

(1921) 10 MAD CK 0022
In the Madras High Court

Talikonda Lakshminarasimham

APPELLANT

Vs

Talikonda Venkataratnayamma

RESPONDENT

Date of Decision : 13-10-1921

Acts Referred:

Citation : AIR 1921 Mad 645 : 70 Ind. Cas. 642

Hon'ble Judges : Spencer, J; Ramesam, J

Bench : Division Bench

Judgement

Spencer, J.—This suit was brought for partition of certain lands lying in the village of Narava Rayapurajupeta commonly known as Narava in the District of Vizagapatam. The appeal relates to B Schedule properties which were formerly karnam Service Inam lands enfranchised in 1911. The objection memorandum relates to C and F Schedule properties which are Darmilla Inams and a house.

2. The plaintiff is the widow of one Tirupathiraju. The last office-holder Tatikonda Padayya died on 17th March 1902 (as it appears from Exhibit E) and Tirupathiraju was registered as a karnam with; Talikonda Venkata Hanumayya as his deputy. The defendant is the adopted son of the said Venkata Hanumayya who was the eldest son of Lakhshminarsu, the father of Venkata Hanumayya and Paddayya.

3. The Subordinate Judge gave a decree; for the plaintiff for partition of the suit-properties on the strength of the title-deed which was issued in the names of the defendant and the plaintiff and also on the strength of an agreement, Exhibit B, by which the parties compromised their disputes and agreed to have the title-deed issued in the names of both persons.

4. For the appellant it is argued that the: plaintiff being a female was not qualified; to hold the office of a karnam [see Section 10(1)(a) of Act II of 1894] and that she could never have been appointed to the office. The enfranchisement proceedings commenced in 1902 as seem from Exhibit, I, and culminated in the Gazette, Notification of 1st April 1911. At the date when the enfranchisement

commenced Tirupathi Raju was a minor and was not qualified to hold office until he attained majority and was found fit by the Revenue Officers (see Section 13 of the Madras Act II of 1894). At the date of the Notification Tirupathi Raju was not alive and any spes or expectant right that might have existed in his favour of succeeding to the office had become extinct. Thus, up to the date of enfranchisement, it is argued that the right to the office vested in the defendant and neither the plaintiff nor her husband could have any title to a share in the lands which formed the emoluments of the Karnam's office. For this position Mr. Narayanamoorthy relied on the Privy Council decision in Venkata Jagannadha v. Veerabhadrayya 61 Ind. Cas. 667 : 30 M.L.T. 14.

5. In reply, Mr. Krishnaswamy Aiyar relied On an observation occurring at page 652 of that judgment which was to the effect that Government had power at the time of enfranchisement to deal with the enfranchised lands as they pleased, and he argued that as the Privy Council at pages 654 and 655 held that the law laid down as to Poligars was not applicable to the case of Inams and as in the case of Poligars no fresh title is created when the Poligars are relieved of their military duties, the converse must apply and a title is created in the case of Inams by reason of enfranchisement in favour of the title-deed holders. On this point I am of opinion that the language of their Lordships should not be strained too far as to make it apply to circumstances which were not before them. To say that Inam title-deeds created a title where no title existed before would be to disregard the provisions of Madras Act VIII of 1869, which expressly state that "nothing contained in any title-deed shall be deemed to define, limit, infringe, or destroy the rights of any description of holders or occupiers of the lands from which, any Inam is derived" or "affect the interest of any person other than the Inam holder named in the title-deed, and nothing contained in the Madras Act IV of 1863 or in Madras Act IV of 1866 shall be deemed to confer on any Inam holder any right to land which he would not otherwise possess." Act IV of 1862 and Act IV of 1866 provide that the title-deed granted by Government should be deemed sufficient proof" of the enfranchisement, that is, of the fact" that the Inam was enfranchised. Act VIII, of 1869 clearly provides that no independent title is created in consequence of grant of title-deeds. The title-deed in this case is Exhibit II. It was issued in the names of Lakshminarsu and Tirupathi Raju. In the original the name of Tirupathi Raju is scored out, and the name of Venkataratnayamma, that is, the plaintiff is inserted in, its place under the initials of the District Collector. The Board's Standing Order LII directs that Collectors should make no change whatever in the title-deed but hand it over exactly as received to the heirs of the deceased in cases where the holder of an enfranchised Inam dies before delivery to him of the title-deed. This injunction does not seem to have been strictly observed, in this instance. But the matter is of no consequence. Whether the title-deed was in the name of Tirupathi Raju or in the name of Venkataratanayamma, it can confer no right against the other title-deed holder Lakshminarsu in defeasance of such rights as existed in him already. The plaintiff's case is that, if the enfranchisement took, effect in 1906,

