

(1909) 09 MAD CK 0059
In the Madras High Court

M. Krishna Aiyar

APPELLANT

Vs

The Sectetary of State for India in Council

RESPONDENT

Date of Decision : 15-09-1909

Acts Referred:

Citation : (1910) ILR (Mad) 173 : 5 Ind. Cas. 121

Hon'ble Judges : Munro, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. It is, found, that the plaintiff has proved possession of item 1 in himself and his vendor for 30 years and of item 2 in himself for 40 years. The defendant, who is the Secretary of State for India in Council, has failed to establish his title to the land, or any possession within 60 years before suit. The only circumstance put forward to show a title in the defendant is the fact that at the settlement in 1874 the Revenue authorities classed the items as natham poramboke. This at the utmost was an assertion of title, and is not by itself sufficient to prove the title of the defendant. The judgment of this Court reported in Kothai Mahomed Meera Moideen v. The Secretary of State for India in Council 13 M.L.J. 269, has been entirely misunderstood by the Subordinate Judge. That judgment does not lay down that the mere classification by Government of the lands as natham poramboke has any legal effect whatever, except in so far as it may be regarded as an assertion of title. It may be regarded as settled law that in circumstances like the present the possession of the plaintiff throws upon the defendant the burden of proving that he has a subsisting title, vide The Secretary of State for India v. Kotah Bapanamma Garu 19 M.k 165, Muthayya Chetti v. The Secretary of State for India (sic), Gangaram Chima Patel V. The Secretary of State for India in Council 20 B.k 798 Hanumatharam Rowv. The Secretary of State for India 25 B.k 287 and this he has failed to do. The plaintiff is clearly, entitled to some relief. It is contended that the only declaration that the plaintiff can, in the circumstances of this case have is that he is lawfully entitled to possession of the land. It is pointed out that this is the declaration that was given in Gangaram Chima Patel v. The Secretary of State for India in Council 20 B.k 798, and

Hanumatharam Row V. The Secretary of State for India 25 B.k 287, In the former cases the plaintiff had only proved possession for 10 years, which was insufficient to give him a title against any one who might be the true owner and on the ground that he had not proved his title a declaration of title was refused. The declaration that he was lawfully entitled to possession was given because there was, as there is in the present cases prayer in the plaint for any other relief to which the plaintiff might be entitled and because the facts brought the case within the ruling of their Lordships of the Privy Council in Ismail Ariff v. Mahomed Ghouse 20 C.j 834. In that case the possession proved was for less than 12 years and apparently on that ground the words "lawfully entitled to possession" were substituted for the words, "sole and absolute owner" which appeared in the decree of the High Court. In Hanumatharam v. The Secretary of State for India 25 B.k 287, also the plaintiffs' possession only extended to 10 years. In the present case the plaintiff's own possession of item 1 extends to 20 years, and of item 2 to 40 years, and such being the state of possession it is sufficient to make out a title against any one including the Secretary of State, the latter having failed to prove a title or possession within 60 years. It is not contended that in order to prove his title against the Secretary of State the plaintiff is bound to prove 60 years' possession, and such a contention would be untenable. Vide The Secretary of State for India v. Kotah Bapanama 19 M.k 165 and Haider Khan v. The Secretary of State for India in Council 36 C.k 1 : 8 C.L.J. 436 : 12 C.W.N. 436 : 12 C.W.N. 1095 The plaintiffs will, therefore, have the declaration prayed for as to items 1 and 2 with costs throughout, and the decree of the lower Courts will be modified accordingly.