

PETITIONER:
STATE OF KARNATAKA AND ORS.

Vs.

RESPONDENT:
K.V. KHADER

DATE OF JUDGMENT 28/02/1990

BENCH:
KANIA, M.H.
BENCH:
KANIA, M.H.
SAHAI, R.M. (J)

CITATION:
1990 AIR 1225 1990 SCR (1) 727
1990 SCC (2) 271 JT 1990 (2) 91
1990 SCALE (1) 563

ACT:
Coorg Land Revenue Regulation, 1899--Regulations 29 and 30--Records of Rights--Change--Permissible only by order/direction of Chief Commissioner.

HEADNOTE:

About 250 acres of wooded evergreen land was given to the ancestors of Respondent by grant over a hundred years ago and a patta in respect thereof granting the aforesaid lands was given to them in 1912 and in that patta there was an endorsement reading "redeemed coffee sagawall malai" indicating that the trees on the land had been paid for. In 1918, it appears that pursuant to an order passed by the Commissioner, the said entry had been altered to "unredeemed" showing that the trees had not been paid for. The respondent applied for permission of appellant No. 1 to cut and remove some of the trees from the land granted to his ancestors. The said application was rejected on the ground that the seigniorage payable on the value of the timber standing on the land granted had not been paid and hence, before the trees could be cut and the timber removed, seigniorage in respect of the trees had to be paid. The respondent thereupon filed a suit in the Court of Civil Judge, Madakeri for a declaration that the said land granted to him was redeemed in tenure and hence no payment of seigniorage could be demanded from him. The respondent claimed that the alteration of the relevant entry from 'redeemed' to 'unredeemed' in the record of rights pertaining to the lands in question was made under orders of the Commissioner and not of the Chief Commissioner as required under the Regulation and hence the alteration was void having been directed to be made by an unauthorised person. The trial Court decreed the suit and granted the declaration. The appellants preferred an appeal against the said decision to the District Court but the appeal failed. Appellant's further appeal to the High Court of Karnataka was also dismissed. Hence this appeal by special leave.

Dismissing the appeal, this Court,

HELD: The suit in the instant case were not barred as they did not question the right of the Government to levy seigniorage nor the liabi-

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lity of the plaintiffs to pay but the plea was that seigniorage had already been levied and paid. [731E]

Identical orders changing the word 'redeemed' to the word 'unredeemed' in the relevant entries have been uniformly made in a large number of cases which would suggest that these changes were made pursuant to a special revision of the record of rights in respect of a number of properties and was not an individual change in a particular entry in the record of rights of a particular plot of land. [731G-H]

Under regulation 29 of the Coorg Regulation, this could have been done only pursuant to a direction or order of the Chief Commissioner. but no such order or direction of a notification to that effect appears to be on the record. The result is that the said change must be held to be unauthorised in law, void and of no legal effect. [732A-B]

State of Mysore v. Kainthaje Thimmanna Enat and Ors., (1968) 2 Mysore Law Journal 227--referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2763 of 1987.

From the Judgment and Order dated 5.2. 1987 of the Karnataka High Court in R.S.A. No. 17/1987.

R.B. Datar and P.R. Ramasesh for the Appellant.

Dr. Y.S. Chitale and E.M.S. Anam for the Respondent.

The Judgment of the Court was delivered by

KANIA, J. This is an appeal by special leave against the judgment and order of a learned Single Judge of the Karnataka High Court in Regular Second Appeal No. 17 of 1987 filed in the said High Court.

As we are generally in agreement with the reasoning and conclusion in the judgment of the Karnataka High Court relied upon by the learned Single Judge in the impugned judgment, the appeal can be disposed of shortly.

About 250 acres of wooded evergreen land in the district of Coorg was given by a grant to the ancestors of the respondent over a hundred years ago. The said district was a Scheduled district under the

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control of the Governor-General of India. The terms of the said grant which is very old are not available but there is no dispute that the said land was granted to the ancestors of the respondent.

On November 1, 1899 Regulation No. 1 of 1899, called the Coorg Land and Revenue Regulation, 1899 came into force in the district of Coorg. We propose to refer to the said Regulation as the Coorg Regulation. It applied to the entire territories administered by the Chief Commissioner of Coorg. We may at this stage take a brief note of some of the relevant provisions of the Coorg Regulation as they stood at the time relevant for the purpose of this appeal. The Coorg Regulation was enacted in order to amend and declare the law in force in Coorg in respect of the land and land revenue. Regulation 4 of the Coorg Regulation prescribes the classes of Revenue Officers. One of these is the Chief Commissioner and one other is the Revenue Officer. Chapter VI of the Coorg Regulation deals with the records of rights and annual records. Regulation 29 in this Chapter provides that there shall be a record of rights for every estate. Clause (2) of Regulation 29 states that when it appears to the Chief Commissioner that a record of rights for an estate does not exist or that the existing record of rights for an estate

requires special revision, the Chief Commissioner shall by notification direct that a record of rights be made or that the record of rights be specially revised, as the case may be. Regulation 30 inter alia provides that the nature and extent of the interests of the landholders, tenants or assignees of land revenue in the estate shall be stated in the record of rights. Regulation 35 deals with the restrictions on variations of entries in records and, generally speaking, provides that entries in records-of-rights or annual records cannot be varied except as provided in clauses (a) to (c) 'thereof. Clause (a) of Regulation 35, the only possible relevant clause for the purposes of this appeal, provides that entries can be varied in accordance with the facts admitted of found by inquiry under Regulation 34 of the Coorg Regulation. Regulation 40 provides that any person who is aggrieved as to any right of which he is in possession by an entry in a record of rights can file a declaratory suit to establish his right. Shri Gustav Hallet, Settlement Officer, Coorg made his report by way of proposals for Land Revenue Resettlement of the Province of Coorg, on February 18, 1910 to the Secretary to the Chief Commissioner of Coorg. The contents of the report shows that it was made after examining the revenue settlements made earlier. Pursuant to the said report a patta was given to the ancestors of the respondent in 1912 granting the aforesaid lands and in that patta there was an endorsement reading "redeemed coffee sagawali malai". The word "sagawali"