Tirupathiraju was the holder or grantee along with the defendant and his interests descended to the plaintiff as his heir; but, if the enfranchisement took effect in 1911, then the title deed is in the, plaintiff's name and effect must be given to the terms of the grant. In my opinion, no title arises out of the issue of this title, deed that was not already inherent in the, plaintiff or her husband.

6. On the second point, which relates to the title of the plaintiff to succeed on the agreement of Exhibit B, I consider that the lower Court's judgment must be supported. The Subordinate Judge found that Exhibit B was a fair and equitable compromise of a bona fide dispute and that, although at the trial both parties attempted to withdraw from the position, fixed by this settlement, it was binding upon them. It was suggested that there was no consideration for this settlement and that there should have been a registered deed for the surrender of the B Schedule properties by the defendant, Exhibit B being only an agreement to relinquish. I consider that the surrender of lights in C Schedule properties was sufficient consideration for the acquisition of rights in B Schedule properties by the plaintiff and that Exhibit B being registered no further document had to be executed in order to enforce the agreement. For the same reasons that I have given for upholding the family settlement embodied in Exhibit B, the memorandum of objections which relates to C Schedule properties must fail, except (1) as to item 8 on which it is conceded on both sides that the plaintiff is entitled to a half, share, the Judge being mistaken in saying that the plaintiff surrendered her claim to it under Exhibit B and (2) as to the item in F Schedule which is a house to half of which plaintiff is entitled without further partition.

7. Another claim was advanced in the arguments as to future mesne profits on the 4th item of B Schedule. As no ground was taken in the objection memorandum it cannot be admitted.

8. On the question of costs, I think that the lower Court exercised a fair discretion in ordering each party to bear their own costs! The result is that the appeal and the memorandum of objections will each be dismissed with costs, except as regards item No. 8 of C Schedule and the house in F Schedule in respect of which items the lower Court's decree will be amended in the manner indicated above.

Ramesam, J.

9. I agree. The judgment of their Lordships of the Privy Council in Venkata Jagannadha v. Veerabhadrayya 61 Ind. Cas. 667 : (1921) M.W.N. 401 cannot be used as an authority for the proposition that the Inam title-deed is conclusive as to the persons in whose favour enfranchisement is to operate. In that case there was no conflict between the title of an office-holder and the title of a person other than the office-holder claiming on the ground that he was named in the title-deed is that case having been issued to the officeholder. Having regard to Madras Act VIII of 1869, and the tenor of the Inam rules according to which enfranchisement should be in favour of the Inam-holder, I think it is open to an

aggrieved party to show that a name or names were added in the deed by mistake. If the matter ended there, this case would have to be decided in favour of the appellant, but in this case not only no such mistake was pleaded by the defendants but, on the other hand, the defendant expressly admitted in paragraph 44 of the written statement that the title-deed was not issued because of the agreement dated 2nd December 1907. I cannot accept Mr. Narayanamoorthi's argument that Exhibit B was abandoned by both parties. The plaintiff in paragraph 9 attacked it only in so far as it prejudicially affected her vested rights. This paragraph cannot be construed to mean that she would not rely on it, when the document supports her. Nor is there anything in paragraph 4 of the written statement to show that the defendant does not rely on it. All that he says in it is, that the enfranchisement having been effected in 1911, the title-deed was void and of no effect. It is clear from the Subordinate Judge's judgment, pages 44 to 46, that the binding nature of Exhibit B was argued before him and was considered by him and I do not and any ground taken by Mr. Narayanamoorthy for attacking this finding. The defendant having induced the Revenue Authorities to issue a patta in the name of both the plaintiff and himself, he is estopped from now contending that the plaintiff has no title.

10. I have nothing to add to the rest of my learned brother's judgment.

11. Appeal and memo of objections dismissed.