

(1985) 08 AP CK 0017

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 98 of 1977

Pentapati Chitti Mahalakshmi

APPELLANT

Vs

Gannavarapu Subba Rap and Others

RESPONDENT

Date of Decision : 13-08-1985

Acts Referred:

Andhra Pradesh (Andhra Area) Hereditary Village Offices Act, 1895 — Section 12, 3(4)
Andhra Pradesh (Andhra Area) Hereditary Village Offices Laws (Repeal) Act, 1969 —
Section 2(3)
Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act,
1956 — Section 3, 7
Hindu Succession Act, 1956 — Section 4

Citation : AIR 1986 AP 52

Hon'ble Judges : P. Chennakesav Reddi, Acting C.J.; Upendralal Waghray, J; P. Kodandaramayya, J

Bench : Full Bench

Advocate : M.S.K. Sastry, for the Appellant; J.V. Suryanarayana Rao for M. Krishna Mohan Rao, for the Respondent

Judgement

P. Kodandaramayya, J.—A Division Bench of this court consisting of Gangadhara Rao and Jeevan Reddy, JJ referred L. P. A. 98/77 for a decision by a Full Bench formulating the following three question :

1. (a) Whether Section 4 of the Hindu Succession Act, 1956 had overriding effect on succession taking place after 1956 and as such Section 12 of the Andhra Pradesh (Andhra Area) Hereditary Village Offices Act, 1895 ceases to have any effect?

(b) In a case where a daughter became entitled to the office and emoluments as defined in Section 3(4) of the Andhra Pradesh (Andhra Area) Hereditary Village Offices Act III of 1895, and the daughter died in 1958 after coming into force of the Hindu Succession Act, 1956, is the succession still governed by Section 12 of the Andhra Pradesh (Andhra Area) hereditary Village Offices Act, or by the provisions of the Hindu Succession Act?

2. What is the impact of the Andra Inams Abolition Act, 1956 and the repeal of the Andhra Pradesh (Andhra Area) Hereditary Village Offices Act, 1895 on service inam lands, and whether such service inam lands are alienable or not?

2. The facts leading to this reference may be stated :

The plaintiff is the appellant in this Letters Paten Appeal. She filed O. S. No. 344/70 on the file of Subordinate Judge's Court, Rajahmundry for recovery of possession of plaint A schedule property or in the alternative for partition of those lands into four equal shares and allotment of one such share to her. The relationship between the parties is not in dispute. It is averred in the plaint that one Pallavarapu Bhimanna of Editha village was the holder of a carpenter service inam. The plaint schedule lands and some other lands pertain to that service. The said Bhimanna alienated those lands but nevertheless executed a will Ex. B-3 dated 15-3-1938 bequeathing property to his wife Somamma. Bhimanna died in 1942 leaving behind him his widow Somamma and two daughters Pullamma and Manikyamba. The 1st defendant is the husband of Manikyamba. The plaintiff and defendants 2 and 3 are their children; the 4th defendant is the husband of Pullamma and they have a daughter not made party to the suit. The 4th defendant is the brother of Somamma. After the death of Bhimanna his widow Somamma succeeded to the office of the carpenter service and when she resigned the said office her daughters Pullamma and Manikyamba succeeded to the same. Both those daughters filed Summary Suit No. 4/1948 before the Sub Collector, Rajahmundry questioning the alienations made by their father Bhimanna. The suit was decreed on 7-5-1951 as per Ex. A-1 so far as Manikyamba was concerned but the same was held barred by limitation so far as Pullamma was concerned. However the property so obtained after executing the decree was divided between both the sisters under partition deed dated 3-4-1956 as per Ex. A-2 and the suit land fell to the share of Manikyamba, the plaintiff's mother. Manikyamba settled 67 cents of land in item 2 of plaint A schedule on her mother Somamma under a registered settlement deed dated 23-4-1956 as per Ex. A-3 giving her life interest with a provision that the property should revert to Manikyamba and her heirs after the death of Somamma. It is the case of the plaintiff that the 4th defendant was looking after the litigation regarding the summary suit and was also performing the carpenter service and cultivating the suit lands on behalf of the above sisters Pullamma and Manikyamba. Manikyamba and Pullamma died in the year 1958 and there is no evidence who predeceased whom. The plaint further avers that the 1st defendant, father of plaintiff (husband of Manikyamba) was not a worldly wise man and the 4th defendant obtained a registered sale deed Ex. B-2 dated 10-12-1969 in respect of the entire plaint A schedule property from Somamma for a cash consideration of Rs. 500/- when she was weak and not in proper senses. The plaintiff also claimed that defendants 1 to 3 conveyed their interests orally to her. Hence she filed the present suit out of which this appeal arose for recovery of plaint schedule properties or in the alternative for partition of those properties and allotment of one such share to her.

