
(1935) 02 MAD CK 0037
In the Madras High Court

Nidadavole Ramalingam

APPELLANT

Vs

Nidadavole Veerabhadru (deceased)

RESPONDENT

Date of Decision : 19-02-1935

Acts Referred:

Limitation Act, 1963 — Section 28

Citation : (1936) ILR (Mad) 51 : (1935) 42 LW 558 : (1935) 69 MLJ 890

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This Second Appeal is by the Plaintiff who sued for possession of certain lands which are admittedly Village Service

Inam (for Blacksmith's service) in the Pittapur Estate. The plaintiff admits that neither he nor his father was the holder of the office or was doing the

service and that the first defendant and after him defendants 2 and 3 are the holders of the office and have been discharging the duties; but, he

claimed that his father and after his death himself have been in possession of those lands for a long time and that he has acquired a title thereto by

adverse possession as against the office holders, though such possession might not affect the right of the Government to resume the lands.

2. In view of the omission of the defendants in the written statement to deny the plaintiff's allegations as to the circumstances under which the plaintiff's

father came into possession of the suit lands, we may take it that as alleged in the plaint the plaintiff's father must have been put into possession of

these lands at a family partition between himself and his brother the first defendant. Whether possession derived under such circumstances should

be regarded as permissive or as adverse is not altogether beyond doubt.

3. It was the prevalent idea for some time, notwithstanding all the provisions of the Regulations or the statute that these service inams were in essence family property and if the office holder allows some other members of his family to remain in possession, the Court need not necessarily regard such possession as adverse to the office holder. However the Court of first instance, in this case, held the possession to be adverse and the argument before me has proceeded on that footing. The evidence in the case establishes that from about 1891, the plaintiff's branch has been in possession of these properties. This date is important, because it is undoubtedly within 12 years of the passing of the Proprietary Estates Village Service Act II of 1894.

4. On behalf of the Appellant, Mr. Somasundaram has criticised the judgment of the lower appellate Court by pointing-out that questions 1 and 2 stated as points for decision in paragraph 2 of its judgment, are not really the questions to be decided in the case. The question is not whether the plaintiff has by prescription acquired a right to these properties as "private properties" that is, even as against the Government but whether he has not acquired a right to continue in possession thereof as against the office holders, until the Government choose to intervene. This criticism is to some extent justified, but I do not think it follows from this that the conclusion of the learned District Judge is not correct. In paragraph 7 the learned District Judge refers to the argument that Section 28 of the Limitation Act cannot be availed of by the plaintiff in this case and that any adverse possession after Act III of 1895 (I will add also Act II of 1894) would be of no avail. Though the learned District Judge does not discuss these questions at length, it is in the next paragraph that he states his conclusion that the plaintiff did not acquire prescriptive title to the suit properties.

5. Mr. Somasundaram has drawn my attention to a number of authorities throwing light upon these questions; in particular he has referred me to a recent decision of Anantakrishna Aiyar, J., in S.A. No. 392 of 1926, which undoubtedly is to a certain extent in his favour, but in view of other authorities binding upon me and of one distinction, which I shall presently refer to, between S.A. No. 392 of 1926 and the case before me, I have ventured to deal with the matter myself, instead of leaving it to be dealt with by

a bench of two judges.

6. The line of cases in this Court which have held that a person not entitled to or in fact discharging the duties of a village office could nevertheless

acquire title by prescription to the service inam attaching to such office, have proceeded mainly upon the authority of the decision of the Judicial

Committee in 4 CWN 329 (Privy Council) .That judgment must, if I may say so with respect, be understood in the light of two other

pronouncements of Their Lordships in Venkata Jagannadha v. Veerabadrappa (1921) 48 I.A. 244 : I.L.R.44 Mad. 643 : 41 M.L.J. 1 (P.C.) and

AIR 1923 205 (Privy Council) where they observe that:

It is somewhat difficult to see how a stranger to a Watan can acquire title by adverse possession for twelve years of lands the alienation of which

was in the interest of the State prohibited.

