Privy Council Appeal No. 6 of 1947

A. Veerayya Vandayar and Others - - - - - *Appellants*

v.

Sivagami Achi and Another - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH JULY, 1949

Present at the Hearing :

LORD OAKSEY
LORD REID
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

This is an appeal from a judgment and decree of the High Court at Madras dated 13th November, 1944, modifying a decree of the Court of the Subordinate Judge of Tanjore dated 18th July, 1941.

The suit out of which this appeal arises was brought by Receivers appointed by the Court to collect the dues upon a mortgage bond dated 19th April, 1926. The mortgage was executed by the first appellant, who was defendant 1 in the suit, on behalf of himself and his minor sons appellants 3 and 4, who were defendants 3 and 4, and by defendant 2 and members of his joint family who were defendants 5, 6 and 7. The suit, which was to enforce the mortgage, was commenced on the 6th April, 1937, and the plaintiffs who are respondents in this appeal, were the persons interested in the mortgage money. The defences originally raised are no longer relevant. On the 22nd March, 1938, the Madras Agriculturists' Relief Act, 1938 (Madras Act IV of 1938) (hereinafter referred to as " the Act ") was passed with the object of giving certain relief to agriculturists as defined in the Act. The defendants filed supplementary written statements claiming relief under the Act. It was conceded that defendants 2, 5, 6 and 7 were agriculturists entitled to relief under the Act, and the principal matter in issue in the suit was, and the only question for determination in this appeal is, whether the appellants, representing the other branch of the mortgagor family, are also entitled to relief as agriculturists.

Section 3, sub-section 2 of the Act defines agriculturist as meaning a person who

> (*a*) " has a saleable interest in any agricultural or horticultural land in the Province of Madras, not being land situated within a municipality or cantonment, which is assessed by the Provincial Government to land revenue (which shall be deemed to include peshkash and quit-rent), or which is held free of tax under a grant made, confirmed or recognised by Government " ;

The other clauses of the definition are not relevant, but there are four Provisos to this section which restrict the class of agriculturists. Provisos "C" and "D" are relevant and are in the following terms:—Provided that a person shall not be deemed to be an agriculturist if he

> C. "has within the two years immediately preceding the 1st October 1937, been assessed to property or house tax in respect of buildings or lands other than agricultural lands, under the Madras District Municipalities Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in any other province in British India or any Indian State, or under the Madras Local Boards Act, 1920, in a panchayat which was a Union before the 26th August, 1930, provided that the aggregate annual rental value of such buildings and lands, whether let out or in the occupation of the owner, is not less than Rs. 600; or
>
> D. is a landholder of an estate under the Madras Estates Land Act, 1908, or of a share or portion thereof in respect of which estate, share or portion any sum exceeding Rs. 500 is paid as peshkash or any sum exceeding Rs. 100 is paid as quit-rent, jodi, kattubadi, poruppu or the like, or is a janmi under the Malabar Tenancy Act, 1929, who pays any sum exceeding Rs. 500 as land revenue to the Provincial Government."

It is not disputed that the appellants came within the definition of "agriculturist" contained in section 3 (2) (*a*), but it is claimed by the respondents that they were taken out of the class of agriculturists because the first appellant fell within provisos C and D. Some discussion took place before the Board as to the burden of proof, and the Judges of the High Court seem to have considered that the burden of proving that they were agriculturists entitled to relief under the Act lay upon the appellants. In the first instance no doubt the burden was upon the appellants to show that they were agriculturists. But having shown that they fell within the general definition of that word they would be entitled to relief unless they were deprived of the privilege by one of the provisos and the burden would lie upon anyone so asserting to prove his case. See section 102 of the Evidence Act and illustration (*b*). This is a point to be borne in mind, though it is not of paramount importance since the whole of the evidence is on Record.

Both Courts in India held that the first appellant did not fall within proviso D, since he held the estate which was alleged to bring him within that proviso as a trustee, and not as an owner, and this concurrent finding their Lordships accept; indeed it has not been challenged. Under Proviso C the contention of the respondents is that the first appellant was assessed within the two years immediately preceding the 1st October, 1937, to property tax on properties in Tanjore under the Madras District Municipalities Act, 1920, and to house tax on house properties in the Panchayat of Ammapet which was a Union before 1930 under the Madras Local Boards Act, 1920, and that the aggregate annual rental value of the said properties exceeded Rs. 600.