3. The 4th defendant who contested the suit raised the defence that Somamma after having succeeded to the office on the death of her husband continued to enjoy the property, and the summary suit filed by the sisters was for the benefit of Somamma. The partition deed and the settlement deed Exs. A-2 and A-3 respectively were nominal and Somamma willingly executed the sale deed for consideration under Ex. B-2 which is valid and binding and hence the suit is liable to be dismissed.

4. The trial court on relevant issues on these controversies held that no title passed to Somamma under Ex. B-3 as the service in a lands are inalienable and after the resignation of the office by Somamma, her two daughters succeeded and after obtaining possession of property by executing the decree passed in the summary suit under Ex. A-1, the same was divided between the sisters as per Ex. A-2 and Exs. A-2 and A-3 are not nominal documents and hence Somamma has no right to suit properties and consequently the sale deed executed in favour of the 4th defendant is invalid. It also found that the sale deed is not supported by consideration and the 4th defendant came into possession of the suit property as an agent of the plaintiff's mother and later as agent of the plaintiff and defendants 1 to 3 and hence preliminary decree for partition of the plaintiff's schedule property into four equal shares and allotment of one such share to the plaintiff and the remaining three shares to defendants 1 to 3 was passed. It also directed the 4th defendant to render accounts in respect of the income he had received from the suit lands.

5. Aggrieved by the judgment and decree, the 5th defendant filed A. S. No. 516/73 and Ramachandra Raju, J., in his judgment dated 19th March, 1976 took the view that after the death of the plaintiff's mother Manikyamba on 21-9-1958 as per the provisions of Sec. 12 of the Madras Hereditary Village Office Act III of 1983 the succession must be traced to Bhimanna as Manikyamba cannot be a stock of descent and consequently Somamma the widow of Bhimanna the last male holder of the office became entitled to the said office and in view of the Andhra Pradesh (Andhra Area) Proprietary Estates' Village Service and the Andhra Pradesh (Andhra Area) Hereditary Village Offices Laws (Repeal) Act 16 of 1969 which came into force on 22-5-1969 the office ceased to be hereditary and Somamma died on 16-12-1969 and under those circumstances the parties must work out their rights under the provisions of the Andhra Pradesh Inams Abolition (Conversion into Ryotwari) Act, 1956 and consequently dismissed the plaintiff's suit. Against the said judgment the present L. P. A., is filed.

6. The Division Bench having heard the appeal held that the plaintiff failed to make out that Somamma was not in a sound state of mind when when executed the sale deed Ex. B-2 and referred the case for the decision of the Full Bench formulating the above questions.

That is how this appeal has come up before us.

7. It is clear that the whole controversy rests on the question whether Sec. 12 of

the A. P. (Andhra Area) Hereditary Village Offices Act of 1895) (hereinafter called the Act) stands superseded by virtue of Sec. 4 of the Hindu Succession Act, 1956 so far Hindus are concerned. The answer to this question is the answer to the question No. 1 referred to us. Hence it is argued by Sir M. S. K. Sastry that by virtue of Sec. 4 of the Hindu Succession Act 30 of 1956 which has the overriding effect against any law or custom, Sec. 12 of the above Hereditary Village Offices Act is no longer in force and the succession is governed by the provisions of the Hindu Succession Act. It is not in dispute that if succession is governed by Hindu Succession Act, the plaintiff and her brothers are the heirs to her deceased mother as per Sec. 15 of the said Act and the plaintiff is entitled to succeed. This contention is refuted by the learned counsel for the respondents Sri J. V. Suryanarayanarao stating that the Hindu Succession Act relates to the succession to a person when an individual dies, but the Act III of 1895 relates to succession to an office and hence Sec. 4 of the Hindu Succession Act is not attracted, and Sec. 12 of the Act governs the field .

8. It is necessary to remember three crucial dates while deciding this question. The Hindu Succession Act came into force on 17-6-1956. Manikyamba died on 21-9-1958. Act III of 1895 was repealed by Act 14 of 1969 with effect from 22-5-1969.