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means cultivation and the word "malai" means "hill". It is common ground that the word "redeemed" used in this entry would show that the price of the standing timber on the said land had been paid by the grantee by the time when the patta was made. It may be mentioned here that in the settlement in Coorg where the land was granted with the endorsement "unredeemed", it meant that the standing timber had not been paid for and the grantee would have to pay for the same if the grantee wanted to cut the trees and remove the timber from the land. In 1918 it appears that pursuant to an order made by the Commissioner the said entry has been altered to "unredeemed" showing that the trees had not been paid for.

For several years no problem arose because it appears that there was no question arose of cutting any trees, but later, in recent years, the respondent applied for permission of appellant No. 1 to cut and remove some of the trees from the land granted to the respondent. The said application was rejected on the ground that the seigniorage payable on the value of the timber standing on the land granted had not been paid and hence, before the trees could be cut and the timber removed, seigniorage in respect of the trees would have to be paid. The respondent filed a suit in the Court of Civil Judge, Madakeri for a declaration that the said land granted to him was redeemed in tenure and hence no payment of seigniorage could be demanded in respect of the trees to be cut and removed. In that suit, the respondent inter alia claimed that the alteration of the relevant entry from "redeemed" to "unredeemed" in the record of rights pertaining to the said lands, made pursuant to the order of the Commissioner, was void as the procedure prescribed by law had not been complied with the alteration in the entry not having been directed to be made by an authorised person. The Trial Court decreed the said suit and granted the declaration. The appellants preferred an appeal against the said decision to the District Court but the said appeal was dismissed. The appellants then preferred a Second Appeal to the High Court of Karnataka which dismissed the same as set

out earlier.

We find that the question which has arisen in this appeal arose before a Division Bench of the Mysore High Court in State of Mysore v. Kainthaje Thimmanna Enat and Others, (1968) 2 Mysore Law. Journal 227. It is common ground that the facts in that case are in pari materia with the facts in the present case. It was held by the Division Bench that the presumption that the entries relating to the change of tenure should be taken to have been lawfully and regularly made in the course of the performance of official duties and in due compliance with

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the procedure enjoined by law could not be drawn in that case. If the order in question for revision of the record of rights had been one that was made in exercise of the power under Regulation 29 of the Coorg Regulation, which is the provision which should have been resorted to for the purpose of preparation and revision of record of rights, the order should have been issued and published by the Chief Commissioner of Coorg by notification and no such notification or publication of the same in the official gazette had been shown to the Court. The order for correcting the entry was issued by the Commissioner and not by the Chief Commissioner as enjoined by Regulation 29 of the Coorg Regulation and there was no reference on the record to any such notification having been issued under Regulation 29. Moreover, it was not apparent who had made the alteration, altering the word "redeemed" to "unredeemed", in the Jambandi Register. It was further held that under Regulation 39, the presumption as regards the truth of the entries arises only when the entries in the record of rights have been made in accordance with law for the time being in force and if the provisions of the relevant rules had been complied with. In the case before the Division Bench, that presumption could not be drawn, because in the absence of a notification issued by the Chief Commissioner, it was not possible to predicate whether the procedure enjoined by the rules had been followed at that time of effecting the change in the entry. It was held that the suits in question were not barred by section 145 (vi) and (viii) of the Coorg Regulation as the suits did not question the right of the Government to levy seigniorage nor the liability of the plaintiffs to pay but the plea was that seigniorage had already been levied and paid. The suits were not barred by time under Article 14 of the Limitation Act, 1908 as no relief was prayed for in the nature of setting aside of an order of a Government Officer but the claim made for a declaration that the impugned order altering the entry was void and non est and hence, liable to be ignored. We agree with these conclusions which were upheld on appeal by the District Court and the High Court.

We would, however, like to give an additional ground which supports the conclusion that the said change in the entry from the word "redeemed" to "unredeemed" was not made according to law. We find from a number of judgments that identical orders changing the word "redeemed" to the word "unredeemed" in the relevant entries have been uniformly made in a large number of cases which would suggest that these changes were made pursuant to a special revision of the record of rights in respect of a number of properties and was not an individual change in a particular entry in the record of rights of a

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particular plot of land. Under Regulation 29 of the Coorg Regulation, this could have been done only pursuant to a

direction or order of the Chief Commissioner but no such order or direction or a notification to that effect appears to be on the record. The result is that the said change must be held to be unauthorised in law void and of no legal effect. In view of what is set out earlier, a detailed discussion regarding this contention is not called for. We may also point out that the same view regarding a similar change of an entry in the record of rights was taken by a learned Single Judge of the Karnataka High Court in Regular Second Appeals Nos. 693 and 694 of 1977. Petitions for special leave being Special Leave Petitions Nos. 38 12-13 of 1985 were preferred by the State of Karnataka against the said decision and the said petitions for special leave were dismissed summarily by this Court on 10th March, 1986. In these circumstances, the only thing which surprises is that the State has again chosen to reagitiate the same question before this court probably only because large stakes are involved.

In our opinion, there is no merit in the appeal and the same is dismissed with costs.

Y. Lal
dismissed.

Appeal

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