It was contended in the first place by the appellants that the High Court put a wrong construction upon Proviso C. The argument presented to the Board was that the assessments under the Act mentioned in that proviso should not be treated as cumulative, and that the appellants did not fall within the proviso unless it was shown that the assessment on the Tanjore property and the assessment on the Ammapet property, in each case, was on land or buildings of the aggregate annual rental value of not less than Rs. 600. This construction seems to be not only inconsistent with the words of the Proviso which speak of the "aggregate annual rental value of such buildings and lands," words which mean, their Lordships think, buildings and land assessed to tax under any of the Acts mentioned in the Proviso, but also to ignore the plain intendment of the Act which is to distinguish between agricultural and non-agricultural properties, and not to differentiate between different classes of non-agricultural income.

There are concurrent findings of the Courts in India that the first appellant was assessed to property tax in Tanjore on property, the annual rental value of which was Rs.490. These concurrent findings their Lordships accept. The Courts in India differed on the question of the assessment of house tax on properties in Ammapet. The Trial Court held that the appellants during the relevant period were the owners of the sites only of the property in Ammapet, and were not the owners of the superstructures on those sites, the ownership of which was in the tenants of the respective sites, and such tenants were assessed to the house tax. The High Court held that the appellants, during the relevant period, were assessed to house tax on the Ammapet properties and were the owners of at least three houses in Ammapet, the annual rental value of which was Rs.216. The High Court therefore held that the assessment to house tax in Ammapet, taken together with the assessment to property tax in Tanjore, excluded the appellants from the benefits of the Act under Proviso C.

Rule 7 of the Rules made by the Provincial Government under section 28 of the Act, provides that if a person is not the owner of any building, the mere fact that the assessment registers show that it stands in his name is not enough to bring the matter within Proviso C. Their Lordships reach this conclusion on the construction of the Act without reference to Rule 7, the validity of which need not be considered. The main question for determination on this appeal is therefore whether the first appellant was during the relevant period the owner of property in the Panchayat of Ammapet, in which he was assessed to house tax, of the annual rental value of not less than Rs. 110.

The learned Subordinate Judge dealt with the question of ownership in paragraph 53 of his judgment in the following terms:—

> "53. The first defendant admits that he owns 46 house sites or manaikats in this village (i.e. Ammapet) but denies that he owns any buildings. Exhibit V (*a*), dated 4th August, 1938, is a certificate granted by the President of the Ammapet Panchayat Board, under section 27 of the Act, to the effect that the first defendant had not been assessed to property or house tax in respect of any buildings other than agricultural lands in his panchayat during the two years preceding 1st October, 1937. In respect of these house sites which he owns in this village, his father and grandfather had taken the lease deeds Exhibits VI to VI (*d*) as early as 1891 from some of the tenants and Exhibits VII to VII (*e*) in 1896. In 1918, his father Appasami Vandayar had taken registered lease deeds Exhibits VIII to VIII (*y*) from some of the tenants who have all agreed to pay manai pagudi or site rent for the manaikats and had put up thatched structures with his consent. During his management, the first defendant has taken lease deeds Exhibits XV series from several of the tenants containing the same provisions as those contained in Exhibits VIII series. The first defendant's case is that his tenants had put up petty superstructures upon his manaikats with his permission, that they are the owners of such superstructures and that he is entitled only to the site. Several of the tenants have been examined as witnesses and all of them speak to the execution of rent deeds by them and to the fact that they are the owners of the superstructures and not the first defendant. There have been instances spoken to by the witnesses of sales, othis and mortgages by the tenants of these superstructures. The village kurippus maintained by the first defendant, which have been filed as Exhibits XV to XV (*e*), and the estate ledgers Exhibits XIV series show only receipt of rent for the sites, and there is not a single instance in those account books of any receipt of rent for the superstructures which are admittedly in the possession of tenants. There has not been also during all these years a single item of expenditure either for repair or reconstruction of any of these 40 and odd superstructures, in the account books maintained by the first defendant. Likewise, there is not a single entry in those account books to show payment

of the union tax by the first defendant in respect of these superstructures. All the tenants who have been examined say that they paid the union taxes though in some cases through the first defendant's kariasthans. There are one or two instances in which the kariasthans collected the taxes from the tenants and after entering the collection in the village kurippu paid them over the next day or the day after the next to the union office. The fact remains that for all these years, there has not been a single instance in which the first defendant paid the tax for any of these superstructures. Almost all the tenants, excepting a few who were not available either on account of sickness or on account of their absence from the village, have been examined by the first defendant and all of them say that they are owners of the superstructures and that they have paid the union tax. Not a single tenant residing in any of these superstructures and not a single resident of this village has been examined on the other side to show that the first defendant is the owner of any of these superstructures. These circumstances and the evidence of the tenants which stands uncontradicted and is extremely probabilised by the registered documents Exhibits VIII series which came into existence in 1918, point to the fact that the first defendant is not the owner of these superstructures."