9. It is seen that Sec. 12 of Act III of 1895 was in force when the succession was opened. However Hindu Succession Act came into force by the time Manikyamba died and hence we have to see the operation of Sec. 12 of Act III of 1895 after the Hindu Succession Act came into force.

10. For this purpose we have to examine the provisions of Act III of 1895 in the first instance and see the nature of Hereditary Offices of Village artisans and servants governed by Sec. 3(4) of the Act. The preamble of the said Act states that "It is expedient to provide more precisely for the succession to certain hereditary village offices in the Presidency of Madras; for the hearing and disposal of claims to such offices or the emoluments annexed thereto; for the appointment of persons to hold such offices and the control of the holders thereof; and for certain other purposes. "Sec. 3(1) enumerates six classes of hereditary village offices. Sec. 3(4) describes seven village artisans or village servants. But it is to be noticed that the list of artisans and village servants in sub-section 4 is only illustrative but not exhaustive as can be seen from the words "such as" occurring in the said sub-section. In fact there are several other village artisans unenumerated according to local needs of various districts in the Presidency of Madras, a part of which is now Andhra Area of Andhra Pradesh. Sec. 5 prohibits the alienation of emoluments attached to the village offices. Sec. 10 prescribes the qualifications for holding offices forming class (1) in sec. 3 and no person shall be eligible for appointment unless he has attained the age of majority. The rule of succession to class (1) offices is embodied in sub-sec. 2 which states that the succession shall devolve on a single heir according to the general custom and rule of primogeniture governing succession to impartible

Zamindaries in Southern India. Sec 10(5) required registration of minor to class (1) offices though he is not eligible to be appointed to the said post during the minority. It is significant to note that this requirement of registering the claim of minor for class (4) offices is not necessary. Further a minor can hold the class (4) offices. It was so held by a Division Bench of the Madras High Court in Krishna Reddy v. Satyam 1941 2 Mad LJ 91 AIR 1941 Mad 693 that the succession to the office mentioned in sec. 3(4) is governed by the provisions of Sec. 12 and it can devolved upon a minor and the registration of his claim under Sec. 10(5) of the Act is not necessary. Hence if such registration is made it was considered to be superfluous.

11. The succession to class (4) offices is governed by Sec. 12 and it runs as follows :

"The succession to village offices forming class (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."

Further as per G. O. Misc. No. 1776 dated 6th July, 1949 the practice of appointing the village artisans or taking disciplinary action which was in vogue in some districts was specifically abolished. The said G. O., reads as follows :

"In the circumstances stated the Government accept the recommendations of the Board of Revenue and direct that the practice of Revenue servants, now obtaining in the district of East Godavari, West Godavari and the Nuzvid Deputy Tahsildar's division of the Krishna District be abolished."

(Vide page 43 of the Madras Hereditary Village Offices Act (III of 1895) Second Edition by P. V. Murty)

it is pertinent to note the Board's Standing Order 157 also in this regard which embodies the same principle.

"Power of Revenue Officers to appoint or punish:-

When a person on whom a village artisans's office has devolved by legal or customary right makes default in respect of service, the revenue office cannot ordinarily interfere in order to appoint a successor; nor are revenue officers in general empowered to punish village artisans."

Thus it is clear that the artisans are allowed to succeed to their office by the rule of succession embodied in sec. 12 without any necessity of appointing them. It is necessary in this connection to refer to two judgments relied on by the learned counsel for respondents where in it was held that an artisan can resign. In Ramakrishna Rao v. Sattemma (1960) 1 Andh WR 433 the question was whether the plaintiff can sue for recovery of the emoluments when his grandfather, and subsequently his father submitted the resignation to a Hereditary office of village artisan of blacksmith. The opposite view urged in that case was that the hereditary village artisan cannot resign his job and when he once becomes an

artisan he remains so till his death. This view was repelled stating that simply because there is no one to taken action on such resignation it does not affect the question whether the resignation an be effective. It was held, "The resignation under such circumstances, in effect, would be a relinquishment or surrender of the office by the artisan wherein only his free will and action of his own volition can come into operation to make him cease to be an incumbent of the office." This view was affirmed by a Division Bench in Chellaya v. K P. Naidu 1962 2 Andh WR 186. This dictum is only consistent with the theory that the incumbent can surrender his office. This clearly discloses that the office of artisans in not really an office as a civil post under the State put only n interest in the property which can be surrendered. In fact it was held that a surrender or relinquishment by some of the holder of a service inam of their interests in favour of the remaining inamdars is valid. (Vide Audayya v. Sarabayya 1944 2 Mad LJ 7 : (AIR 1944 Mad 422). This view is further fortified when we compare class (4) offices with class (1) offices.

