

N. S. Krishnaswami Ayyangar and Others - - - Appellants

v.

Perumal Goundan (since deceased) and Others - - - Respondents

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

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REASONS FOR REPORT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE  
15TH DECEMBER, 1949

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*Present at the Hearing:*

LORD GREENE  
LORD OAKSEY  
LORD RADCLIFFE  
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

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This is a consolidated appeal by special leave from a decision of the High Court of Judicature at Madras dated the 30th July, 1946. At the conclusion of the arguments their Lordships announced that they would humbly advise His Majesty that this appeal be dismissed with costs, and they now give their reasons.

The consolidated suits out of which this appeal arises were filed in the year 1939 by the respondents as ryots against the appellants as landowners in the court of the Deputy Collector, Salem, claiming a grant of pattas under section 55 of the Madras Estates Land Act of 1908. The respondents claimed rights of permanent occupancy in the lands held by them in the village of Bairoji, District Salem, on the ground that such lands formed part of an estate as defined by the Madras Estates Land Act of 1908 as amended by the Madras Estates Land (third amendment) Act, 1936. The appellants denied that the lands formed part of an estate, and claimed that the said Acts had no application to the case.

By section 3 (2) (d) of the Act of 1908 "Estate" is defined as meaning any village of which the land-revenue alone has been granted in inam to a person not owning the kudivaram thereof, provided that the grant has been made, confirmed or recognized by the British Government, or any separated part of such village. It is not disputed that the appellants owned the kudivaram as well as the melvaram in the lands in question, and that such lands therefore did not come within the above definition.

However, section 2 of the said amending Act of 1936 provides that for sub-clause (d) of clause 2 of the Act of 1908 the following sub-clause shall be substituted, viz.:

"any inam village of which the grant has been made, confirmed or recognized by the British Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees.

Explanation (1)—Where an inam village is resumed by the Government, it shall cease to be an estate ; but, if any village so resumed is subsequently regranted by the Government as an inam, it shall from the date of such re-grant, be regarded as an estate.

Explanation (2)—Where a portion of an inam village is resumed by the Government, such portion shall cease to be part of the estate, but the rest of the village shall be deemed to be an inam village for the purposes of this sub-clause. If the portion so resumed or any part thereof is subsequently re-granted by the Government as an inam, such portion or part shall, from the date of such re-grant, be regarded as forming part of the inam village for the purposes of this sub-clause.”

Upon this definition two arguments were addressed to the Board on behalf of the appellants. First that the village in which the lands are situated is not an inam village, but is held on ryotwari tenure ; secondly that, even if the village is an inam village, the grant thereof did not comprise the whole inam village and on that ground also it was not brought within the definition.

The early history of the village of Bairoji appears from entries in the Inam Register of 1865, Exhibit A. It appears that the village in pre-British times was granted as a sarva inam (free of assessment) to two persons who divided the village into 54 vritties or shares, and that subsequently the properties were either sold or given to a community of Brahmins. During the rule of Tippu Sultan a jodi or quit rent of 1280 pagodas was fixed as payable to the government by the persons in possession. In 1795 one Captain Maclean fixed the jodi at 1026 pagodas, equivalent to Rs.1,294—9—0. In making this settlement he converted 81 acres which had been zufted, or attached for non-payment of government revenue, into ryotwari lands, the rest of the village being retained as inam. The part converted into ryotwari tenure was only  $2\frac{7}{8}$  shares out of the 54 shares. At the time of the Inam Settlement in 1865 the total assessment was shown as Rs.3,420—13—1 divided between the wet land and the dry land which together comprised an area of 769a—41c. The poramboke or waste land containing 273a—13c was deducted in arriving at the assessment. The quit rent payable on the properties was fixed at Rs.1,545.

In the year 1894 the inam village of Bairoji was attached by government for non-payment of revenue, and in 1895 it was sold at auction to Srinivasa Ayyar for Rs.41,000. The particulars of the sale have not been included in the record, but it was admitted in the High Court that what was sold was the right, title and interest of the inamdars, and that there was no condition imposed that the lands should be held by the purchaser on ryotwari tenure.

