

(1935) 12 MAD CK 0004
In the Madras High Court

(Nagadevam) Venkatasubbamma	APPELLANT
Vs	
Nagadeva Venkateswaralu and Another	RESPONDENT

Date of Decision : 02-12-1935

Acts Referred:

Citation : AIR 1936 Mad 429 : (1936) 43 LW 718

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This is a suit for maintenance by a Hindu widow. The plaintiff's late husband and another, deceased father of the

defendant, were undivided brothers owning joint family property, moveable and immovable. The Immovable property consisted of a house and site

described in Schedule B to the plaint and the lands described in Schedule A there to which comprised certain purohit service inam lands in

Anaparthi village. The learned District Munsif who tried the suit took into account the income from all the items of Immovable property and

moveable property and gave a decree to the plaintiff fixing Rs 100 per annum from date of plaint and past maintenance at Rs. 30 per annum for six

years prior to suit and provided also for her residence.

2. On appeal the learned Subordinate Judge was of opinion that the income from service inam lands should not have been taken into consideration

but nevertheless considered that the rate of Rs. 100 per annum was a proper rate having regard to the income of the family even excluding the

income from Anaparthi lands, but modified his decree by directing that the maintenance should be payable at the rate of Rs. 100 only from 1935,

but at the rate of Rs. 72 from date of plaint up to 1935, and confirmed the

decree of the District Munsif in other respects save in regard to the date from which the arrears of maintenance had to be paid. Mr. Somasundaram on behalf of the plaintiff raises two contentions before me : (1) the view taken by the learned Subordinate Judge in regard to the income from service inam lands is not sound, (2) the modification in regard to the rate of future maintenance awarded by the District Munsif is wrong. In regard to the first contention, Mr. Somasundaram relied on Section 12 of the Madras Act 3 of 1895 and the Board's standing orders, and submitted that the service inam lands must be treated as partible property though alienation thereof may be forbidden and the income therefrom should be taken into account in fixing the amount of maintenance. He contends that u/s 12 of the Act, as contrasted with Section 10 in case of offices coming u/s 3, Sub-section 4 of the Act the office will be heritable and divisible among the members of the family just like any other property. Section 12 runs as follows:

The succession to village offices forming Sub-section (4) in Section 3 shall devolve in accordance with the law or custom applicable thereto at the date on which this Act comes into force.

3. The question therefore is what was the law or custom applicable to purohit service inams on the date when Madras Act 3 of 1895 came into force. The origin of village service inams is well known. Grants of lands or assignments of revenue were made to the Revenue Officers of the State as well as to other Public Officers, village servants or individuals employed in conducting the general concerns and administering to the public wants and necessities of the village communities into which the whole country was divided. The purohit was one of the 12 village officers or servants in a village establishment and functioned in the village, economy. The emoluments of these village officers, whether in the shape of lands or assignments of revenue or of fees, were annexed by the state to the office as remuneration for the performance of public services and intended not to be separable from the office to which they were attached and were not being regarded by the state as private property divisible among the members of the family. It is also known that at the time of the permanent settlement these service inam lands were not included in the assets of the zamindari but were excluded as lakiraj lands and retained at the disposal of the

state in the interests of the public service. As the office holders were subjecting these lands to unauthorized alienations, very early steps were taken by the state to prevent their diversion from the purpose for which they were intended and Regn. 6 of 1831 was enacted. The preamble to the regulation and Section 2 indicated the policy of the state in regard thereto, Section 2 which corresponds to Section 5 of the Madras Act 3 of 1895, was in these terms:

It is hereby declared that all emoluments derived from lands, from fees in money or grain, or from other sources, which have been annexed by the state to hereditary village and other offices in the revenue and police departments are inalienable from such offices by mortgage, sale, gift or otherwise; that all transfers which may hereafter be made thereof by the holders of such offices shall be null and void and that such emoluments shall not be liable to attachments or other process in satisfaction of decrees of Court.

