

## ARTICLE

## The Functioning of a Land Market in Qing South China: Comments on a Set of Guangdong Land Deeds

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This is a brief commentary on one particular institution concerning land transactions in late imperial China. This practice could be found in the land deeds of a voluntary association active in Guangzhou over the late 19th to early 20th centuries, the Aiyutang of Guangzhou 廣州愛育堂.<sup>1)</sup> The practice seems particularly relevant in considering the extent to which a “market” might have been in operation with regard to land in traditional Chinese society. While scholars have worked on long-term changes in land prices, on tenancy rates and on their implications in the wider economy, it has also been cautioned that we still know very little on the land rights that were being transacted.<sup>2)</sup> Moreover, a closer look at land transaction records at the village level points to a situation where land transactions were generally part of longer-term relationships involv-

ing credit, intermarriage and lineage building, thus “embedded” in a wider context of social relations.<sup>3)</sup> This short paper looks into a hitherto little known institution that bears on such aspects of the land market as the scope of potential purchasers for a particular piece of land, the mechanism of how prices were agreed upon, and the implication of corporate parties to certain transactions.

The collection of documents under examination, forming part of the volume of Guangdong land deeds edited by Tan Dihua and Xian Qianmin,<sup>4)</sup> includes deeds of sale, tenancy and what might be loosely referred to as mortgage, as well as governmental decrees related to land disputes, and documents regarding tax registration. The collection includes both documents directly pertaining to transactions conducted by the Aiyutang, and those recording past

1) For basic information on such societies in Guangdong as the Aiyutang, see DENG YUSHENG 鄧雨生, QUAN YUE SHEHUI SHILU CHUGAO 全粵社會實錄初稿 (1910).

2) See, for example, DAVID FAURE, THE RURAL ECONOMY OF PRE-LIBERATION CHINA: TRADE EXPANSION AND PEASANT LIVELIHOOD IN JIANGSU AND GUANGDONG, 1870 TO 1937 (1989); KISHIMOTO MIO 岸本美緒, SHINDAI CHUGOKU NO BUKKA TO KEIZAI HENDO 清代中国の物価と経済変動 (1997).

3) Matsubara Kentaro 松原健太郎, *Keiyaku, ho, kanshu: dento chugoku ni okeru tochi torihiki no ichi sokumen* 契約・法・慣習：伝統中国における土地取引の一側面 [*Contract, Law and Custom: An Aspect of Land Transactions in Traditional China*] in SHIHAI NO CHIHKISHI 支配の地域史 [THE REGIONAL HISTORY OF DOMINANCE] 44 (Hamashita Takeshi 濱下武志 & Kawakita Minoru 川北稔 eds., 2000).

4) GUANGDONG TUDI QIYUE WENSHU (HAN HAINAN) 廣東土地契約文書 (含海南) (Tan Dihua 譚棣華 & Xian Qianmin 冼劍民 eds., 2000).

transactions (to which the Aiyutang was not a party) of properties eventually acquired by the Aiyutang. Thus while most of the land transactions of the Aiyutang date from the late 19th to early 20th century, a considerable part of the documents in this collection are from earlier in the Qing, and one deed is from the 48th year of the Wanli emperor (1620) in the late Ming.

## THE PRACTICE AND THE PROBLEM

The practice this paper focuses on is that of the *chuzhang* 出帳, found in many of these deeds, literally meaning “putting out a notice.” The deeds suggest that it was followed for a period of over a hundred years in the middle to late Qing period, within the community that traded land around Guangzhou.

A typical entry in a land deed involving this practice would be as follows.

Deed for sale of rice land, issued by Mai Qizhang, inhabitant of Chunwan neighbourhood in Lishui village. Since he has immediate need for money and grain, and he has previously borrowed silver from others whom he cannot repay, he wishes to sell rice land to another owner, gain silver and repay others. He has discussed the matter among husband and wife, elder brother and younger brother, and he now wishes to sell one plot (*qiu* 坵) of rice land irrigated with tidal water (*chaotian* 潮田) inherited from his forefathers, and that has been ascribed to Qizhang having undergone division. The land is in an area named Meng Hai Chong; now the land measurement for tax is 1.5 *mu* 畝 exactly, and the rice for this people’s tax is 4.815 *sheng* 升. Purchasers were invited through *chuzhang* 出帳, and

the price that needed to be fetched was altogether 24 taels. The relatives of the same branch, those within the lineage and such were consulted first, but each said that he did not have the silver to make the purchase. Thus a middleman was entrusted with the task of finding a purchaser, and Zheng Xianzuo of this neighbourhood would buy. The three parties spoke and agreed, the two families consented, and a price of 20 taels was to be paid. . . . on the same day, measurement of the land was made and the deed drawn up, the deal was unambiguous and clear, the silver and the deed were exchanged, with the actual deed and the actual silver. This was a clear purchase and a clear sale, with no such circumstances as land being taken in lieu of payment for a loan.<sup>5)</sup>