After a detailed discussion of the evidence and the arguments presented before him the learned Judge concluded by saying, " I have no hesitation in coming to the conclusion that the first defendant was not the owner of any superstructures in the village of Ammapet." The learned Judge then expressed the view that this finding, combined with Rule 7, involved that the first appellant was not hit by Proviso C, and that it was not necessary for him to decide whether the name of the first appellant was entered in the assessment register on house property in Ammapet during the relevant period though he noticed the contentions of the parties upon the question.

In appeal the High Court dealt first with the question of assessment. The evidence with regard to the assessment register stood in this way. It is common ground that up to the end of 1935 the first appellant was shown in the register as assessed to house tax in respect of property in Ammapet, but that the register had been altered by striking out his name and substituting the names of the tenants of the houses. This alteration according to the evidence for the appellant, was made on the 12th April, 1935, to take effect as from the 1st April, 1935, that is before the commencement of the relevant period. At the trial, as noted by the Judge, the defendants produced a certificate (ex. 5A) given under section 27 of the Act, signed by the president of the Panchayat of Ammapet stating that the first appellant had not been assessed to house tax during the relevant period. A similar certificate had been issued to another creditor of the appellants in May, 1938 ; that creditor challenged the correctness of the certificate, and an inquiry was ordered by the District Panchayat Officer, West Tanjore. The assistant Panchayat Officer made an inquiry and on the 8th July, 1938, reported to the District Officer that certain numbers originally stood in the name of the first appellant, but that his name had been scored out and the names of eleven named persons (who were tenants of the appellants' sites) had been substituted, and that the alterations had been made because the first appellant was only entitled to house sites at Ammapet. This report the District Officer did not consider sufficient and he directed the Assistant Panchayat Officer to make a full inquiry and ascertain at whose instance the changes in the assessment register had been made, and whether they were genuine. The Assistant Panchayat Officer then took statements from the President of the Panchayat Board, the Bill Collectors and various of the ryots into whose names the properties had been transferred, and on the 12th October, 1938, he made a full report to the District Officer, in which he stated " In view of my local enquiry and the statements obtained from the President, Panchayat Board, Ammapet, from the parties and from the Bill collectors, I am of opinion that the changes made in the assessment registers were genuine and there

is nothing to be doubted." This report seems to have been accepted by the District Officer, and must carry some weight.

The learned Judges of the High Court however held that there had been a conspiracy between the first appellant, the President of the Panchayat Board and numerous tenants to make it appear that there was a transfer early in 1935, whereas the transfer must have been made sometime after the provisions of the Act were known. The basis for this opinion of the learned Judges depended upon the electoral role prepared for the purpose of election to the Legislative Assembly at Madras. Under the Government of India Act, 1935, Schedule VI, part 2 (*d*) a person was entitled to be included in the electoral roll if in the previous financial year he had paid house tax. The first electoral roll was prepared on the 17th January, 1938, and this did not contain the names of most of the tenants of the Ammapet property; nor did it include the name of the first appellant, who may have been entered on the roll of some other district, though there is no evidence of this. The roll was revised on the 1st November, 1938, and in the revised roll the names of most of the tenants of the Ammapet property of the first appellant were included. From these facts the High Court inferred that the names of the tenants were first entered in the register during the year 1938, but this inference is really no more than suspicion. The officer who prepared the first electoral roll was not called as a witness, nor was his absence from the witness box explained. There is no evidence as to whether the person who prepared the electoral roll inspected the house tax register. No question was put upon this subject to the President of the Panchayat Board Ammapet, who might have had an explanation for the omission of the tenants' names, for example that the officer who prepared the electoral roll had been provided by mistake with an out of date register of those assessed to house tax. There is no direct evidence whatever as to the existence of any such conspiracy. Its date and the circumstances in which it was entered into are not shown, nor are the names of the conspirators who must certainly have been numerous. Nor is there any evidence that anybody received any advantage from having entered into the conspiracy. In these circumstances their Lordships are not prepared to hold that the conspiracy found by the High Court is proved, whatever grounds for suspicion there may be.

