
(1918) 08 MAD CK 0039
In the Madras High Court

Audi Raju Pyrappa and Another

APPELLANT

Vs

Audi Raju Syma Rao and Another

RESPONDENT

Date of Decision : 07-08-1918

Acts Referred:

Citation : 46 Ind. Cas. 250 : (1918) 8 LW 614

Hon'ble Judges : Spencer, J;Kriahnan, J

Bench : Division Bench

Judgement

Spencer, J.—The question that has arisen for determination in this second appeal is whether a person, who belongs to a family having an hereditary interest in a Karnam's Inam and becomes divided in status from the holder of the office for the time being, can, when that Inam is subsequently enfranchised by the Government, claim a share in the lands that formed the emoluments of the office of Karnam.

2. In other words, when an Inam is enfranchised from the condition of service, does it become partible among all persons having an hereditary interest in the office through descent from the original grantee or only among those who belong to the joint family of the holder of the office at the time of enfranchisement?

3. The respondent's Pleader relies upon an observation of Bashyam Aiyangar, J., at page 354 in Gunnaiyan v. Kamakchi Ayyar 26 M.A 339 "that in the absence of any evidence to the contrary, it must be presumed that the family of the parties were the holders of the hereditary office up to the date of the enfranchisement of the Inam." The "family" referred to in that sentence was the family of the parties to an unreported case Second Appeal No. 222 of 1896. All the parties to Gunnaigan v. Kamakchi Ayyar 26 M. 339- were members of an undivided family. Therefore, any observations that occur in that judgment must be understood as having no express reference to the claims of any members who had become separated from the family of the holder of the office at any date before enfranchisement.

4. *Pingala Lakshmipathi v. Chalamayya* 17 M.L.J. 101, which mentions the rights possessed by "other persons" in the item of the enfranchisement, does not attempt to define the class to which such "other persons" must belong in order to have such rights. There was no decision of the point which has now arisen.

5. In *Karri Ramayya v. Villoori Jagannndham* 30 Ind. Cas. 889 the rights of the members of a joint family having a hereditary interest in a service Inam were recognised, but we expressly declined to consider what would be the position of the parties if the family had been divided at the time of enfranchisement as there was no evidence of division and as the point was not taken in the appeal memorandum.

6. As there appears to be no reported case directly on the point, it is necessary to consider what is the legal position of persons belonging to the families in the names of which Karnam loans have been registered.

7. u/s 10, Clause 2, of Madras Act III of 1895 the succession to the office of Karnam devolves on a single heir according to the general custom and rule of primogeniture governing succession to impartible Zemindaris in Southern India, Under Clause 3, when a vacancy occurs, the Collector appoints the nearest qualified heir in the order of succession to the last holder of the office. The person so appointed is, u/s 13, entitled to recover the emoluments of the office from any other person into whose hands they may have fallen, emoluments being defined in Section 4 as including lands.

8. Thus at the moment when enfranchisement takes place, no one can have a better title to the lands attached to the office than the registered holder of the office. All other members of his family have up to then no more than what, in the words of the Judicial Committee in dealing with the succession of an impartible estate in *Thahurani Tara Kumari v. Chaturbhw Narayan Singh* 30 Ind. Cas. 833: 18 M.L.T. 228, may be described as a contingent interest. In the language of the learned Judges who recently decided Appeal No. 178 of 1917 (unreported), "till enfranchisement the family had a possible right of enabling the Government to select a member from any one of its branches and a potential right of holding the property as joint family property when in the enfranchisement the Government disannexed the emoluments from the land and enfranchised it." As soon as enfranchisement takes place, what was a potential or contingent right becomes a substantial right under Hindu Law for those members of the family of the Inamdar, who by reason of their coparcenary have an equal right to enjoy with him the ordinary joint family property. No* one belonging to a divided branch of that family would have a right to come in and take a share of the property of the joint family, of course a title-deed that happened to "be issued by the Government in favour of a person who was not in the family of the holder of the office at the time of the enfranchisement, would confer no legal title against the true owners of the property (see the observations at the top of page 349 in *I. L.R. Madras* 26 .