The practice of *chuzhang* here involves the invitation of purchasers, with a price already set by the potential vendor. This appears to form, in effect, an advertisement that starts the process of finding a purchaser. While the actual transaction may well have gone through a much more complex path, the procedure presupposed in this deed is as follows. After the *chuzhang* is made, the close relatives are consulted as to whether they could pay the price, and once the attempt to find a purchaser among them fails, a middleman is entrusted with the task of finding a purchaser outside the family. The middleman in this particular case was a Mai Fuxiang, with the same surname as the vendor.<sup>6)</sup> Moreover, after the potential vendor is found, there is a process whereby the two parties and the middleman discuss terms. This involves a bargaining process, and the price finally agreed upon is 20, rather than 24, taels.

One aspect of the transaction we can-

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5) *Id.* at 8.

6) *Id.* at 9.

not learn from the available material is how widely the sale was initially advertised. At one extreme, it is possible to envisage a situation where there is an institutional framework that allows the *chuzhang* to inform the full range of potential buyers that could possibly have any realistic interest, giving them each an equal chance in buying the land. At the other extreme, the *chuzhang* could have been a mere notice of the vendor's wish to sell, intended for close relatives only, as might be deduced from the deed's formulation suggesting the employment of a middleman after the relatives' refusal of the offer, in order to find a purchaser outside the circle of family members.

If the situation were closer to the former extreme, this could imply the functioning of a "market" with regard to land, in the following sense. The purchaser of a plot of land would be decided primarily in accordance with the quantifiable economic gain from the transaction on the part of the vendor. In this case, such other considerations as the protection of family property or implications in local social structuring and power relations would be entirely secondary. The latter extreme would involve an entirely different situation, where the institution of *chuzhang* made very little difference in terms of actually finding a purchaser. In effect, the parties would be following the more standard procedure of going through a middleman, who would have the chance to evaluate the various social implications of the sale to a particular party, including its effects on the familial and territorial interests concerning the various groups involved. While it would be difficult to identify and evaluate the exact criteria according to which purchasers could be decided upon in this latter situation, the primary importance of a larger monetary profit from the transaction at hand is far less

apparent than in the former case. In this latter case, the functioning of a land market would be difficult to perceive.

### THE *CHUZHANG* IN ACTION

In beginning the assessment of the situation in relation to these two extremes, it would be useful to see the form assumed by the *chuzhang*, not in a deed referring to the practice, but the actual document itself that invited purchasers. These are harder to come by, but Tan Dihua quotes a Republican example.

A *chuzhang* issued by (or, a notice put out by) Li Gui, who has one plot of land (in Hefu jitang, which is a field by the river with a dyke), the nominal tax on which is for 1.2 *mu*. He is selling this plot, and is asking for the current price of 170 taels. If there is one who has the funds and agrees to the terms, he should take the notice *zhizhang* 執帳 and discussions will be held with a middleman.<sup>7)</sup>

This document takes the form of an open invitation without any limitation as to who might be a potential purchaser. One possible implication is that whoever was able to make an offer meeting the price requirement could purchase the land in question, a situation close to the first extreme referred to above. Indeed, this is the conclusion Tan Dihua himself draws, albeit in the context of emphasising the decline of relatives' preferential rights. "In front of money, all people were equal; naturally, if different parties could pay the same price, the close relatives would have a certain right of preference. However, among the deeds that we have seen, there were none that basically followed the rule of first inviting the close relatives to buy."<sup>8)</sup>

7) TAN DIHUA 譚棣華, QINGDAI ZHUJIANG SANJIAOZHOUDE SHATIAN 清代珠江三角洲的沙田 56-57 (1993).

8) *Id.* at 57.

Another deed from Daoguang 3 (1823) offers an even clearer indication of the aspect of open competition in finding a purchaser.

