
(1916) 04 MAD CK 0044
In the Madras High Court

Dinvahi Lakshmipati and Another

APPELLANT

Vs

Pingal1 Narasimham and Others

RESPONDENT

Date of Decision : 18-04-1916

Acts Referred:

Limitation Act, 1963 — Section 28

Citation : 34 Ind. Cas. 898 : (1916) 3 LW 590

Hon'ble Judges : Seshagiri Aiyar, J;Phillips, J

Bench : Division Bench

Judgement

1. It was held in *Gunnaiyan v. Kamakchi Ayyar* 26 M. 339 that an inam, granted for service became the hereditary property of the grantee and that the conditions restraining alienation applied only as between him and the Crown. Consequently, if the property in suit before its enfranchisement was trespassed upon by a stranger, the latter would acquire a title to it by prescription u/s 28 of the Limitation Act, as against the person entitled to its possession.

2. Mr. Nagabushnam, relying upon *Bhaiji Thakur v. Jharula Das* 24 Ind. Cas. 501 : 27 M.L.J. 100 : (1914) M.W.N. 636 : 16 Bom. L.R. 845, contended that as the property appertained to the office, adverse holding of it would not give a right to it as against the office-holder entitled to possession. The answer to this contention is that the inam, although it was originally granted for service, was not attached to the office in the sense in which lands granted for performing a religious service in a temple are attached to the service. The Government by express legislation declared that by enfranchising the inam in favour of a village office-holder, they are not conferring a title to the property which formed the emoluments of the office at one time. In this view, the decisions following *Bhaiji Thakur v. Jharula Das* 24 Ind. Cas. 501 : 16 M.L.T. 210 : (1914) M.W.N. 636 do not affect the present question. The lower Appellate Court is right, and these second appeals are dismissed with costs.

3. As regards the memo, of objections the Sub-Judge is wrong in directing the plaintiffs to file a separate suit. The decrees of the Courts below must be

modified by declaring that future mesne profits should be ascertained in execution.

4. There will be no costs. Second Appeal No. 322 of 1915 must be allowed and there will be no order as to costs in this appeal also.