (P.C.) any application to the facts of this case.

8. The second appeal is dismissed with costs, one set to be shared equally by Government and plaintiffs.