The learned Subordinate Judge in the passage quoted from his judgment makes a formidable case in support of his view that the appellants did not own anything but house sites in Ammapet. The learned Judges of the High Court, in view of their finding that there was a conspiracy between the appellant and most of his witnesses, were not prepared to take so favourable a view of the oral evidence given on behalf of the appellants as the Subordinate Judge had done. In relation to the documentary evidence they did not differ altogether from the conclusions of the learned Judge, but they made some criticisms of a negative character upon the evidence discussed by him. They pointed out in particular, that not a single receipt for payment of house tax had been produced by any tenant. This is a legitimate criticism, but as against this it is open to observation that if the first appellant was concocting a false case, it would have been easy for him, in conjunction with the President of the Panchayat Board, and the Bill Collector, who must have been parties to the alleged conspiracy, to have provided the tenants with receipts for the payment of house tax which were ante-dated.

The learned Judges also considered that no tax receipt books of the Panchayat had been put into evidence. But this seems to be an error. The Bill Collector witness D.W. 5 stated in his evidence in chief that house sites in the Panchayat were not taxed, and that he had carried out the changes in the register from the name of the first appellant to the names of the tenants on the instructions of the President given on the 15th April, 1935. In cross-examination he said that he had collected taxes from the tenants after the change, and put in his collection register as Ex. W. Ex. W. has not been incorporated in the Record before the Board but it is described in the list of omitted documents in Ex. L. from which

it appears that it was a collection of books kept by the Bill Collector from the 18th September, 1932, down to 31st July, 1937. As no suggestion to the contrary was made to the witness, it must be assumed that these books bore out his evidence, and showed that the tax had been collected from the tenants.

The learned Judges of the High Court did not suggest that entry on the assessment register would render the appellants liable to tax without proof of ownership of the properties assessed and, as already observed, they did not reject the whole of the finding of the learned Subordinate Judge on the question of ownership, but they considered that it was proved that the appellant owned three houses in Ammapet during the relevant period of the rental value of Rs.216 which brought him within Schedule C. The first two of these houses are the last two items in Schedule B to Ex. E which is a partition deed made in August, 1920, between the appellant and his brother. The properties in Schedule B were those allotted to the first appellant, and comprised a considerable number of properties, described as including some sort of a house. The learned Subordinate Judge in paragraph 68 of his judgment pointed out that in the case of almost all the houses mentioned in this schedule, it was proved by Ex. VIII series and by the evidence of the persons living in the houses that the sites alone belonged to the first appellant and accordingly he considered that the reference to houses in the schedule was made merely by way of description of the property and did not establish ownership by the first appellant. The last two items in the schedule, however, which are assessment Nos. 428 and 407 were not included in Ex. VIII series and their history is unknown until they appear in the schedule to the partition deed. Assessment No. 428 is situate in the western row of Bazaar Street within the boundaries stated and the description ends with the words " within these one shop No. 41." Assessment No. 407 is situate in the eastern row of the said street within the boundaries stated, and the description concludes " within these one terraced shop." Assessment No. 407 was comprised in the counterpart lease Ex. GG dated 2nd September, 1918, by which one Swaminatha Chetti stated that he had taken from the first appellant " Your shop with terraced superstructure " in the eastern row of Big Bazaar Street for a period of three years at a rent of Rs.3 per month, and that on the expiration of the lease he would vacate the shop and deliver possession thereof to the appellant. This document no doubt suggests that in 1918 the appellant owned the shop on this piece of land.

The next relevant document is Ex. IX C which is an annual tenancy agreement relating to the Assessment Nos. 407 and 428. By this document one Hussain Badsha deposed that he had accepted from the first appellant for one year from the 14th June, 1928, land situate in Ammapet Village belonging to the first appellant measuring kulis 9 and " mentioned hereunder " for him (the tenant) to build a house thereon and enjoy the same, paying rent at Rs.3. 8 annas per month. The tenant agreed that on the expiry of the lease period, i.e. on the 13th June, 1929, he would remove the superstructure of the said house and deliver possession to the landlord of the ground site. Then in a schedule to the document the property was described as one upstair shop situate on the eastern row of Big Bazaar Street and one upstair shop situate on the western row of the said street, in each case the boundaries being given. These houses are those included in assessment Nos. 407 and 428.