Deed for perpetual sale of a *weitian* field 圍田, issued by the Guan Zhuxi ancestral estate [zu 祖] of Rongqi village, Dongyong *du* 都 in Shunde county. Because of the need to build a(n ancestral) hall, the descendants, elders and branch members have gathered and discussed matters. As a result it was wished that the two fields should be sold: these are the fields above and below the stream south of the walled field built on the middle-grade tax land in Shunde in the location Yan Qi Sha, that this estate (previously) purchased, altogether 4 *qing* 頃 in area and registered for tax under the household Guan Yongchang in the 2nd *tu* 圖, 5th *jia* 甲, attached with the mulberry stocks and protective stones at the bottom of the wall. These should altogether be posted in a notice, inviting the wealthy parties of each village to come to the ancestral hall and make an offer for purchase. All would be unambiguously evaluated and a price would be received: this would be the actual price of the actual land, and additional fees for the drawing up of a deed, a drinks-gathering upon the sale, and for the clarification of various interests in the land, which would be calculated at 2 *fen* for every tael. The term was set at the 12th day of the first moon this year, and the highest bidder was to gain the right to purchase. Next, family friends Chen Naicheng and Lu Canzhao introduced Lu Rudi of Dawan village, Simaning *bao* 堡, Jiangcun, in this county, and he made an offer. All offers were opened on the day, in the ancestral hall in front of the people: Lu Rudi's offer was to buy 17.5 *mu* of the fields in question that were held by this estate. He made an evaluation of each *mu*

in accordance with official measurements, and offered 55.735 taels per *mu*, and no one could match this. Thus both parties went to the land in question, clarified the boundaries, and placed a pole in the ground to confirm them. The field was indeed 17.5 *mu*, and a certifying document *dingtie* 定帖 was issued. Now it is a lucky day, and the deed is being issued.<sup>9)</sup>

The only restriction applied in the initial stage of the search for purchasers is that it is the “wealthy parties” *caidong* 財東 of each village who are invited to bid for the purchase. On one hand, the term *chuzhang* is not used in this deed, and instead of advertising with an asking-price as in the previous two documents, the procedure resembles that of an auction. On the other hand, one of the most significant points concerning the institution of *chuzhang*, namely the disregard for the various social constraints that might prevent the sale to the potential buyer with the best offer, is emphasised to an even greater degree than in the cases referred to above.

Of course, it is unclear how widely the net was cast in asking “the wealthy parties of each village.” It may well have been limited to a community of neighbouring villages within which a land sale would involve little social change. However, even if the scope of potential purchasers might have been relatively wide, it is not certain that “in front of money, all people were equal.” The implications of the fact that middlemen are involved from the early stage of bringing in potential purchasers are unclear. Their roles in both the negotiation process and final endorsement of the deed appear to be as important as in cases where no such procedures as the auctioning in this deed are followed, and this may well have involved a process of screening that took account of the

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9) Tan & Xian eds., *supra* note 4, at 51-52.

social consequences of the purchase in terms of descent and territory. However, lack of information on the middlemen allows for the possibility that their role was more nominal, giving the transaction an appearance of having followed the standard practice of going through a middleman, and securing the additional parties committed to ensuring the efficacy of the sale. If one took this latter case to the extreme, the actual decision to sell to a particular party may well have been based entirely on monetary considerations.

What one could infer from this deed, however, is that the transaction is not conducted on a purely individual initiative, either on the vendor's or purchaser's part. If the full functioning of a market economy also involved individuals and households (who had independent funds) participating in transactions most advantageous to themselves, free from the considerations of such wider social groups as lineages, villages and other territorial organisations, this deed does not represent such a situation. In the collection of Aiyutang deeds reproduced in Tan & Xian, *supra* note 4, there are twenty-two deeds of sale from the Guan Zhuxi ancestral estate to the Lu surname, relating to (different parts of) the same tract of land, and all within the first two months of the 3rd year of the Daoguang emperor.<sup>10)</sup> Six purchasers of the Lu surname appear in these twenty-two deeds.<sup>11)</sup> Each of these deeds describes the same procedure of inviting the wealthy parties of each village to make an offer, and the same middlemen find-

ing the particular Lu surname purchaser in question. Each purchaser has made the same offer of 55.735 taels per *mu*, and each is buying 17.5 *mu* of the walled fields. Additional purchases are made in the following years, and by 1847 the Lu lineage had purchased over four hundred *mu*.<sup>12)</sup>