12. In fact in the earliest judgment of the Privy Council in Musti Venkata Jagannadha v. Musti Veerabhadrayya ILR 44 Mad 643 : AIR 1922 PC 96 it was ruled that the karnam of a village in Madras occupies his office not be hereditary or by family right but as a personal appointee, although the appointment is primarily made of a suitable person who is a member of a particular family. Hence when a karnam service lands were enfranchised and a quit-rent was imposed in lieu of the service, and an inam title-deed was granted confirming the lands to the holder of the office, it was held that the lands were his separate property, and were not subject to nay claim to partition by other members of the family. This principal is reiterated by the Supreme Court in Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others, . IN the said case the question raised was whether the office of village munsif under Act III of 1895 is an office under the State within the meaning of clauses (1) and (2) of Art. 16 of the Constitution of India. Repelling the contention that the post of village munsif is a customary village office and not being a post in a civil service or an ex-cadre post under a contract of service it is held that the office f the village munsif under the act is an office of the State within the purview of Art. 16 and consequently the hereditary claim to the said office was struck down. It was ruled :

"The appointment is made by the Collector, the emoluments are granted or continued by the State, the Collector has disciplinary powers over the Village Munsif including the powers over the Village Munsif including the power to remove, suspend or dismiss him, the qualifications for appointment can be laid down by the Board of Revenue - all these show that the office is not a private office under a private employer but is an office under the State."

The other contention that the office of the village munsif is an office-cum-property and hence outside the purview of Art. 16 was also rejected holding "Apart from the office there is no right to the emoluments, in other words, when

a person is appointed to be a "village Munsif" it is an appointment to an office by the State to be remunerated either by the use of land or by money, salary, etc., it is not the case of a grant of land burdened with service, a distinction which was explained by the Privy Council in AIR 1931 157 (Privy Council) ". This dictum clearly gives the distinction between class (1) offices and class (4) offices enumerated under Sec. 3 of the Act. Though the village artisans or villages servants are also described as hereditary offices of class (4) under Sec. 3(4) of the Act they are not offices under the State but they are only service grants made to the service holders.

13. S. Sundararaja Iyengar in his Treatise on land Tenures in the Madras presidency states in Chapter VIII under the heading "Service Grants":

"Service grants came into existence on account of the custom of the country to remunerate service rendered by servants, public and private, by assignments of land or land revenue, and this system was special adapted to a country where the revenue was payable in kind. Such assignments varied according to the nature of the services to be rendered. They are at first only for the lives of the grantees, but in course of time, became hereditary. They may be divided into four classes, (a) grants for private or personal services; (b) grants for public services (c) grants in favour of village servants; and (d) grants for religious and charitable services"

We are concerned with the grants in favour of village servants. The are specifically dealt with and those inam lands are made inalienable under Sec. 5 of the Act III of 1895. A special machinery is provided for recovery of illegal alienations. A grant of an office is a well known service grant. Though the Act described these service grants as offices it is misnomer to call them as offices. They are not offices under the State. No doubt the State has got power to resume the inam in the event of default by the service holder. It is true an office is created by a grant. The earliest dictum point out the distinction between grant of an office and personal grant is hat of Jackson, J., reported in Baboo Koolodeep Narain Singh v. Mahadeo Singh and others (1866) 6 Suth v. Mahadeo Singh and others (1866) 6 Suth WR 199 (209) accepted in Forbes v. Meer Mohomed Tuquee (1869-70) 13 Moo Ind App 438 and finally accepted by Lord Atkin, J., in AIR 1931 157 (Privy Council) who stated "There is a distinction between the grant of an office to be remunerated by the use of land and the grant of land burdened with service. In the former case the land will prima facie be resumable; in the latter case prima facie it will not." This was again reiterated by the Supreme Court in P.V. Bheemsena Rao Vs. Sirigiri Pedda Yella Reddi and Others, . Thus it is clear that grant of an office must be understood as a service grant but not an office under State as a civil post. This view of ours is also supported by a judgment of this court delivered y a Division Bench in Manepalli Sattemma Vs. Manepalli Satyanarayana and Another, . There the vies of S. 12 of the Act was questioned as being offending Art. 16 of the Constitution of India. The said contention was rejected on the ground that there are vital differences between