4. This regulation was interpreted as applicable to all village offices and not only to offices in the revenue and police department as contended by

Mr. Somasundaram. As early as 1852 this regulation was held applicable to all village offices wherever situated except that of karnam or village

accountant in permanently settled estates. (Vide S.O. No. 91, Dalgell's Edition of Standing Orders of the Board of Revenue). In *Pichu Vayyan v.*

Vilakkudayan Asari (1898) 21 Mad 134 blacksmith's and carpenter's inams were held to be within the purview of Regn. 6 of 1831. (See also

Palamalai Padayachi v. Shunmuga Asari (1894) 17 Mad 302 and *Kandappa Achary v. Vengamma Naidu*, 1914 37 Mad 548. The object of the

Regulation was to prohibit every kind of alienation and transfer, and partition was also intended to come within its ambit. The Circular Orders of

the Board of Revenue dated 26th October 1858 and 11th March 1859 clearly outline the policy which prohibited even partition not only with

reference to the office of karnam but also with reference to all village offices. The circular order of the Board of Revenue dated 26th October

1858 is in these terms:

The Board consider that the continued enjoyment by the dismissed karnams, and their relatives, of any portion of the manium land attached to the

office of karnam is highly improper.

2. The Collector will take immediate measures for placing this portion of the original emoluments attached to the office, in the hands of the person

performing the duty, and should he be of opinion that it is still insufficiently remunerated, that he will submit his proposals for the restoration to it of

such portion of the manium lands that were resumed in default of payment of quit-rent, as he may consider necessary.

3. The Board trust that no opportunity is neglected of remedying by degrees the existing very objectionable state of things as regards the manium

lands of village officers, which throughout the Northern Sircars appear to have been in great measure alienated from the office to which they

properly attach, for the benefit of a set of persons who perform no kind of public duty, and have no shadow of right to their enjoyment. (Vide

G.O. 18th December 1845. Vide G.O. 6th June 1859. Annexed.)

5. The Circular Order of the Board of Revenue dated 11th March 1859 runs thus:

Resolved that the concluding part of extract minutes consultation No. 188, E.D. dated 11-2-1859 as entered in the margin be circulated to all

Collectors for information and guidance. (2) The Board have steadily discountenanced division of the emoluments of village offices and they rely on

the co-operation of the local officers to enable them to gradually abolish a practice which is so utterly destructive of the efficiency of that valuable

and useful corporation.

Extract, Minutes, Consultation 11th February 1859. R.D. No. 188.

The Government view with special disapproval the subdivision of village officer's emoluments, already very insufficient, and they request the Board

will adopt measures for reuniting the emoluments to the duties in the present case, and that they will discountenance all such severances when

brought to their notice in future.

6. This was embodied in the 1866 Edition of the Standing Orders of the Board of Revenue, vide Dalyell's Edition, Section 90, Rule 4 which ran

thus:

2. The sub-division of the emoluments of office among the several persons is also objectionable, and in all cases in which this has already taken

place, every opportunity should be taken of gradually restoring them to such number of persons only as are absolutely necessary for the proper

performance of the duties of office. In cases too where persons doing no duty are enjoying the profits of office, whenever a lapse takes place, the

emoluments should be restored to the persons who actually perform the work. (Vide also McLean's Edition of Standing Orders of Board of

Revenue 1879: S.O. 172. Clause 4).

7. In 1883, in *Venkata v. Raman* 8 Mad 249 (FB), the question as to the rights of the members of a family to the emoluments of the office of the

karnam came up for consideration. In that case a karnam service inam was enfranchised in favour of the appellant who was the office holder at the

time of the enfranchisement. The respondent as the representative of the former incumbent sued to recover the land. The office was actually held

by three persons but there were three other persons, of whom one was the adoptive father of the Respondent, who were recognised as having an

hereditary claim to the appointment and who were termed ghair misldars or men out of office. In this character the respondent's father had been

allowed by some office-holders to hold some of the inam lands. As the respondent's father died, a claim was made on behalf of the respondent

that the lands held by his father should be granted to him. The claim was negatived. Turner, C.J., observed at p. 259:

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 hands soever the office might pass.