The 1823 deed cited above appears to be part of one cohesive action on the part of the Lu lineage of Dawan village, in purchasing a large tract of land from the Guan Zhuxi ancestral estate. It represents a transaction that was performed very much in the lineage context, acquiring part of what would become a collective body of property, later to be sold all together by a single Lu surname institution, the Lu Chengqing *tang*.<sup>13)</sup> The decision to purchase in 1823 was not made at the level of Lu Rudi as an individual, but at a level that also encompassed five lineage institutions taking the forms of *zu* 祖 and *tang* 堂. Although a signatory of the deed, Lu Rudi was not participating in the "property market" as a party seeking to maximise his own profit through this transaction. The internal organisation and politics of the Lu lineage cannot be known from the deeds. However, it is clear that the individual (and household) on one hand had the position of an autonomous entity capable of buying and holding property, and on the other hand would surrender its property to the Chengqing *tang*, the latter selling it outside the lineage as its own. It was within these confines that such an individual as Lu Rudi would operate, in partic-

10) *Id.* at 51-63. There are also other transactions between the same parties in later years, between 1826 and 1847: *id.* at 63-67. On the significance of such long-term relations of continuous sale, see Matsubara, *supra* note 3.

11) 盧汝棣; 盧承慶堂; 盧澹鞍菴祖; 盧卓昭祖鄉; 盧碧池祖; 盧松科祖.

12) The total, assuming that all twenty-two of the 1823 deeds are for 17.5 *mu*, would be 428.04139 *mu*. The amount that the Lu surname sells in the 30th year of the Daoguang emperor, however, is 414.04139 *mu* [Tan & Xian eds., *supra* note 4, at 67-68]. The inconsistency can be due to some of the 1823 deeds mixing up the acreage between 17.5 and 10.5 *mu* [*Id.* at 52; 53; 55; 56 — if there were two deeds actually for 10.5 *mu*, 414.04139 would be an accurate calculation], or to the ambiguity as to whether the 414.04139 is the amount of land tax or the actual land acreage [*Id.* at 51-52; 67-68]. A third possibility, of course, is that 14 *mu* is somehow being kept and not sold in this final transaction.

13) Tan & Xian eds., *supra* note 4, at 67-69.

ipating in the economic environment and the land “market” of the day.<sup>14)</sup>

## THE TYPES OF LAND

Such cohesive operations in purchasing large tracts of land are not rare in the collection of Aiyutang deeds. In the sale of the same body of land made by the Lu Chengqing *tang*, the purchasers were twelve different *tang* of the Wu surname, explicitly taking equal shares of the property.<sup>15)</sup> Nor were these operations limited to the lineage context. The collection includes a set of four deeds, all signed on the same day in 1786. Here, the parties of the Xu surname of Rongqi village sold land taxed for a total of 191.097 *mu* to four different parties with four different surnames, but all residing in Daliang village.<sup>16)</sup> That this was a purchase coordinated among the different purchasers linked territorially can be inferred from the following facts. Firstly, the four purchases, all made through the same two middlemen, divide the purchased land into three equal shares and one half-share. Secondly, all this land is later sold on the same day in 1797 from these groups to a single different entity, the Li Detao *zu* of Longshan.<sup>17)</sup>

All four of these 1786 deeds describe a process of *chuzhang* where a price was advertised, and outside purchasers were found through middlemen after close relatives had

declined to buy the land. Again, this shows how the economic processes reflected in these deeds, while certainly suggesting the element of an open invitation to purchasers, were also characterised by considerations of lineage and territory, and not purely of the monetary interests of the signatories.

However, it is dangerous to play down the aspect of open competition too much, and to overemphasise the aspect of land sales being constrained by non-economic factors. It is indeed in cases where the right of prior purchase held by relatives and neighbours is not exercised that these deeds are preserved, and extensive migration into Guangdong in the Qing period would only have been possible if land could be transferred to outsiders without too much difficulty. The oft-cited deed of permanent tenancy from the New Territories of Hong Kong, making an explicit provision as to the exclusion of “those who live far away” from parties to whom land rights could be transferred, may even constitute the exception that proves the rule: the competition among “great surnames” necessitating an extra clause that was out of step with the standard practice.<sup>18)</sup>

One factor that appears relevant is the type of land that is being dealt in. Reclaimed farmland, held in large tracts at a distance from one’s residence, plots of farmland held within one’s village, and grave land in the mountains would each have different forms of management and different concerns in their uses. It

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14) On the relationship between “individual” property and “household” property under the system of *tongju gongcai* 同居共財 (common residence, shared property), see SHIGA SHUZO 滋賀秀三, CHUGOKU KAZOKUHO NO GENRI 中国家族法の原理 [PRINCIPLES OF CHINESE FAMILY LAW] (2d ed. 5th prtg. 2000). Concerning the relationship between individual/household property and lineage property within a particular lineage, see ch. 3 of Kentaro Matsubara, *Law of the Ancestors: Property Holding Practices and Lineage Social Structures in Nineteenth Century South China* (2004) (D.Phil. thesis, University of Oxford) (On file with the Bodleian Library, University of Oxford).

