

Privy Council Appeal No. 33 of 1931.

Sri Sri Sri Krishna Chendra Gajapati Narayana Deo Maharajulungaru, Zamindar of Parlakimedi - - - - - *Appellant*

v.

Challa Ramanna 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 7TH DECEMBER, 1931.

Present at the Hearing :

VISCOUNT DUNEDIN.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

[*Delivered by* VISCOUNT DUNEDIN.]

This case is in a curiously unsatisfactory position. The plaintiff in it is the Zamindar of Parlakimedi in his capacity as trustee for two Gods. The defendants are the occupying tenants of the village of Kosamala, 183 in number. The only relief asked in the plaint was as follows :—

“(a) For a declaration that the settlement of the *Mokhasa Amaniya* village of Kosamala made in or about 1869 by the Court of Wards acting on behalf of the Plaintiff's late grandfather, the then Trustee of the Gods Sri Ramaswami and Sri Jagannadhaswami of Parlakimedi, and continued since about 1869, by which the said village has been annually leased out at a money-rent determined according to fixed block-rates, is beyond the powers of a Trustee and is not binding on the Plaintiff, who is the present Trustee of the said Gods ;

“(b) For a declaration that the Plaintiff as the present Trustee of the said Gods is entitled to claim rent in kind from the Defendants in respect of their holdings in the said *Amaniya* village of Kosamala ;

“(c) For an injunction directing Defendants to pay rent in kind to Plaintiff from *Fasli* 1326 in respect of their holdings in the said village of Kosamala.”

Now it is perfectly clear that the only real question raised by the above-recited prayer is the question whether the plaintiff was entitled to have the rent in kind instead of money rent. But when the case got before the temporary Subordinate Judge he framed

issues which strayed far beyond that simple question and these issues were adopted by the District Judge before whom the case came to depend. Leaving out issues which were either irrelevant or redundant, the critical issues are as follows :—

“ (5) Are the Defendants *ryots* of Kosumala with no permanent rights of occupancy ?

“ (6) Was the *melvaram* (the Government or landlord's share of the crop) and *kulivararam* of the lands in Kosumala vested in the Gods Sri Ramaswami and Sri Jagannadhaswami ?

“ (7) Did the Defendants ever pay *varam* rent, rent in kind according to sharing system, to the landlord ?

“ (8) What was the system of tenure prevalent prior to 1869 ?

“ (11) Is the Plaintiff entitled to claim rent in kind from the Defendants for all or any of the reasons stated in plaint, paragraphs 8 to 12 ? ”

Taking 7, 8 and 11 first, as the issues which the plaintiff justified, they raise pure questions of fact. Payment in money had, even as the plaintiff admitted, been going on since 1869—that is, nearly 50 years—and it was proved to have been a rule since at least about the beginning of last century. The plaintiff's right to have a rent in kind depends on his being able to show that the rent in olden days used to be in kind. This he was quite unable to show, as found by the District Judge, and this finding was affirmed by the High Court when the appellant appealed against a dismissal of the suit. These are concurrent findings in fact, so that this point, the only point really raised by the plaintiff, could not be argued before this Board. But, as has already been shown, the District Judge fixed issues which strayed into other matters, and evidence was led upon these points as raised by issues 5 and 6. The District Judge, notwithstanding that he dismissed the suit, held that the respondents had not proved occupancy rights. This finding was reversed by the High Court, who held that the respondents had occupancy rights, but that the settlement by the Court of Wards of 1869 was not a permanent settlement. They therefore dismissed the appeal and the suit was dismissed.

As their Lordships have pointed out, all this enquiry about occupancy rights and as to whether the settlement of 1869 was a permanent one, was not properly raised by the plaintiff, but as both parties have without protest chosen to join issue upon these points, their Lordships see no reason why these matters in dispute should not be *res judicata* between them. On consideration of the evidence on these questions, which are questions of fact, their Lordships see no reason to differ from the result arrived at by the High Court, viz., that the respondents have occupancy rights, but that the settlement of 1869 was not a permanent settlement.

Their Lordships will therefore humbly advise His Majesty to dismiss the appeal and find the appellant liable in costs to the respondents.



In the Privy Council.

SRI SRI SRI KRISHNA CHENDRA GAJAPATI
NARAYANA DEO MAHARAJULUNGARU,
ZAMINDAR OF PARLAKIMEDI

o.

CHALLA RAMANNA AND OTHERS.

DELIVERED BY VISCOUNT DUNEDIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.
1931.