Privy Council Appeal No. 66 of 1919.

The Secretary of State for India in Council - - - *Appellant*

v.

Srinivasa Chariar 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 16TH DECEMBER, 1920.

Present at the Hearing:

LORD MOULTON.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.
SIR LAWRENCE JENKINS.

[*Delivered by* SIR LAWRENCE JENKINS.]

The suit out of which the present appeal arises was brought by the Shrotriemdars of the village Kulloor in the Madras Presidency in order to establish their unfettered right to quarry stone in the lands of the village without payment of any royalty in respect thereof. Their claim has succeeded in all the Indian Courts, and the present appeal has been preferred from an appellate decree of the Madras High Court, dated the 7th March, 1916, by the defendant to the suit, the Secretary of State for India in Council.

The title alleged by the plaintiffs in their plaint is a grant about 160 years ago of the village as Inam to their predecessors in title by the Government that existed prior to the British Government. The plaint then alleges undisputed enjoyment, an admission of their title at the time of the Inam settlement of the village, the acquisition of a prescriptive right, and proceedings under the Land Acquisition Act.

On the strength of this grant, and these subsequent events, they claimed a decree "establishing the full rights of the plaintiffs, the Shrotriemdars of the said village" to the rocks and hills within its boundaries. The defendant, by his written statement, did not dispute that there was a grant of the village, but he

traversed the statement that there was any conveyance of the right of the State to the minerals in the village. He also contested the other matters on which the plaintiffs relied.

In these circumstances the suit came on for settlement of issues, and it was ordered that the following issues should be tried :—

> " 1. Was there an outright grant of Kulloor village as Inam to the plaintiffs' predecessors in title by the Government prior to the British rule as alleged, and did the grant include the right in regard to minerals also in the village ? And is this grant, if true, binding on the defendants ?
>
> " 2. Was the exclusive right to take the minerals in the village free of taxation conferred expressly or by implication on the plaintiffs, predecessors in title at the time of the Inam settlement ; if this right had been conceded by the Inam Commissioner in excess of what had been allowed by the original grant, was it within the scope of the authority of the Inam Commissioner to have done so ; if not, whether the action of the Inam Commissioner is binding on the defendant ? "

There were other issues, but they need not now be considered.

The findings of the Courts on these issues, and their decrees, are in the plaintiffs' favour, and in accordance with them the appellate decree of the 7th March, 1916, was passed.

The burden of establishing the grant is on the plaintiffs, by whom it is asserted, and it is for them to show, that it contained terms apt to vest in their predecessors the quarries, and the full right to work them.

Though the grant is not disputed by the defendant, when it came to proving its terms at the trial the plaintiffs were in this difficulty, that the original grant could not be produced by them.

The defendant, however, produced a register containing an English translation of a purvanah which purports to be a copy of a purvanah written in 1750 (Exhibit I). Its genuineness is conceded and the document was properly admitted in evidence by the Court of first instance as evidence of the terms of the original grant.

In the circumstances of this case it is the best evidence of those terms, and it is on the true construction of the terms so evidenced that the rights of the plaintiffs must depend. And in so saying their Lordships do not overlook what has been urged as to the effect of subsequent proceedings and conduct.

The document recites (1) that the entire village Kulloor had been enjoyed for a length of time by way of Shrotrium for a yearly sum ; (2) that it was so enjoyed according to the sunnads of former princes ; (3) that it was granted as a subsistence to Letchmi Narasumachary, Zunardar ; and (4) that the original sunnads had been lost. It then records that the village was restored to the said Zunardar, and that the purpose of the restoration was that, having appropriated to his own use the produce of the seasons each year, the Zunardar might be assiduous in offering up prayers for the lasting prosperity of the Empire. The obligation was then imposed on him of paying regularly to

the Sirkar, the established amount of the Shrotrium. It was a condition of this restoration that the village had been enjoyed according to the mamool sheedamed.

Can then the plaintiffs successfully claim that under these terms the full right to the quarries and minerals passed to them?

Their Lordships think not. The grant was of a village in Inam, and the rules of English law as to real property in England can afford no guidance as to what passed. A grant of this description may be no more than an assignment of revenue, and even where it is or includes a grant of land, what interest in the land passed must depend on the language of the instrument and the circumstances of each case. There is nothing here to suggest that the original grant contained words sometimes employed in Indian documents, where it is the intention that the Inam grant of a village should create such an interest in land as would vest the minerals in the grantee. Nor does the language suggest that any further benefit to the grantee was contemplated or intended than such as might be derived from the ordinary use of the land for the purposes of cultivation. It was not a complete transfer for value of all that was in the grantor; the interest bestowed was merely something carvedout of his larger interest which still remained in him as a reversion: the grantor was the ruling power, the grantee a Brahmin whose assiduous prayers were engaged: a jodi was reserved and the purpose of the grant was to ensure the subsistence of the grantee by the appropriation to his use of "the produce of the seasons each year."