7. It is true that their Lordships do not finally decide the question, but if the observation above cited is justified by principle, as I shall presently

endeavour to show there is no reason for ignoring it. The decision in Venkata Jagannadha v. Veerabadrappa (1921) 48 I.A. 244 : I.L.R.1921 44

Mad. 643 : 41 M.L.J. 1 (P.C.) has sometimes been put aside merely with the remark that it dealt with the effect of enfranchisement, but what is

relevant to the present discussion is the basis on which that decision was rested by their Lordships. Mr. Somasundaram pressed on me the fact that

in that case their Lordships were discussing the Karnam's office where the discretion allotted to the authorities in the matter of making the

appointment from the family is much wider than in the case of village artisans and therefore there was justification for the view that the karnam got

his office not by hereditary or family right but as a personal appointee. But it is important to notice that their Lordships quote with approval a

passage from the decision in Venkata v. Ram I.L.R.(1887) 8 Mad. 249 to the following effect:

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 appanage 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. As will be seen from the preamble to Regulation VI of 1831, the underlying

idea is that these lands are attached to the office by the State as wages of the office-holder for the time being and it will be scarcely correct to speak of the officeholder as having "proprietary" right or interest therein. It is one thing to say that the office is hereditary but another thing to say that the emoluments are held and enjoyed by the successive holders of the office, in a kind of hereditary proprietary right. If the correct view is that the office holder for the time being is only entitled to the usufruct of the lands, it becomes intelligible why it has always been the policy of the law to prohibit alienation of these lands by the office-holder for the time being and to exclude suits relating to such lands from the cognisance of the ordinary civil Courts. These two provisions throw light upon the true conception of the nature of the interest possessed by the office-holder in a service inam.

9. It seems to be that it cannot, consistently with the above considerations, be held that a person remaining in possession of the lands adversely to an office-holder can thereby acquire a right to remain in possession even as against succeeding office-holders. In 4 CWN 329 (Privy Council) the suit involved a claim for possession of the trustee's office as well (the possession of the properties being held to go with the office) and the office being admittedly hereditary, their Lordships held that a succeeding trustee claimed the office only through or under his predecessor, that the predecessor had the full title vested in him as a hereditary tenure and that adverse possession of the office as against the predecessor extinguished the whole hereditary tenure, so that there was nothing to descend on to the successor. Where the claim is to the property without reference to the possession of the office what has to be considered is whether the property is held with hereditary or absolute right, so as to make it possible to say that the succeeding office-holder claims that property through or under the preceding office-holder. In the case of service inams, the answer must, I think, be in the negative.

10. Some of the cases in Madras which recognise the possibility of acquiring a title by adverse possession to service inam lands, are explicable on the ground that they related to the Karnam's office in proprietary estates which for some reason has been specifically excluded from the operation of Regulation VI of 1831 and was not brought under the same policy till 1894 or

1895. The decision in Chintalapudi Neelachalam adu Another

Vs. Chintalapudi Kamarazu, takes care to refer to this circumstance and though the decision in Dhanushkotirayudu v. Venkataratnam (1919) 38

M.L.J. 320 does not in terms state that that case also arose from a Zamindari area the papers show that that was the fact, and in both those cases,

the judgment pointed out that the prescriptive title had been completed before the coming into force of the Acts of 1894 and 1895. The case in

Khaji Mir Majavath Alli Vs. Khaji Mir Mujafar Alli and Another, related to a Kazi inam, but the learned Judges have relied upon the decisions in

Chintalapudi Neelachalam adu Another Vs. Chintalapudi Kamarazu, and Dhanushkotirayudu v. Venkayala Venkataratnam (1919) 38 M.L.J. 320

without advertng to the special considerations relied on in those cases. In the judgment in S.A. No. 392 of 1926, no reference has been made by

the learned Judge to this aspect of the matter and the earlier decisions are relied on as authority for the general proposition that title by adverse

possession could be acquired in respect of any service inam lands, as against the office-holder. Even this decision will not, however, carry the

appellant in this case to the extent necessarys for his purpose, because, so far as I can gather from the judgment, title by adverse possession was

there upheld as against the office-holder against whom "the land has been adversely held, and the question arising for decision in this case namely,

how far such title would avail even against succeeding office-holders, did not arise in that case.

