

PRIVY COUNCIL

MustiVenkataJagannadaSarma

Vs.

MustiVeerabhadrayya

(Lords Buckmaster, Dunedin, Shaw and Sir John Edge JJ).

21.4.1921

JUDGMENT

Lord Shaw J.

1. This is an appeal from a decree, dated the 19th February 1918, of the High Court of Judicature at Madras which reversed a decree, dated the 14th March 1917, of the Temporary Subordinate Judge of Cocanada. This last mentioned decree remanded the suit so that partition might be decreed in favor of the Plaintiff-Respondent.

2. The suit was for the recovery of the possession of a one-half share of lands specified in the schedule attached to the plaint. It was admitted that the suit properties had formed the emoluments attached to the office of Karnam or Village Accountant in the village of Pandalapaka.

3. These lands were enfranchised, as after-mentioned, in the year 1906 by an Inam, a title deed granted to Venkataramayya, the Appellant's father.

4. The pedigree is as follows:-

The Appellant's grand-father Subbarayudu was removed from his office of Karnam for incapacity due to old age, and his eldest son Venkataramayya was appointed Karnam on 23rd February 1902. Shortly thereafter the former Karnam died.

5. It is a fact in the case which is admitted that prior to the enfranchisement and Inam grant of 1906 all the family properties which were capable of division were divided into two equal shares between Venkatramayya and Veerabhadrayya. No partition took place of the Service Inam lands which are in suit in the present case.

6. The Appellant maintains that the Respondent had no right to such lands; that they were not joint family property, and were for that reason not included within the scope

of the division made; and that the enfranchisement of the Karnam lands in 1906 and the procedure with regard thereto are consistent with the view that the lands were impartible and were confirmed as separate property by the then holder of the office of Karnam; while on the other hand the Respondent maintains that a division of this particular property, although it is undoubtedly Karnam land, must now be decreed and that the enfranchisement of 1906 could not destroy the nature of the property as joint family property and the interest of the Respondent therein.

7. The Subordinate Judge took the former view and the High Court took the latter. The question in the appeal is which of these views is correct.

8. The point in issue is compendiously put in the Respondent's case in these terms "Whether the enfranchisement the name of the Defendant's father ensured for the benefit of the family or to himself exclusively?"

9. It is admitted that the lands in suit formed the emoluments of the Karnam or Village Accountant. A large body of authority on the subject of the nature of the title to lands so held was cited to the Board. There can be no question of assailing (whatever be the nature of the title to the property itself) the validity of the enfranchisement under the Inam rules. The suit proceeds upon that footing and asks for a division of the property on the assumption that it has been duly enfranchised under the Inam Rules of 1859.

10. It is, however, highly expedient to note the exact terms of the enfranchisement itself. It is dated the 21st March 1906, and is signed by Mr. J. A. Atkinson, Inam Commissioner. It is thus expressed:-

"No. Venkatramayya.

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"By order of the Governor in Council of Madras acting on behalf of the Secretary of State for India in Council, I acknowledge your title to an Inam consisting of the right to a portion of the Government revenue on land measuring forty-five 45 - 83 acres of dry (be the same a little more or less) originally granted for service, and situated in the village of Pandalapaka in the Estate of Pithapur, in the Taluk of Eamchandrapur in the District of Godavari.

"2. This Inam, being held for Karnam Service now otherwise provided for, shall now be deemed freed of such service but shall henceforth be subject to the payment of an annual quit-rent of Rs. (296-8-0) two hundred and ninety-six and annas eight exclusive of Rs. (24-0-0) twenty-four already payable as jodi to the proprietor, which quit-rent is hereby imposed upon the Inam in commutation

both of the said service and of the reversionary interest possessed by Government in the Inam. The Inam is now confirmed to you, your representatives and assigns, to hold or dispose of as you or they think proper, subject only to the payment of the above mentioned quit-rent and jodi (which quit-rent will be liable to revision at the periodical re-settlements of the district), and to the provisions of the next clause.

"3. The right of Government to all minerals, if any, in the land referred to in clause 1 above is hereby expressly reserved to Government, and the revenue referred to in such clause represents only the right of Government to a share in the surface products of such land.

(Signed) J. A. ATKINSON,

Inam Commissioner. Dated 26th March 1906.

"MADRAS.

There can be no question as to the absolute nature of this grant in favor of the Appellant's father. The Inam is confirmed "to you, your representatives and assigns, to hold or dispose of as you or they think proper" subject only to the payment of quit-rent, etc., and to the reservation of minerals."