8. And he pointed out that in practice where one member was recognised as the office-holder, other members enjoyed parts of the inam lands

which constituted the emoluments of the office, such a practice was not legal. Muthusami Ayyar, J., made the following observation on the

enactment of Regn. 6 of 1831 (at p. 266):

According to Section 2 of the last mentioned enactment, all emoluments derived from the lands annexed by the state of hereditary village offices

were inalienable from such offices either by mortgage, gift, sale or otherwise, and all transfers which were thereafter made by the holders of such

offices were null and void. The possession of the respondent's father, then as a ghair misl karnam from 1870-74, was contrary to the regulation

and therefore illegal. It was probably due to an arrangement made with the office-bearers not uncommon in this presidency, whereby the office-

bearers discharged the duties of the office, but its emoluments were divided by them with their co-sharers. Such an arrangement being however null

and void according to the Regulation, the respondent's father had no legal right to continue in possession, and the Collector was at liberty to put an

end to it at any time and re-attach the land to the office from which it was illegally severed. Even according to the Standing Order of the Board of

Revenue, which as a matter of policy enjoined consideration to the party in possession,. Collectors were required, in cases where persons doing

no duty were enjoying, the profits of the office, to restore the emoluments to persons who actually performed the work when a lapse took place.

9. It will be seen from the above passage that the prohibition in the regulation covers also a case of partition and the observations will apply to all

village officers. In Venkatajagannadhan v. Veerabadrappa 1922 44 Mad 643 the Privy Council which restored the law as stated-in 8 Venkata v.

Raman (1883) 8 Mad 249 (FB) approved the observations of both Turner, C.J., and Muthu-swami, Iyer, J., and it is also indicated-therein that

the principle of partition is inconsistent with the principle that the right to the land could only be acquired through the right to the possession of the-

office. In Venkata v. Raman (1883) 8 Mad 249 (FB), Brandt, J., in his dissenting judgment raised the question.

When there are several other persons equally entitled it would be a difficult question whether they shall also share the land or if not on what

principle the Court should discriminate them.

10. This difficulty cannot in any way affect the nature of the property and the incidents attached thereto. Where the office holder dies leaving sons

more than one, it may be the office will be performed by them by turns or service may be distributed and the emoluments enjoyed in such a manner

as they may deem fit, but the emoluments enjoyed by each will be his separate property as salary for the service he renders, and this income

cannot be deemed to be joint family property available for family necessities. It can not be said that the maintenance payable) to the plaintiff can be

charged on the; lands or the income thereof, nor can they be sold for arrears of maintenance. The question of succession to the office and the

devolution of the office on more than one heir have in my opinion nothing to do with the question whether the land or income can be regarded as joint family property like any other property available for division and appropriation for, all the charges and expenses for which ordinary family property can be rendered liable under the Hindu law. Therefore the income from Anaparthi lands cannot be taken into account in fixing the rate of maintenance. I think however the second contention of Mr. Somasundaram must prevail. The reason assigned by the learned Subordinate Judge for the modification of the rate of maintenance from date of plaint to 1935 is that the defendant was a minor and that his guardian and mother had apparently to depend upon others in regard to various matters, and that till he attained about .20 years of age some additional expense may have to be incurred as services of others will have to be employed in managing the state. There is absolutely no evidence to justify this observation of the learned Subordinate Judge and he was not right in reducing the rate of maintenance. I therefore set aside the order of the learned Judge in this behalf and restore that of the District Munsif. With this modification the second appeal fails and is dismissed. I direct each party to bear his own costs of this appeal. Leave refused.