11. On one aspect of the matter, the decisions of this Court are fairly uniform namely, that neither Section 28 of the Limitation Act nor the principle

thereof can be applied to cases where, during the period of the alleged adverse possession no suit for possession could have been instituted in a

civil Court. The language of Section 28 applies only to cases of suits for possession in respect of which the period of limitation is thereby provided,

that is, by the second schedule of the Limitation Act. But the Limitation Act does not apply to suits to be brought in Revenue Courts and the

decisions in Pichuvayyan Vs. Vilakudiyan, Srinivasa Varadachary v. Narasinga Pillai (1911) 9 M.L.T. 430 and Vanchinatha Iyer Vs. Rajagopala

Iyer and Others, have held that where service inam lands have been in possession of a stranger for more than 12 years he cannot thereby acquire

title by prescription, because Section 28 of the Limitation Act would not apply to any suit for possession thereof. If the office-holder is out of possession", he will no doubt be bound even according to the Special Act to sue for possession in the Revenue Court, within a period of three years and it may be that if he allowed the three years period to elapse, he may not be able to get possession even through a Revenue Court; but in the present case the second and third defendants who are admittedly discharging the duties of the office have also obtained possession through the Revenue Court in execution of a decree of the Revenue Court in Suit No. 5 of 1920 after their appointment to the office. The plaintiff cannot therefore ask the case to be treated as one of a suit for possession by the office-holder. Nor can he claim relief on the basis of possession and unlawful dispossession because the defendants got possession under the law, in execution of a decree of the Revenue Court. If the plaintiff had been a party to the suit in the Revenue Court that decision would be conclusive against him, as held by Anantakrishna Ayyar, J. in *Palakolanu Manikyam and Others Vs. Palakolanu Chandrasekharudu*, . As he was not a party to that suit, that decision is not conclusive as against him, but he cannot on that ground claim to be treated as one who has been unlawfully dispossessed by the defendants. The plaintiff must succeed only by proving title to the suit lands and that he can do, only by invoking Section 28 of the Limitation Act which as I have already observed does not apply to this case.

12. Mr. Somasundaram however contended that a suit by the first defendant for possession against the plaintiff's father would have been cognisable by the civil Court and that therefore Section 28 of the Limitation Act could be availed of by his client. He referred in this connection to the decision in *Yandluri Yeilamanda v. Kunchala Chitanibaram* (1925) 50 M.L.J. 267. That case does not really help him. Where the office holder could get relief merely on the strength of his possession, as for instance against a dispossessor or against a lessee, the position may be different; but where he could get relief only by insisting on his title as office-holder and on the character of the lands as emoluments, the principle of exclusion of the jurisdiction of the civil court will undoubtedly apply. In the present case, if the first defendant had sued the plaintiff's father for possession, he

would have been met with the answer that the first defendant himself put the plaintiff's father in possession under a partition arrangement and was accordingly not entitled to recover possession. He could have defeated that contention, only by pleading that the land was service inam and that an alienation thereof was void as prohibited by the law. A suit of that kind could therefore have been instituted only in the Revenue Court and not in the Civil Court. That the inam in question in the present suit is within the purview of Act III of 1895 has been decided by the Full Bench in

Kandappa Achary y. Vengama Naidu I.L.R.(1912) 37 Mad. 548 : 25 M.L.J. 42.

13. The learned District Judge was therefore right in holding that the plaintiff or his father has not acquired a title to the suit property, at any rate, not one that can prevail against the second and third defendants who have been appointed to the office in the year 1919. The Second Appeal fails and is dismissed with costs of second and third respondents. The appellant will pay to Government, the court-fee payable on the appeal memo.