the office of village munsif governed under class (1) and other offices described as hereditary offices of village artisans and village servants and if no appointment is to be made by any officer of a State, then there is no question of violating the principle embodied in Art. 16 of the Constitution and consequently sec. 12 is upheld. We are in agreement with the distinction pointed out by the learned Judges between class (1) offices like village munsifs and class (4) offices like village artisans and village servants enumerated in sec. 3(4). WE are clearly of the opinion that though Act III of 1895 described the village artisan as a hereditary office it is not an office or a civil post under the State but it is only a service inam grant held by the incumbent liable to be resumed in the event of default in rendering service.

14. To sum up, none of the indicia for a civil post or an office under the State are satisfied in the case. There are no qualifications prescribed to hold the post of an artisan. He is not appointed to the post by any authority. No disciplinary action can be taken against the person holding the office of artisan. A minor can hold the office. No registration of a claim a minor is necessary. More than one person can hold the office simultaneously and the emoluments can be partitioned among shares. It is well established that the partition is not alienation within the meaning of sec. 5 of the Act. The service holder can surrender the office and accelerate the succession. The practice of submitting resignation of the office of village artisan was specifically abolished. Hence we are clearly of the opinion that cl(4) hereditary offices of village artisans and village servants under sec. 3(4) of the Act are not offices under the State but only service inam grants held by the incumbents.

15. Once we hold that the hereditary offices of artisans and village servants though described as offices for the purpose of Act III of 1895 are not offices as such but pertain to the personal property of the incumbents the rule of succession embodied in Hindu Succession Act should be attracted. For that purpose we must look to sec. 4 of the Hindu Succession Act which is in the following terms :

"4.(1) Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

We have already noticed sec. 12 of Act III of 1895. Once we hold that the rule embodied in sec. 12 relates to property possessed by the village artisans and village servants we have no difficulty in holding that sec. 12 should yield to the

overriding provision embodied in sec. 4 of the Hindu Succession Act. Sec. 4 supersedes both custom and usage on one hand and any other law in force on the other before the commencement of the Act. Such custom or usage and the other law shall cease to apply to Hindus so far as it is inconsistent with any of the provisions contained in the Hindu Succession Act.

16. The Supreme Court had occasion to construe this provision more than once. In *S.S. Munna Lal Vs. S.S. Rajkumar and Others*, it was ruled that Sec. 4 of the Hindu Succession Act gives an overriding effect to the provisions of the Act and supersedes the rules of Hindu Law on all matters in respect of which there was an express provision made in the Act and accordingly the share of a Jain widow declared by a preliminary decree in a suit for partition of the joint family properties before the commencement of the Act is made to govern by sec. 14 of the Act. The Punjab Custom (Power to Contest) Act I of 1920 was enacted to restrict the rights exercisable by members of the family to contest alienations made by a holder of ancestral property. By virtue of sec. 6 of the Act no person is entitled to contest an alienation of ancestral immovable property unless he is descended in the male line from the great-great-grandfather of the alienor. In *Giasi Ram and Others Vs. Ramjilal and Others*, it was held;

"After the enactment of the Hindu Succession Act the estate devolved, by virtue of Section 2 and 4(1) of the Hindu Succession Act, 1956 upon the three sons, the widow and the two daughters. WE are unable to agree with the High Court that because in the year 1920 the wife and the daughters of Jwala were incompetent to challenge the alienation of ancestral property by Jwala, they could not, after the enactment of the Hindu Succession Act, inherit his estate when succession opened after that Act came into force."

Further in *Punithavalli Ammal Vs. Minor Ramalingam and Another*, construing sec. 14(1) of the Hindu Succession Act it is held that by virtue of Sec. 4 of the Act the full ownership conferred on a Hindu female under sec. 14(1) is not defeasible by the adoption made by her to her deceased-husband after the Act came into force. Similarly in *Sundari and Others Vs. Laxmi and Others*, it was ruled that the mode of devolution prescribed under sec. 36(5) of the Madras Aliyasanthana Act (9 of 1949) has to give way to provisions of Sec. 8 of the Hindu Succession Act which prescribes a different mode of succession. Again in *Smt. Manshan and Others Vs. Tej Ram and Others*, a declaratory decree obtained by a collateral declaring that the gifts executed by a last male holder of certain estate governed by the General Punjab Customs Act is not valid beyond lifetime of the last male holder was no longer enforceable in view of the abrogation of such custom after the Act came into force by virtue of sec. 4 of the Act.