11. It is worthy of note first that this enfranchisement happens also to be in entire accord with the Standing Order of the Board of Revenue of Madras as to Inam No. 52 of 1897, and second that that Standing Order makes the distinction between grants which are personal or subsistence grants and those which are Service Inams. It is to the latter category that the enfranchisement in the present case properly belongs.

12. By the Standing Order alluded to it is provided by Section 29 that:-

"XXIX. Inams thus enfranchised, either by the payment of an annual quit-rent, or of a single fixed sum equal to twenty years' purchase of the quit-rent, will, like every other description of property be subject to the jurisdiction of the ordinary Courts of Justice in all questions of disputed right, succession, etc., and they may be mortgaged, sold and transferred in any manner at the will and discretion of the Inamdar, subject to the payment of quit-rent if such is not redeemed."

13. The Board has carefully considered the long series of authorities quoted in argument and it is of opinion as follows:-

- (1) The lands comprising the emoluments of a Karnam were attached to the office held by him as such:
- (2) When the Karnam for the time being was removed from office he lost all

rights and title to the lands:

(3) Although in point of fact there might be even a long continuance of the office in a particular family, the right of the Government and the decision of the Revenue authorities to remove a Karnam from office and to appoint another were not open to question in Courts of Law, and

(4) If this right of selection were exercised in favor of a stranger, there being, for example, within the range of the family (which had been accustomed to have one of its members holding the office of Village Accountant) no person who in the opinion of the Revenue Officer was suitable for the position, then the appointment went to the stranger selected and the lands with it as emoluments without any claim thereon as a family right by relatives of former holders of the office.

14. These propositions seem to their Lordships to have been part of the law of Madras long prior to the Acts of 1894 and 1895, which are now to be referred to; but it is to be observed with regard both to Madras Act No. 2 of 1894, Sec. 10, and Madras Act No. 3 of 1895, Section 10, that eligibility, whether for nomination to the office of Karnam by the proprietor of the village under the former Act or by the Collector under the latter, is a matter personal to the nominee, clearly taking into account such things, not only as sex and age, but also the physical and mental capacity to discharge the office, and even the educational qualifications of the person selected.

15. It is accordingly clear that since that time in Madras the Karnam of the village, occupies his office not by hereditary or family right, but as personal appointee, though in certain cases that appointment is primarily exercised in favor of a suitable person who is member of a particular family.

16. It would accordingly appear, apart from the authorities, that lands held or as appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible.

17. It may be, however, that the course of authority leads to a different result from that to which principle and administrative convenience would seem to point. Their Lordships will therefore examine the authorities, which, as will be seen hereafter, are conflicting.

18. In *Srinivasayyar v. Lakshamma*¹ it was held that, where a hereditary village officer who had been dismissed sued to recover land which had formerly been the emoluments of the office and which had been enfranchised and granted to another

person holding the office at the time of the enfranchisement, such a suit could not lie.

19. Their Lordships quote the judgment of Turner, C. J., as containing a compact statement of law upon the point:-

"The lands were attached to the office of Karnam, as its emolument; when the Appellant was removed from the office, he lost his right to the land.

"The circumstance that money may have been expended on the improvements of the land in the expectation that the office with its emolument would be continued to the family, would not give the Appellant any title to recover the land in the events that have occurred. When he was removed for misconduct, the office and emoluments were conferred on a stranger, and with the decision of the Revenue authority on that question we cannot interfere. While the office was held by a stranger, the Government resolved to sever the lands from the office and to offer them to the then office-holder for enfranchisement: the holder accepted the offer and became the owner."

20. The decision, it will be observed, nonsuited the former holder of the office from recovering the land. But the same result followed in the subsequent case of *Bada v. HussuBhai* in which a member of the family of an office-holder who had never held the office sued to recover share of the lands, and the same learned Judge put the point thus:

"The land was appurtenant to the office, and the Government determined to sever it from the office and to allow the office holder or office-holders for the time being to enfranchise it. The Appellant, who was never the holder of the office, could not have a claim on its emoluments."

21. That this was the law of Madras was stated by the Full Court in the year 1884, in *Venkata v. Rama* ²The judgment of Hutchins, J., in referring to the Full Court thus states the point :-

"To ensure the office being held by a qualified person, the Executive was compelled to reserve to itself the determination of all claims."

22. Following the line of his dissent, however, he added:-

"But subject to this one condition the absolute right of hereditary succession has been repeatedly recognized."