15) Tan & Xian eds., *supra* note 4, at 67-69.

16) *Id.* at 85-91.

17) *Id.* at 91-95.

18) DAVID FAURE, *THE STRUCTURE OF CHINESE RURAL SOCIETY: LINEAGE AND VILLAGE IN THE EASTERN NEW TERRITORIES, HONG KONG* 39-40 (1986).

may be significant that these deeds involving the institution of *chuzhang* largely relate to the first kind of land, that is, the sands in the Pearl River Delta. Compared to land within or immediately around the vendor's village, the territorial significance of such land is limited. Its importance lies primarily in its ability to yield profit, and such considerations as territorial power balance or destruction of *fengshui* are less compelling.<sup>19)</sup>

In this regard, it is significant that the sale from the Lu Chengqing *tang* to the twelve *tang* of the Wu surname did not specify the exact area of land each purchaser was buying. The property being sold as a whole (with the twelve deeds together) was specified, but each deed did not spell out what portion of the land was to be taken by the purchaser noted in that deed: it merely noted that the purchaser in that deed took "one twelfth" of the land as a whole.<sup>20)</sup> The implication is that the deed was more concerned with delineating the purchaser's claim to a part of the income from the land, than with securing the purchaser's rights to a tangible, specific piece of land. In this sense, one could say that the land was "commercialised," in a way that is distinct from land with immediate territorial implications.

The procedure of *chuzhang* in finding a purchaser would have been easier to introduce in dealing with this type of land. Whoever the purchasers were, their rights to (the income from) such land was unlikely to jeopardise, for example, the vendor's position in the local politics involving the immediate vicinity of where he lived. In this respect, although the deeds do mention how the close relatives of the vendors were consulted first, the view that monetary considerations were foremost in the vendors' minds may well be tenable. However,

it is also clear that the social dynamics informing the transactions took place in the context of lineage and territory, and only within this context were the individual buyers and sellers of land free to pursue their own (commercial) interests.

## TENTATIVE CONCLUSION

While land transactions would be thus constrained, the institution of *chuzhang* clearly has an element of open competition, and it is possible to read these deeds in the context of an open land market, only with lineages and territorial organisations as the actual competitors, as with corporations participating in the market economy of the present day western world. However, neither lineage nor territorial organisation was an institution based on the principle of commercial profit: whether or not these institutions were fully accommodating to this notion, they had to account for various interests, from territorial politics to ritual orthodoxy.

While an individual or household could buy and sell property in its own name, such activities were conditioned by social interactions in the lineage or territorial context. Moreover, there was no system in operation that could delineate the exact content of the land right held by these parties. Neither the "customary law" nor the legal codes of the Qing were equipped to deal with all the tensions created in the lineage context through competing interests between households, different branches and the lineage as a whole. Such ancestral institutions as *zu* or *tang*, while providing a basic framework for the management of common property

19) For a case study of village land in the New Territories of Hong Kong where such considerations are more apparent, see Matsubara, *supra* note 14, ch. 4.

20) Tan & Xian eds., *supra* note 4, at 67-69.

and distribution of profits, did not have adequate internal rules of governance and transparency that would underpin their operation in an environment of open competition.<sup>21)</sup> In short, these were not circumstances that allowed each individual or household to deal in a “market” environment with regard to land.

Our conclusion is thus twofold. Firstly, in considering the extent to which “market” principles dictated land transactions, it is necessary to differentiate between the types of land that were being transacted. Different types of land called for different considerations, among which would have been the scope of parties to whom land rights might be granted. Secondly, even in cases where the type of property allowed for a wide range of potential buyers, the corporate nature of the transacting parties and its implications should be taken into consideration. Not only were the individuals and households constrained in this context, the multi-layered interests at the corporate level itself could not be reduced to maximising the short-term profit that the transaction would yield. These would be vital factors in understanding the significance of the transaction.

It would thus be rash to conclude from the institution of *chuzhang* that a market environment was in operation with regard to land, free of more “traditional” social constraints based on interests involving family and territory. However, the full implications of the practice would need to be worked out in relation to a body of material more comprehensive than the deeds themselves, and such an investigation may well reveal further aspects indicating the operation of a market. What this short paper has tried to do is to clarify some of the basic premises for such an investigation.

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21) Matsubara, *supra* note 14, ch. 5.