9. So in the present case the plaintiff, having by his father's suit of 1885 become divided from the family of the defendants, is not now entitled to claim a share in the suit lands, which in consequence of the act of enfranchisement in 1889 became the joint family property of the defendants' branch and liable to partition only among the un-divided members of that branch as it existed on the date of enfranchisement.

10. Seeing that a right to a partition of the lands, which only became in 1889 the joint property of the defendants' undivided family, did not at any time become vested in the plaintiff, the question of limitation discussed in the judgments of the lower Courts and argued at the hearing of the second appeal does not arise. Much less is it necessary to consider whether the plaintiff possesses any right to succeed to the share of Giremma, as she had no more than a contingent interest at one time in the office of Karnam and the emoluments attached thereto, an interest that did not materialise. The appeal must be allowed and the suit dismissed with costs through-out.

Krishnan, J.

11. This second appeal relates to two items of lands which at one time formed the emoluments of a Karnam office, which was hereditary in the joint family of the 1st defendant and his brothers. In 1885 Ramayya, one of the brothers, and the father of the plaintiff and of the 3rd defendant sued the 1st defendant and others for the partition of their family properties in Original Suit No. 3 of 1885 and obtained a decree for it. No mention was made of these lands in that suit. They were then in the exclusive enjoyment of the 1st defendant who was the office-holder or Karnam at the time. In 1889 these lands were enfranchised in the 1st defendant's name, and it is found by both the lower Courts that he has continued in exclusive enjoyment of these lands for the last 24 years without giving any share in the profits to the plaintiff or his brother, the 3rd defendant. Plaintiff has brought this suit now, claiming a 1/4 th share in them and for partition and delivery to him of that share. The lower Courts have given him a decree, as also to his brother, the 3rd defendant, holding that, on enfranchisement, they became entitled to the shares claimed in spite of the previous partition decree in Original Suit No. 3 of 1885 and that their claim was not barred by limitation, as proof of mere non-participation in the profits was not sufficient for the purpose and as there was no proof of ouster or exclusion of plaintiff and his brother to their knowledge from the enjoyment of such profits. The 1st defendant and his son, the 2nd defendant, have appealed to us against that decree. The claim as regards the 3rd item of property was dismissed by the 1st Court and no question arises about it now.

12. The first point taken before us by the learned Vakil for the appellants is that plaintiff and his brother have not proved that they are entitled to any share at all in the Inam lands. This question depends upon whether the plaintiff's branch of the family had any existing interest in the lands on the date of the enfranchisement and upon what exactly was the effect of the enfranchisement in