23. He dissented, as has been said, on this point from the judgment of the Full Bench. But in the opinion of their Lordships the judgment then pronounced (and it is observed that Turner, C. J., and MuthusawmyAyyar, J., were members of the Court) was clear

and sound.

24. The Madras Regulations of 1802, 1806 and 1831 are most carefully considered, and the general result is stated in the following sentences of the judgment of Turner, C. J.:-

"When the emoluments consisted of land, the land did not become the family property of the person appointed to the office, whether in virtue of an hereditary claim to the office or otherwise. It was an appendage of the office inalienable by the office-holder and designed to be the emolument of the officer into whose soever hands the office might pass. If the Revenue authorities thought fit to disregard the claim of a person who asserted an hereditary right to the office and conferred it on a stranger, the person appointed to the office at once became entitled to the lands which constituted its emolument."

25. Even on the footing that the Respondent in the present case had established that the office was one in which he as a member of the family had a species of expectation or hereditary right, the decision would equally apply to the present case. The judgment of MuthusamiAyyar, J., upon this point was clear.

"According to the law, therefore, as it stood prior to the enfranchisement of the Inam, a right to the land could only be legally acquired through the right to the possession of the office, and neither the Respondent's father nor the Respondent had then any vested interest in the office to sustain an action in the nature of an ejectment."

26. The same reasoning would have applied to any attempt to partition the lands.

27. In the opinion of the Board the law of Madras was thus soundly stated and that judgment should not have been disturbed.

28. It was followed in the case of *Venkatarayadu v. Venkataramayya*³and, as the judgment of Sir Arthur Collins seems strictly to apply to the present litigation, these sentences from it are quoted and are adopted :-

"We think that the decision of the Subordinate Judge is opposed to the principles laid down in the Full Bench decision in *Venkata v. Rama (Supra)*.⁴ The land which formed the emolument of the office of Karnam did not become the family property of the person appointed to the office although he may have had an hereditary claim to the office. The land was designed to be the emolument of the person into whose hand the office of the Karnam might pass

and was inalienable by him, The effect of enfranchisement Was to free the lands from their inalienable character and to empower the Government to deal with them as they pleased."

29. The same result was reached in *DharanipragadaDurgamma v. Kadambari Virrazu*,⁵ in which the principle of the Full Bench case was again followed.

30. In *SubbarayaMudali v. KamuChetti*,⁶ "lands which had been held by a deceased as moniem service Inam were enfranchised after his death and sold by his widow. On a claim being preferred by the reversioner's for a declaration that the sale was inoperative as against them after the expiration of the widow's life estate, it was held that the right of the widower under the grant was not limited to that of a widow's estate."

31. The case was expressly decided as following the Full Bench decision. Subsequently, with one exception about to be noted, the law of Madras up to the year 1899 followed the consistent line which has just been stated.

32. The difficulty, however, which appeared in the later decisions sprang from the case of *Narayan v. Chengalamma*⁷It must, however, be observed that that was not a Karnam case. It was the case of a Palayam; and in their Landships' opinion the error which has appeared has been in the treatment of these two separate cases as governed by analogical principle.

33. Running through the decisions of the Madras Courts the same difficulty more than once appears : it arises from the same cause, namely, that the law of the Palayam is treated as the same as the law of the Karnam. This is carried to the point that in 1902 in the case of *Gunnaiyan v. KamakchiAyyar*⁸the Full Court reversed the law that had been laid down by a Madras Full Bench in 1884 in the case of *Venkata v. Rama (supra)*.⁹ This procedure has been, of course, full of perplexity and that perplexity must now, if possible, be brought to an end.

34. The judgment of this Board dealing so fully with the case of a Palayam tenure and delivered by Sir John Edge in the case of *AppaswamiNaicker v. MidnaporeZamindary Company* ¹⁰on the 16th March 1921, makes it unnecessary to enter again at length on that topic. The Palayagars were originally "petty chieftains occupying usually tracts of hills or forest country subject to pay tribute and service to the paramount State, but seldom paying either, and more or less independent."

35. The State policy with regard to Palayagars was definitely announced by the

proclamation of Lord Clive in 1801. To all intents and purposes the Palayagars were relieved of military duties; they had to give up possession of fire-arms and weapons of offence and become Zamindars; a certain number of pikemen whose names were to be registered were allowed to these chieftains in deference to their personal feelings and "for the purpose of maintaining the pomp and state heretofore attached to the persons of the said Palayagars."