The interest thus created was inalienable and heritable only by lineal heirs, so that on any occasion of forfeiture or extinction of lineal heirs the grantor or someone deriving title under him would come in by virtue of the reversion which had not been transferred. It does not accord with the scheme of such a grant that any person taking under it should have the power to consume its subject matter by quarrying operations, even if an interest in land was created.

But then it is urged that subsequent events show that the Shrotriemdars acquired in one way or another an interest in the land of the village that entitles them to work the quarries without any obligation to make any payment to the Government. In support of this argument their Lordships' attention has been drawn to many matters and in particular to the title deeds of the A series of Exhibits, the extract from the Inam register (Exhibit J), the regulations, acts and standing orders relating to Inams and a land acquisition proceeding.

Had these materials stood alone they might well have been urged as suggesting an inference that the original grant was in terms that supported the plaintiffs' claim as to what passed under it. But in the clearer light afforded by Exhibit I they lose their evidentiary value and leave the terms as shown by that exhibit in no degree obscured.

No doubt words are to be found which are in a sense

appropriate to the plaintiffs' claim, but they are used in a context to which they do not belong. Thus, to speak of " freehold " in the connection in which it appears, is merely a piece of inapt drafting, and cannot be regarded as a correct description of the plaintiffs' rights in this village.

Even in this litigation there is the same incorrect use of words used, as where the payment demanded by the Government is spoken of as assessment, whereas the demand is for a payment in the nature of royalty for the use and consumption of that which belongs to the Government.

Inaccuracies of this class can in no way assist the plaintiffs.

Apart from the contention that these materials furnish evidence of the terms of the grant, it is contended that a title was thereby created in the Shrotriemdars to the quarries. But it was rightly decided by the final appellate bench of the High Court that the title deed of the Inam Commissioners conferred no higher title than was originally granted. There is language in the Act of 1862 that might possibly be read as having the effect for which the plaintiffs contend, but this was corrected by Act VIII of 1869, and it is now clear that though a larger interest was created, nothing done under the Inam Commission could vest in the Inamdars a subject matter not already belonging to them.

The land acquisition proceedings do not carry matters any further, for even without any title to the quarries it may well have been thought expedient, especially in the view then held, to proceed under the Act for the purpose of acquiring such interest as the Shrotriemdars might have in the surface. And at most these proceedings can amount to no more than action taken under a misapprehension of the Government's legal rights, and this could not make the law one way or the other, nor could it affect the Government's title.

As affecting the quarries none of these matters had any creative or disentitling force.

It must be conceded that expressions which are ambiguous and to some extent compromising, are used, and the reason for this is not far to seek.

The Government of Madras have not always adhered to the view they now hold. Thus in the Standing Orders (Edition 1890), it is declared that " the State lays no claim to minerals in enfranchised Inam lands." But this view was changed, and in the Edition of 1907 it is laid down that " claims should be made to the State's share in all mineral produce in lands held on inam tenure " of the description there given.

Authorities dealing with the relative rights of a Zemindar in Bengal and those holding by subordinate tenure from him were brought to their Lordships' notice, and were claimed by the appellant as conclusive in his favour. They refrain, however, from discussing them, as this case turns on the true construction of the particular grant which is the foundation of the plaintiffs' claim in this suit.

Their Lordships therefore hold that this appeal should be

allowed. The ordinary consequence would be that the costs here and in the Indian Courts should be thrown on the unsuccessful respondents. But there are circumstances in this case which induce their Lordships to depart from this rule. The value of the subject matter in litigation is far below the appealable value, and it was as a matter of favour that the defendant was permitted to appeal, as this apparently was regarded as a case of general importance. Moreover, the respondents' resistance to the Government's demand was not unreasonable in view of the latter's earlier attitude in reference to minerals.

Their Lordships therefore think that there should be no order as to the costs either here or below.

Their Lordships accordingly will humbly advise His Majesty to allow this appeal, and to dismiss the suit. There will be no order as to the costs of this appeal or of the lower courts, except that each side must bear its own.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA
IN COUNCIL

v.

SRINIVASA CHARIAR AND OTHERS.

DELIVERED BY SIR LAWRENCE JENKINS.

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

1920.