the name of the 1st defendant. After the ruling of the Full Bench in *Pingala Latyhmipathi v. Chalamayya* 17 M.L.J. 101 it cannot be contended that, by the enfranchisement in his name, the 1st defendant got an exclusive title" to the lands; in fact the appellant's Vakil did not so contend. There the Full Bench accepting the view of Sir Bhashyam Ayyangar, J., in *Gunnaiyan v. Kamakchi Ayyar* 26 M. 339 laid down that the effect of the en-franchisement in cases like the present was to disannex the Inam from the office and convert it into ordinary property and. release the reversionary rights of the Crown, but that it did not confer on the person in whose name the title-deed was given any right in derogation of those possessed by other persons in the Inam at the time of the enfranchisement." We are bound to follow this ruling and make *it the basis of our decision, though it is stated that the question is now before the Privy Council for decision and though it is not altogether free from doubt. Applying this principle we must see whether plaintiff's branch was possessed of any rights in the Inam lands at the date of the enfranchisement. On that date they had ceased to be members of the joint family of the 1st defendant; for it is conceded that though the decree in Original Suit No. 3 of 1885 was subsequently declared to be unexecutable, it completely put an end to the co-parcenary existing between them previously. The appellant argues that the benefit arising from the enfranchisement of the lands should be extended only to the members of the joint family of the person in whose name the title-deed is given as it existed at the date of the enfranchisement, and to no others. There are some observations of Sir Bhashyam Ayyangar J., in *Gunnaiyan, v. Kamakchi Ayyar* 26 M. 339 in favour of this argument, but as the learned Judge had not in his contemplation the case of an enfranchisement after partition we cannot treat them as authority here as pointed out by my learned brother neither the observations in this case nor those in *Karri Ramayya v. Villoori Jagannadham* (1915) M.W.N. 838 are of any authority on the point before us. The respondents' Vakil has, however, drawn our attention* to three unreported decisions of this Court in Second Appeal No. 49 of 1911, Appeal No. 79 of 1917 and Appeal No. 176 of 1917, where the enfranchisement took place after partition. In those cases persons who had divided off from the persons who subsequently obtained the title-deeds for the enfranchised lands were held to be entitled to shares in those lands. They are, no doubt, authority for holding that partition before enfranchisement is not in itself conclusive of the question whether a person has rights or not in the enfranchised lands. But in all those cases there were circumstances justifying the inference that was drawn in them, that in spite of the partition the rights of the divided members were kept alive in the Inam lands at the date of enfranchisement. In Second Appeal No. 49 of 1911 the learned Judges say that it was not disputed that the land was treated as property in which all the members of the family had an interest; in Appeal No. 79 of 1917 they say there can be no doubt the lands were enjoyed in common." Appeal No. 176 of 1917 followed the ruling in Appeal No. 79 of 1917. These rulings thus show that even though a person may have been divided off from the person who subsequently obtained the title deed for the enfranchised land, he may prove that his right was kept

intact at the partition and claim his share.

13. So long as the lands remain unenfranchised, the office-holder has the exclusive right to their enjoyment and the succession devolves under Madras Act III of 1895 on a single heir according to the general custom and the rule of primogeniture. Thus, as observed by my learned brother, each of the other members of the family has only a possible right of succeeding to the office and the emoluments thereof, a contingent interest dependent on his becoming the nearest qualified heir when the office falls vacant.

14. We can scarcely hold that such a mere contingent interest is kept alive in favour of a divided member so as to give him rights in the property when enfranchised, unless at any rate there is evidence to show that such right was reserved at the time of partition and recognised by the parties. I am not able to agree with the respondents' contention that every person who is shown to be the lineal descendant of the original grantee of the Inam, however remote he may be from the person who got the title-deed, and whatever the length of time may be when his branch divided off from the branch holding the office and whatever may be the number of subsequent partitions in the family, must be held to have a share in the lands when enfranchised unless it is proved against him that his right had become extinguished. I think that will be extending the rule laid down in *Gunnaiyan v. Kamakchi Ayyar* 26 M. 339 much too far. In the present case except the fact that the Karnam office was hereditary in the family when the plaintiff's father was a member of it, there is nothing to show that the lands in question were treated as joint family property either before or after enfranchisement or that any rights in them were reserved in plaintiff's father's favour when he sued for partition and got his decree. There was no reference to those lands in the plaint in Original Suit No. 3 of 1885 and though it is 24 years now since the enfranchisement took place, no claim to these lands seems, to have been put forward by the plaintiff till now and no share in the profits was enjoyed by him or by his brother all this time. There is no proof here of any common enjoyment as in the unreported decisions cited above and they are all thus clearly distinguishable from the present case. The lands were, all along being enjoyed by the 1st defendant and if the plaintiff's branch had any rights in them and wanted such rights to be kept alive after partition, they should have reserved them in some manner. They may have failed to do so because the prevalent view at the time was that the lands when enfranchised would belong to the person to whom the title-deed was given by the Government, but they cannot for that reason alone be consequently allowed to allege a right which, if they had it, they did not take care to preserve.

15. I am, therefore, of opinion that on the findings in this case plaintiff and 3rd defendant have failed to show that they are "other" persons referred to in the Full Bench case as having rights in the Inam lands at the time of enfranchisement. Their claims must, therefore, fail and it is unnecessary to consider the other questions raised. I agree to the order proposed by my learned

brother.