On the 6th December, 1895, a sanad was granted by the government of Madras to the purchaser, a certified copy of which is Exhibit 1. The record before the Board does not disclose by whom this copy was certified. The only witness called for the appellants, whose name was also Srinivasa Ayyar, said that it was a true copy of the sanad, but that he did not get a certified copy from the Collector's office. He also said that the original had been filed in a civil suit and not taken back, and that the Court said it had been destroyed. As the questions which arise for decision depend on the construction and effect of this document it must be set out in extenso :—

“Whereas Srinivasa Ayyar, son of Kantesa Venkataramier of Erode, has purchased at public auction the agrapharam specified below to be held on ryotwari tenure subject to an assessment of Rs.1,754—9—7 and has paid into the treasury at Salem, the sum of Rs.41,010 being the purchase money of the said agrapharam, I hereby, acting under the authority of the Governor-in-Council of Madras, confirm the said agrapharam to the said Srinivasa Ayyar and heirs to be held by them as aforesaid subject to all the conditions and incidents of ryotwari tenure.

## SPECIFICATION OF THE AGRAHARAM

District	Registration sub-district	Village	Name, if any	Survey number	Extent A. C.	Assessment RS. A. P.	Sum paid RS.	Date of payment
Salem ...	Razipore ...	Bairoji agraharam ...	Entire agraharam with all the rights of the registered holders—					
			Ayacut ...	...	1,042—54	—		
			Deduct poramboke ...	...	273—13	—		
			Net holding containing	...	769—41	—		
			Dry ...	...	643—86	2,344 4 0		
			Wet ...	...	125—55	1,076 9 1		
			Total	...	769—41	3,420 13 1	41,010	25.3.1895 and 19.4.1895
			Quit-rent ...	...	—	1,540 12 9		
			Road-cess ...	...	—	213 12 10		
			Total	...	—	1,754 9 7		

(Signed) M. AZIZUDDIN,  
Deputy Collector."

At the trial before the Deputy Collector it was held on the construction of Exhibit 1 that the tenure under it was ryotwari tenure, and that the Madras Estates Land Act of 1908 as amended did not apply. The suits were therefore dismissed. The respondents appealed to the District Court at Salem. The District Judge allowed the appeal, holding that the grant was a grant under inam tenure and that the inam satisfied the definition of "estate" contained in the said amending Act of 1936. The suits were remanded to the lower Court for disposal according to law. An appeal from this decision taken to the High Court of Madras was dismissed, the learned Judges agreeing substantially with the views of the District Judge.

As already indicated the first question to be determined is the construction of Exhibit 1. It was conceded by the appellants in the High Court that the words in the recital "to be held on ryotwari tenure" were inserted by mistake since there was no such condition in the contract of sale. The appellants, however, relied on the concluding words "to be held by them as aforesaid subject to all the conditions and incidents of ryotwari tenure", words which, they say with truth, are clear and unambiguous. The document must, however, be construed as a whole. In the body of the deed the property sold is described as "the agrapharam specified below", and agrapharam is a word apt to describe property held on inam tenure, but not apt to describe property held on ryotwari tenure. In the specification the property sold was described as "Baireji agrapharam . . . Entire agrapharam with all the rights of the registered holders". The only rights of registered holders were those appearing in the Inam Register; the land had never been held on ryotwari tenure and there were no registered holders of lands so held. The particulars in the specification are clearly taken from the Inam Settlement of 1865. The areas of the poramboke or waste land, and of the dry and wet lands, and the figures of the assessment are identical. The only discrepancy is that the quit rent in Exhibit 1 is Rs.1,540—12—9 in place of the figure of Rs.1,545 in the Inam Settlement, a small discrepancy which has not been explained. It is plain that what was expressed to be granted by Exhibit 1 was inam property, and the direction that the property granted was to be held subject to all the conditions and incidents of ryotwari tenure is a contradiction in terms. The court must either reject the description of the property sold, or the condition upon which it was directed to be held. In deciding which part of the deed to reject it is relevant to observe that the grant purported to carry out a contract for the sale of inam land. No doubt if the terms of the conveyance were clear they would over-ride the contract, but if part of the conveyance must be rejected it is legitimate to lean towards the rejection of that part which is inconsistent with the contract. Taking Exhibit 1 as a whole, and bearing in mind the circumstances in which it was made, their Lordships have no hesitation in holding that it is a grant of land to be held on inam tenure.

