

1963

*Present: Herat, J., and Abeyesundere, J.*

N. S. S. CHELLIAH MUHANDIRAM and others, Appellants,  
and K. P. V. V. ETHIRMANASINGHAM, Respondent

*S. C. 362/60—D. C. Batticaloa, 1163/L*

*Evidence—Grains Tax Register—Relevancy of entries therein.*

Entries in a Grains Tax Register are relevant and admissible evidence on the question of title to a land.

**A**PPEAL from a judgment of the District Court, Batticaloa.

*H. V. Perera, Q.C., with C. Ranganathan and Miss Suriya Wickremasinghe, for Defendants-Appellants.*

*M. Tiruchelvam, Q.C., with J. N. David and D. E. V. Dissanayake, for Plaintiff-Respondent.*

June 26, 1963. HERAT, J.—

The plaintiff sues the defendants for declaration of title to an extent of land which is 22 acres, a land forming the subject matter of this action, which consists of paddy fields. The defendants, who are appellants in the case, are Trustees of a Hindu Kovil in the Batticaloa District and claim title to this land as trust property of the said Kovil.

The plaintiff-respondent alleges that the original owner was one Veemapyody Udayar from whose descendants he purports to trace title. The plaintiff's immediate source of title is a deed of gift, marked P5, from his wife and brother-in-law. There is no grant of any sort produced in favour of the Udayar, but the plaintiff has produced his document P9a, a usufructuary mortgage bond of 1896 granted by the said Udayar to one Kanapathipillai, and also a usufructuary mortgage bond P1 of 1898 granted by the same Udayar to the same Kanapathipillai. These two mortgage bonds relate to the land in dispute. The plaintiff-respondent asserts that the land has been in the possession of the usufructuary mortgagees, on the usufructuary bonds or in the possession of the assignees from those usufructuary mortgagees. The plaintiff-respondent also asserts that the possession of the usufructuary mortgagees or their assignees enures to the benefit of the mortgagor the Udayar and his successors in title including the plaintiff-respondent himself and thereby pleads prescriptive possession and prescriptive title.

On the other hand the case for the defendants-appellants is that the Udayar referred to above was the Trustee at one time of the Kovil in question and that he possessed the land in dispute as Trustee of the said Kovil. Their case is that the said Udayar executed the usufructuary mortgage bonds P9a of 1896 and P1 of 1898 in his capacity as Trustee

of the Kovil in order to raise funds for the benefit of the Kovil and that therefore the possession of the said Udayar through his usufructuary mortgagees and their assignees should benefit the charitable trust which is the Kovil and enure to the benefit of the Trustees of that Kovil.

The important question to decide therefore is in what character did the Udayar possess or hold the said land? Did he hold it beneficially for himself or as beneficial owner or did he hold it and possess it as Trustee for a charitable trust, namely, the Kovil?

In our view this question can be decided by considering the documents which have been produced in this case by both sides. Let us first consider the usufructuary mortgage bond P9a of 1896. This bond contains the recital that the money borrowed on it has been raised "For meeting the expenses of effecting repairs to and renovating the Sithira Velauthaswamy Temple of Tirukovil." The bond also describes the property as "which is registered in the Registration Book No. B 202 Batticaloa and which is being possessed by me." When we turn to the second usufructuary mortgage P1 of 1898 which, as I said earlier, is by the same Udayar in favour of the same mortgagee Kanapathipillai it is stated that the purpose of the bond is to pay off the earlier mortgage P9a and "Further for the purpose of expending for the Sithira Velauthaswamy Temple of Thirukovil." The description of the land mortgaged is given as in P9a.

The defendants-appellants have produced an extract of the registration book relating to the Grains Tax Register which document is referred to in the usufructuary mortgage bonds as registration book bearing No. B 202 of Batticaloa. This extract is marked D1. Now this extract has a column requiring the description of the owner and according to the Grains Tax Ordinance it has to be kept in the English language with each English word translated into the vernacular tongue most prevalent in the particular district, in this case Tamil. In D1 under the column "Designated owner" in English language we find the entry giving the name of the Udayar in question followed by words "Manager of and in the name of the particular Kovil." This is followed by an entry in Tamil which, according to the expert who gave evidence in the case on behalf of the defendants-appellants, reads as follows "For and on behalf of Thirukovil Manager" followed by the name of the Udayar in question.

It has been held by the late Mr. Justice A. St. V. Jayewardene in 27 N. L. R. at page 212 that entries in a Grains Tax Register are relevant and admissible evidence on the question of title to a land.

We have also to consider two other documents, namely D2 and D3. D2 of 1930 is a secondary usufructuary mortgage bond of this land granted by 1st defendant-appellant as Trustee of the Kovil in question in favour of the same mortgagee who was the mortgagee under P1 and P9a, and D2 recites as follows "And whereas the said temple has no funds to meet the said expenses", meaning thereby that the money was raised for the purposes of the Kovil in question. The other document is D3 of 1938

which is also an usufructuary mortgage by the 1st defendant-appellant in respect of an extent of eight acres out of the land in dispute and in favour of two persons named as Nagamuttu and Selliah. This contains the recital that the land in dispute "was in the possession of my uncle N. S. Veemapody Udayar as Manager and Trustee."

We think that these documents, all taken together, create strong evidence from which one is entitled to draw an inference that the Udayar held the property in question as Trustee of the said Kovil and not as beneficiary. We rely particularly on the contents in the extract from the Grains Tax Register and the connected recitals in the two bonds P9a and P1 in coming to this conclusion and we are of opinion, with respect, that the learned District Judge came to a wrong conclusion when he held that the Udayar was the beneficiary owner.

We therefore set aside the judgment of the learned District Judge and dismiss the plaintiff-respondent's action. Defendants-appellants will be entitled to costs of the appeal in this Court as well as costs in the Court of first instance.

ABEYESUNDERE, J.—I agree.

*Appeal allowed.*

