
(1907) 12 MAD CK 0001
In the Madras High Court

L. Angannayya and Others

APPELLANT

Vs

Daroor Narasanna and Others

RESPONDENT

Date of Decision : 17-12-1907

Acts Referred:

Transfer of Property Act, 1882 — Section 43

Citation : (1908) 18 MLJ 247

Judgement

1. There is no doubt that the Courts were entitled to hold, as they have held, that the land sold under the decree, was land in Survey No. 695-C

and not in Survey No. 695-B. In so holding they have not gone behind the decree, which was ambiguous. Nor have we been shown that they have

gone behind the sale proclamation.

2. The next question is whether the 1st defendant had any interest in the land which he could mortgage to the plaintiff. The land was classed as

Village Service Inam and was sold in 1889 by the 2nd defendant : the Inam was enfranchised or resumed in 1891, and the land was mortgaged to

the plaintiff in 1892. Whether we regard the Inam as a grant of the land or as a remission of the assessment payable on the land, it is clear that if the

land is transferred the Inam is transferred, unless in the transfer the Inam is reserved ; and it is not suggested that there was any such reservation in

this case. Any transfer of Inam forming the emoluments of Village officers and servants is by Regulation VI of 1831, which was in force in 1889,

null and void, and it seems that the alienation as a whole must be null and void, for it is not easy to see how it can be possible to alienate the land

and reserve the benefit of the right to withhold the payment of the assessment payable thereon.

3. But when the land was enfranchised or fully assessed about 1891, it became alienable, and the 1st defendant then, and the plaintiff claiming through the 1st defendant, subsequently, became entitled to require that the transfer should operate on the alienable interest acquired by the 2nd defendant. Dr. Swaminadhan cited the case of Ramasami Naick v. Ramasawy Chetty ILR (1907) M. 255 against this view, but that, as is pointed out in the judgment, was not a case to which Section 43 of the Transfer of Property Act could be applied.

4. Here the 2nd defendant purported to transfer certain immovable property, and his statement in Exhibit A that the Inam sold had fallen to his share, amounts to a representation that he was authorized to transfer them. The case is, therefore, within the section and the appeal has to be dismissed with costs.