The learned District Judge and the Judges of the High Court regarded Exhibit 1 as an ambiguous document, and, in construing it, relied upon the way in which it had been read by the parties as disclosed in the documents on record. How far the construction of a modern document can be affected by the interpretation placed upon it subsequently by the parties is a question not free from doubt, and their Lordships prefer to base their decision as to the meaning of the document upon the language in which it is expressed without regard to the subsequent conduct of the parties. There is, moreover, this further difficulty in relying upon the interpretation said to have been placed on the document by the parties; that it does not appear from the record that the parties concerned ever considered the construction of this document. According to the evidence of the witness already mentioned called on behalf of the appellants, the purchaser at the auction sale in 1895 persuaded the Tahsildar to issue a ryotwari sanad in order to overcome opposition from the ryots to delivering possession. The learned District Judge thought it incredible that the Tahsildar would have altered the contract made

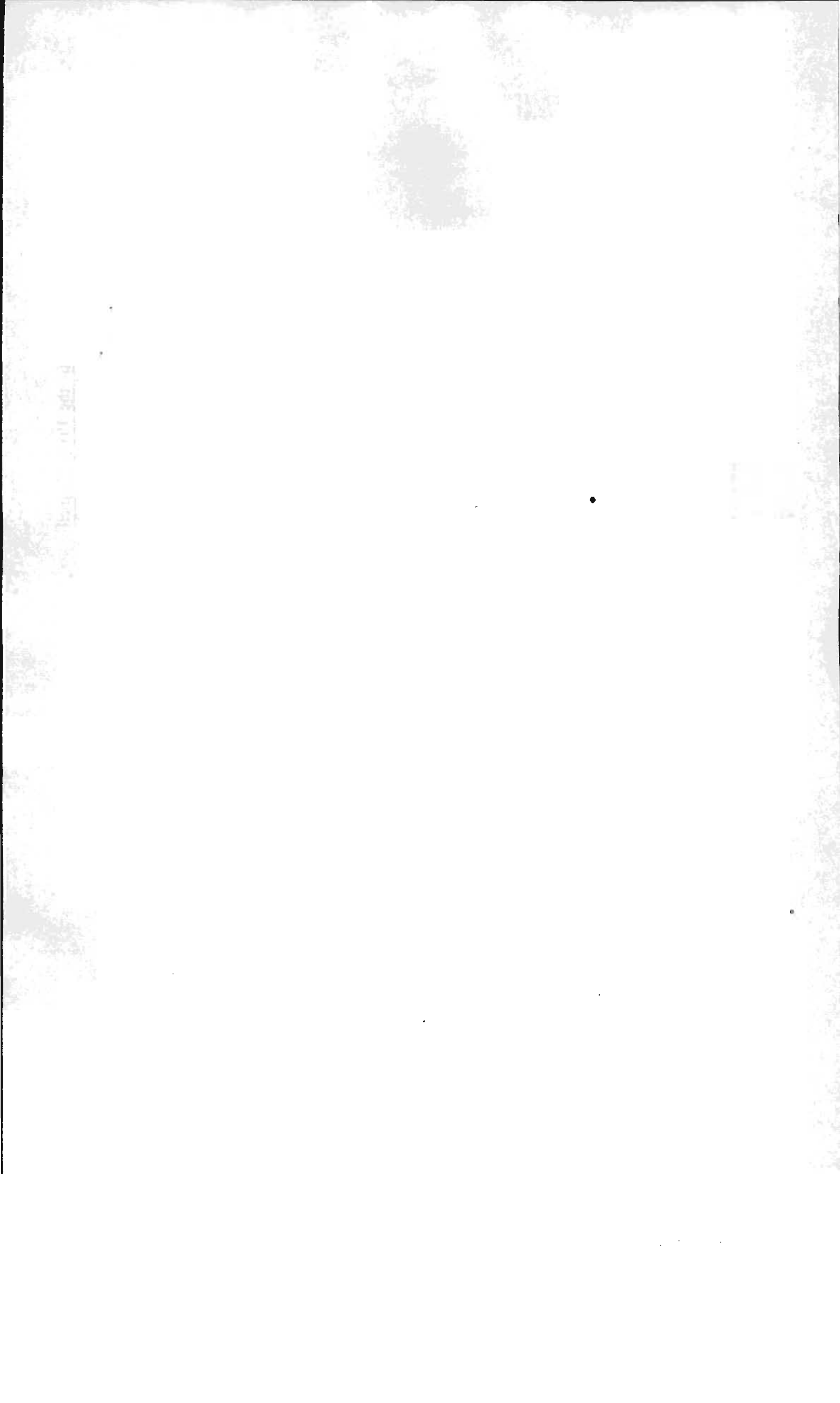
by Government. Whatever may be the true explanation of the inclusion of the direction that the land be held on ryotwari tenure, such direction was subsequently ignored. In March, 1896, that is three months after the date of Exhibit I, the purchaser by Exhibit B mortgaged the land to secure Rs.20,000 under the description of "inam Bairoji agraharam village" with particulars following the specification in Exhibit I. The mortgagee brought the property to sale and purchased it through the court, and in 1908 sold and conveyed it to the predecessors in title of the appellants by Exhibit D. The property sold was described as the "inam-village of Bairoji agraharam" with particulars as in Exhibit B, and the vendor was described as the inamdar. These transactions could hardly have taken the form they did had the parties had before them a title deed which purported to be a grant in ryotwari tenure. More remarkable still is the fact that in the Survey Settlements of 1905 (Exhibit IV) and of 1936 (Exhibit E) the property was treated as inam and was not surveyed. Moreover in the register of the Collector of Salem (Exhibit C) which shows the person recognised by the Collector as landowner under section 3 (5) of the Estates Land Act (which defines "landowners"), the appellants were shown as the landowners of Bairoji agraharam. The Settlement Officer and the Collector must have had access to all documents contained in government records and the omission of any reference to the land being held on ryotwari tenure suggests that the government cannot have possessed the counterpart, or a copy of the original of Exhibit I. As none of the parties to the 1895 transaction gave evidence and all are said to be dead, and since the original of Exhibit I, which might have been a revealing document, is not available, it is useless to speculate on what may have happened. What appears clear is that no document, apart from Exhibit I, treats the property as subject to the incidents of ryotwari tenure, and that there is nothing on the record to show that a document in the terms of Exhibit I was ever produced between the time when the possession was recovered from the ryots in 1895-6 and the time when the present suits were filed by ryots in 1939. From the opening sentences of the judgment of the learned District Judge it appears that he realised that there were matters connected with Exhibit I which required further elucidation, and in the first instance he directed that the Province of Madras should be impleaded, and further enquiry held, in order to ascertain the nature of the grant. In appeal, however, the High Court set aside these directions, and in the result the Government has not been made a party, and there is no evidence from the side of Government as to the terms of the sanad granted in 1895. However, having regard to the view which their Lordships have taken as to the construction of Exhibit I, it is not necessary to reach a definite conclusion on these matters.