17. Hence we are of the opinion that sec. 12 of Act III of 1895 shall yield to sec. 4 of the Hindu Succession Act.

18. The learned single Judge relied upon two judgments of this Court to hold that in view of sec. 12 of the Act the succession should be traced to the last male

holder as the law applicable to the succession in question is the law which was in force on the date when Act III of 1895 came into force. In *Mallela Venkata Subbamma Vs. Gogulapati Raja Rathamma and Others*, the competing claims to the village office of a potter service between sister and uncle's son of last male holder was considered. The Hindu Law Inheritance Amendment Act 1929 admitted son's daughter, daughter's daughter, sister and sister's son as heirs next after the father's father and before the father's brother. It was held that in view of sec. 12 the paternal uncle's son has the preferential claim. Though the case was decided after the Hindu Succession Act came into force, the succession was opened before the Hindu Succession Act came into force and hence the impact of Hindu Succession Act could not be considered. It is true the second case relied upon by the learned counsel *D. Raghavulu v. Deputy Collector* 1969 1 Andh WR 6 clearly supports his contention. IN that case a similar contention was raised stating that when one female office holder *Seshamma* died, her heirs should succeed to her estate. The Bench upheld the contention of the rival claimants that the female could not be a fresh stock of descent as the law applicable under sec. 12 of the act is the law on the date on which the Act came into force. We see from the judgment that the learned Judges have not adverted to sec. 4 of the Hindu Succession Act. They simply gave effect to sec. 12 of the Act holding that the contention runs counter to the express words of sec. 12 of the Act. Hence we respectfully dissent with the said view the learned Judges failed to give effect to sec. 4 of the Hindu Succession Act.

19. To dispel any doubt whether the State Act can be superseded by Central Act, we may add that the Hindu Succession act regulates the succession to property and was enacted by the Parliament under Entry 5 List III (the concurrent list) of the Constitution. The corresponding entry in the Government of India Act, 1935 was Schedule VII, List III Entry 7 which reads : "Wills, intestacy and succession, save as regards agricultural land." The words "save as regard agricultural land" were omitted in the corresponding entry 5 of List III in the Constitution so that a uniform law of Succession can be passed by the Parliament and hence the comprehensive law enacted under the Hindu Succession Act so far Hindus are concerned prevails over any other law.

20. In the result we answer question 1 (a) as follows :-

Sec. 4 of the Hindu Succession Act has the overriding effect on succession taking place after the said Act comes into force and sec. 12 of Act III of 1895 shall yield and it stands abrogated after coming into force of the Hindu Succession Act so far as Hindus are concerned.

(b) The hereditary offices of villages artisans, and village servants covered by sec. 3(4) of Act III of 1895 are not offices as civil posts under the State but they are service Inams and a female heir died possessing such hereditary office and emoluments attached to it, shall be a stock of descent and the succession is governed by the Hindu Succession Act if the parties are Hindus and her heirs will succeed to the office and the emoluments thereto.

21. In the light of the answer given by us to the first question, we proceed to answer the second question referred to us.

21A. It is two parts (1) the effect of Andhra Pradesh (Andhra Area) Inams Abolition Act 37 of 1956 on service inams (2) the effect of Andhra Pradesh (Andhra Area) proprietary Estates" Village Service and the Andhra Pradesh (Andhra Area) Hereditary Village Offices Laws (Repeal) Act 16 of 1969 on service inam lands.