36. The meaning of the proclamation is that their estates were subjected to assessment "upon the principles of zamindar tenures." Palayagars so treated were dealt with as zamindars with hereditary estates, their ancestors' possessions being secured to them.

37. It is accordingly not to be wondered at that When a case of this nature was brought before the Courts as in *Narayana v. Chengalamma (Supra)*, ¹¹already referred to, it should have been held that the Inam title-deed which had been granted to the Palayagar in that case did not confer any new title and that the enfranchisement had no "larger operation than as a release granted by the Crown in respect of its reversionary interest and of the obligation of rendering service."

38. The decision forms no authority for the same principle being extended to the case of a Karnam. It was so interpreted, however, in *Gunnaiyan v. KamakshiAyyar (Supra)*,¹² and BhashyamAyyangar, J., applied the law as laid down as to Palayams as "law bearing upon the enfranchisement of Inams whether they be personal Inams or Service Inams."

39. The only difference, said the learned Judge, between that case and the present one "is that in the former the office itself was abolished as unnecessary whereas in the present case the office was retained an office, the house being attached thereto in lieu of the Inam. This, of course, can make no distinction in principle."

40. Their Lordships differ from this view. When a Palayam was abolished, in so far as the duty of rendering military service was concerned, the estate was continued with all its hereditary incidents to the Palayagar in the same manner as if possessed by a zamindar. It is different with regard to the case of a Karnam. A hereditary right in a Karnam or his family can only, at the utmost, be said to constitute a certain spes among persons within the area of selection of those eligible for the office. But it is not, as had already been observed even so limited.

41. The power of selection rests with the administrative officials who alone are judges of the eligibility of the Karnam for the time being, and it is the settled law of Madras

that the emoluments in the shape of lands followed the office, ex necessitate. Otherwise the holder of the lands might be some person other than the holder of the office as already pointed out. The analogy fails.

42. It was however, decided in the opposite sense by a Full Bench in the case of *PingalaLakshmipathi v. BommireddipalliChalamayya*¹³In a brief opinion it is said that "it is difficult to gather any definite principle common to the majority" in the case of *Venkata v. Rama (Supra)*.¹⁴The case of *Gunnaiyan v. KamakshiAyyar (Supra)*¹⁵was approved.

43. Their Lordships are of opinion that the Full Bench was in error that the case of a Karnam stands on its own footing and that the principles applicable thereto were properly decided in *Venkata v. Rama (Supra)*¹⁶by the Full Court. The reasons for their Lordships' views have already been sufficiently stated.

44. To quote and to adopt the judgment of the 25th August 1902, of Mr. Galletti, Acting Sub-Collector in this case:-

"This is a suit for the recovery of the Karnam service Inam lands of Pandalaka. Plaintiff is admittedly Karnam. The land is admitted Karanam'sInam. Judgment for Plaintiff with costs."

45. A warrant of execution dated the 24th October 1902, authorizing the removal of "any person bound by the decree who may refuse to vacate the same," was also right. It is unnecessary, however, to enter upon questions either of limitation or of *res judicata* which were referred to in the argument, because the case has been disposed of on the merits.

"When, accordingly, on the 21st March 1906, the title deed already quoted was granted by way of an Inam to the Appellant's father and was in express words confirmed to him, and was, "now confirmed to you, your representatives and assigns, to hold or dispose of as you or they think proper," the Board is of opinion that that enfranchisement must be given full effect to, and that it is not subject to be eviscerated or altered by the claim for partition or division put forward by way of defense to the present suit.

46. Their Lordships will humbly advise His Majesty that the appeal should be allowed; that the decree of the Temporary Subordinate Judge of Gocanada, dated the 14th March 1917, be affirmed, and that the Appellant be found entitled to costs in the Courts below from the said date and of the costs of this appeal.

Appeal allowed.

Cases Referred.

1. (1883) 7 Mad 206
2. AIR 1922 PC 193: 46 Bom 153 : 49 IA 1 (PC)
3. (1891) 15 Mad, 284,
4. (1883) 7 Mad 236,
5. (1897) 21 Mad 47 : 7 MLJ 233
6. (1899) 23 Mad 47 : 9 MLJ 160
7. (1886) 10 Mad 1.
8. (1902) 26 Mad 339,
9. (1884) 8 Mad 249 (FB).
10. (1899) 22 Mad 464 : 26 IA 107 : 7 Sar 534 (PC).