The second question raised is whether the grant was one of a whole inam village. As already explained the inam had been granted in pre-British times but had been recognised by the British Government. In 1795 a small part of the village was resumed by the government and granted in ryotwari tenure, but the rest of the village, by far the larger part, continued to be treated as an inam village. It is not necessary to consider the validity of the argument advanced by the appellants that after 1795 the inam village was only part of a whole inam village, since, when the Government resumed possession in 1894, the inam village became government land and not subject to any particular tenure. In 1895 the Government granted on inam tenure (as their Lordships have held) the whole village, that is the whole village which for the past 100 years had been recognised as an inam village. In their Lordships' view it is irrelevant that the village so granted had once formed part of a larger village. The important fact is that the grant of 1895 comprised the whole of what was then regarded as an inam village. The evidence of the Revenue Inspector, Virapandi, Salem taluk, called on behalf of the respondents supports the view that the Bairoji agraharam is an inam village, and that the Bairoji village held on ryotwari tenure is separate. In the view of their Lordships therefore the subject-matter of the grant of 1895 falls within the definition of "estate" contained in section

3 (2) (d) of the Madras Estates Land Act 1908 as amended by the Act of 1936, and it is not necessary to have recourse to the explanations to the amended definition.

A further argument advanced on behalf of the appellants was that Exhibit 1 was not a grant of the whole inam village because the poramboke or waste land was excluded in the specification of the agraharam. In their Lordships' view the words in the specification "Deduct poramboke 273—5—4" (which are taken from the Inam Settlement) do not mean that the poramboke was excluded from the grant, but merely that it was deducted in ascertaining the assessment, since waste land is not assessed. This view accords with the opinion expressed by the learned District Judge; the point does not seem to have been discussed in the High Court.

In their Lordships' opinion for the above reasons the appeal must fail.



In the Privy Council

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AND OTHERS

v.

PERUMAL GOUNDAN (since deceased)  
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DELIVERED BY SIR JOHN BEAUMONT

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