

(1935) 01 MAD CK 0014
In the Madras High Court

Nagalingam Pillai

APPELLANT

Vs

Alagia Manavalam alias Kalingaraya Ramakrishnan minor by
guardian Kalingaraya Chokkalingam Pillai and Another

RESPONDENT

Date of Decision : 16-01-1935

Acts Referred:

Madras Proprietary Estates Village Service Act, 1894 — Section 10, 9

Citation : AIR 1935 Mad 416 : (1935) 41 LW 576 : (1935) 68 MLJ 464

Hon'ble Judges : Horace Owen Compton Beasley, J; Cornish, J

Bench : Full Bench

Judgement

Horace Owen Compton Beasley, Kt., C.J.—This is a Letters Patent Appeal from an order of Lakshmana Rao, J. holding that the Board of

Revenue had jurisdiction to decide whether or not Act II of 1929 is applicable to the case and deciding that there was no ground for the issue of a

writ of certiorari. He, therefore, rejected the petition. He had before him, as his order indicates, a petition for the issue of a writ of certiorari :

directed to the Court of the Sub-Collector of Ramnad and the Court of the District Collector also of Ramnad. The Sub-Collector had before him a

suit under Act III of 1895. The first plaintiff in that suit claimed that he was entitled to be appointed to a certain village office, the predecessor in

that office having resigned in 1932. Acting under Sections 9 and 10 of the Madras Proprietary Estates' Village Service Act (II of 1894) the

proprietor of the village had appointed to the office the defendant in the suit in the Revenue Court in preference to the first plaintiff. The first

plaintiff, as he was entitled to do, filed the suit as before stated under Act III of 1895 claiming to be the person to be appointed to the office. It is

necessary to refer to only two of the issues which were framed in the suit, viz.,

issues 4 and 5. Issue 4 is as follows:

Whether the first plaintiff has a preferential right to succeed to the office - and here follow the important words - according to the law applicable to the case.

2. Issue 5 reads:

Whether the defendant has a better title in law to the office than the first plaintiff.

3. In dealing with these issues the Sub-Collector states as follows:

Issues 4 and 5 go together. They are the main issues on which the case depends. The plaintiffs rely on the fact that they are the nearest

coparceners in the male line. The defendant is the sister's son of the last officeholder. The defendant has quoted authority from Act II of 1929.

But I do not think that Act II of 1929 applies to the case. The Act is not intended to cover hereditary village offices which are impartible property.

The defendant does not get any relief from Act II of 1929.

4. On appeal this order was upheld by the Collector. It is argued here that, by holding that Act II of 1929 did not support the defendant's case

because it was not applicable, the Sub-Collector has refused to exercise jurisdiction, that is to say, he has refused to have regard to Act II of

1929. That, in my view, clearly is not a refusal to exercise jurisdiction; and it is only in cases where there has been a refusal to exercise jurisdiction

or an improper exercise of jurisdiction, or where there have been acts in excess of jurisdiction that the High Court will consider the issue of a writ

of certiorari. One question to be decided in the suit was what law was applicable to the case and the Sub-Collector upon the issues framed clearly

had jurisdiction to decide what law was applicable to the case. If as it is alleged he has given a wrong decision upon the point, that is merely a

wrong decision of law. It is certainly not a refusal to exercise jurisdiction. For these reasons, I am satisfied that the order of Lakshmana Rao, J.

was quite right and there was no ground whatever for the issue of a writ of certiorari. This appeal must, therefore, be dismissed with costs.

Cornish, J.

5. I agree.