The tenant of the property Hussain Badsha gave evidence as D.W.31. His evidence was that he owned the superstructures of the two shops in question which are Nos. 43 and 22. He said that on the site of No. 22 there had been a thatched hut which had fallen down and that Swaminatha Chetti then ceased to do business there. The witness further said that he himself had built the existing superstructure No. 22; that he had executed Ex. IX C; that there was no superstructure on the site when

he executed the first chit, and he could not say whether Ex. IX C was the first or the second chit. The learned Trial Judge accepted the evidence of this witness and their Lordships can see no good reason why the High Court should have rejected it. If accepted it shows that the house on assessment No. 407 in 1918 had fallen down before 1928, and that at that date the tenant owned the superstructure. Counsel for the respondents have argued that Ex. IX C must be regarded as a lease of the houses and not of a vacant site. The document is certainly not happily expressed. The parties seem to have used a printed form not suitable to the case. The lease purports to be of a vacant site for the purpose of the tenant erecting a house thereon, but the schedule described the existing houses. The explanation must be, their Lordships think, that the parties have used a printed form applicable to the first grant of a yearly tenancy of a vacant site, but not applicable to a renewal of the tenancy after a house had been erected on the site. Regarding the document as a whole their Lordships have no doubt that the schedule contains merely a description of the physical condition of the property at the time of the lease, and does not contradict the operative part of the document which is a lease of land on which the tenant may build a house and which imposes on the tenant the obligation to remove the superstructure at the end of the term. It may be noticed that Ex. XV series contains instances of many similar yearly tenancies of a vacant site for the purpose of erecting a house but with a house described in the schedule.

The other shop assessment No. 428 is not included in Ex. GG. and there is no evidence that in 1918 or at any other time the shop on that piece of land belonged to the appellant. The case for the respondents in regard to the shop on assessment No. 428 is less strong than their case in relation to the shop on assessment No. 407.

In view of the documents and the evidence of the tenant Hussain Badsha their Lordships are of opinion that it is not proved that the appellants owned houses on those two sites during the relevant period from 1935 to 1937.

The other piece of property upon which the High Court considered that it was shown that the appellant possessed a building was assessment No. 1163 relating to No. 1 Railway Road. This property is not to be traced in the partition deed, Ex. E, but it is admitted that it is part of the Ammapet property of the appellants. No special claim in respect of this house appears to have been made before the Trial Judge, but the matter was discussed in some detail in the judgment of the High Court. The property is occupied by one Moidinsa Rowther who gave evidence as D.W.47. His evidence was that the first appellant owned the site and that the superstructure belonged to him. He said that he had purchased it from his uncle Ibramsa Rowther eight years before giving evidence for Rs.30 and that after the purchase he repaired it at a cost of between Rs.50 and Rs.60. He said that he paid manai paguthi of Rs.13.4 annas every month to the first appellant, that he had not been making this payment for the last two years as the building had fallen down. In the House Tax Demand Register the capital annual value of this house is given as Rs.108, and the Judges of the High Court rejected the evidence of this witness because he did not produce any registered sale deed of the house and because they considered that the sum which he said he had paid for it, viz. Rs.30 was incredible in view of the annual value of the house. But no question was put to the witness about this. It is possible that his uncle only charged him a nominal sum for the house. The learned Trial Judge accepted the evidence of this witness, pointing out that he belonged to an entirely different community from the appellant, and their Lordships see no reason for rejecting the evidence.

In the circumstances their Lordships think that the plaintiffs failed to prove that the first defendant was the owner of any houses in Ammapet Panchayat or that he was assessed to house tax in respect of any such

houses during the relevant period, and that the judgment of the learned Subordinate Judge was right.

For these reasons their Lordships will humbly advise His Majesty that this appeal be allowed, that the judgment and decree of the High Court at Madras dated 13th November, 1944, be set aside and the decree of the Subordinate Judge at Tanjore dated 18th July, 1941, be restored.

The respondents must pay the costs of the appeal to the High Court and of the appeal to His Majesty in Council.

(65558) Wt. 8084—42 180 8/49 D.L. G. 338

In the Privy Council

A. VEERAYYA VANDAYAR
AND OTHERS

v.

SIVAGAMI ACHI AND ANOTHER

DELIVERED BY SIR JOHN BEAUMONT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1949