22. A Full Bench of this Court in *N. Bujanna v. Tahsildar, Rapur* 1980 1 APLJ HC 1 : AIR 1980 A P 118 laid down that the inams covered by the Inams Abolition Act are not abolished on the date of coming into force of the Act but the abolition of inams takes place only on the date of grant of a ryotwari patta in favour of a land holder or the tenant as the case may be. Hence till the actual ryotwari patta is issued the inam tenure continues. Further there is no prohibition under the provisions of the Inams Abolition Act ousting the jurisdiction of the civil court deciding the question of rights inter se the inamdars, or the third parties and the inamdars as the case may be. Unlike in the case of Andhra Pradesh (Andhra Area) Estates Abolition Act 26 of 1948 there is not provision in the Inams Abolition Act vesting the inams in the State during the process of abolition of the inam tenure except in the case of communal lands covered by Sec. 2-A of the said Act. The cultivable land forming part of the holding of any individual is allowed to continue in the possession of the respective persons and the process of conversion takes place on an enquiry initially made under S. 3 finalised by granting ryotwari patta under SE. 7 of the above Act. Further the provisions of that Act do not reveal any intention on the part of the legislature to keep the service condition as a part of the tenure after its abolition. A Division Bench of this court in *Punnaiah v. Sri Lakshmi Narasimhaswamy Varu* 1963 2 Andh WR 214 specifically adverted to this question and held that as per the provisions of the Act (Inams Abolition Act) the service holder is entitled to the ryotwari patta absolutely and it is for the legislature to make a suitable provisions if a condition as to service has to be imposed. The judgment was rendered on 28-3-63 but no amendment is made imposing any condition regarding service to be performed while granting ryotwari patta to a service holder when in an enquiry under that Act it was found that the service holder is entitled to ryotwari patta. We are in agreement with the view expressed by the above Division Bench that in case of service inams, ryotwari patta should be issued to the service holder and thus making him holder of a ryotwari tenure. On obtaining such ryotwari patta the service condition is disannexed from the land and the land becomes a freehold. We answer the first part of the second question accordingly.

23. So far as the Repealing Act 16 of 1969 is concerned under sec. 2(3) of the said Act the proceedings relating to matters of appointment, the conditions of service, and dismissal or removal under the Village Offices Act III of 1895 were preserved, and they shall be continued and enforced subject to the rules that may be made under the proviso to Art. 309 of the Constitution. Such rules were

framed in respect of class (1) service enumerated under Sec. 3(1) of the Act. No. Such rules are framed in respect of offices mentioned under sec 3(4) of the Act. We have already noticed that such kind of practice of appointing or punishing the village artisans and village servants governed under sec. 3(4) of the Act was specifically abolished and we also held that they are not offices under the State. Consistent with this view subsec. (4) of Sec.2 of the Repealing Act 16 of 1969 makes that all other proceedings pending except the proceedings as mentioned above in sub-sec. (3) of the said section shall abate. Thus any proceedings under sec. 13 of Act III of 1895 for recovery of emoluments that were pending by the date the Repealing Act came into force in respect of class (4) offices shall abate. We may also make a passing remark that even class (1) offices also were abolished in our State by the A. P. Abolition of Posts of Part Time Village Offices Act 8 of 1985. Thus the answer to second part of question No. 2 is that after the Repealing Act 16 of 1969 the service inam lands are free from the embargo imposed under sec. 5 of Act III of 1895 and those inam lands will become freehold in the hands of holder of such inams on conversion of the tenure in to ryotwari.

24. Let us apply this legal position to the facts of this Case. The result is simple. The plaintiff and her brother are entitled to succeed to the estate of her mother Manikyamba as he becomes the stock of descent in view of sec. 15 of Hindu Succession Act. The view of the learned single Judge that the succession should be traced to the last male holder disregarding sec. 4 of the Hindu Succession Act and giving effect to sec. 12 of Act III of 1895 cannot be accepted as correct.

25. Realising this the learned counsel of the respondents Sri. J. V. Suryanarayanarao argued that Exs. A-2 and A-3 are nominal documents and in fact the summary suit also was nominally filed in the name of daughters of Somamma and the decree obtained in the Summary Suit must enure to the benefit of Somamma. We are not persuaded to accept this contention and the findings concurrently arrived at on these questions cannot be upset as there are not compelling vitiating grounds in favour of this contention.

26. It is also unnecessary for us to go into the question raised by Sr. M. S. K. Sastry alternatively that the alienation in favour of the 4th defendant by Somamma under Ex. B-2 is hit by the provisions of the Transfer of Property Act. Once we hold that the succession has devolved on the daughters of Somamma in view of her resignation which constitutes surrender of the estate, no estate has passed to the 4th defendant under Ex. B-2 even assuming the sale deed in his favour is true and supported by consideration.

27. In the result, the appeal is allowed and the judgment and decree of the learned single Judge is set aside and that of trial court is restored with costs payable by the contesting 4th defendant to the plaintiff throughout.

28. Appeal allowed.