

(1908) 09 MAD CK 0032
In the Madras High Court

V. Subbaroya Chetty and Others

APPELLANT

Vs

Aiyaswami Aiyar and Another

RESPONDENT

Date of Decision : 11-09-1908

Acts Referred:

Citation : (1909) ILR (Mad) 86 : 1 Ind. Cas. 749

Hon'ble Judges : Munro, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The suit lands were formerly service inam, lands attached to the office of Karnam. One Venkatasubba Aiyar who held that office was dismissed in 1878, and this cousin Viswanatha Aiyar was appointed in his place. Viswanatha Aiyar got a decree for the inam but failed to get possession from Venkatasubba Aiyar. Venkatasubba Aiyar died in 1886, and thereafter his widow Sivakami was in possession till 1894, when the inam was enfranchised in her name. Sivakami continued in possession till 1902, when she sold the lands under Exhibit X to the first defendant. Sivakami died in 1904. The suit is by the plaintiff as reversioner to recover the lands. The plaintiff succeeded in both the Courts below.

2. The points pressed in second appeal are that the lands were the absolute property of Sivakami from the date of the enfranchisement, and that, in any case, she had at the date of Exhibit X acquired title by adverse possession. As to the first point it is contended that, as the lands themselves constituted the inam, there was at the enfranchisement a resumption and fresh grant by the Government to Sivakami. This contention is opposed to the latest decision of this Court. In *Gunnaiyan v. Kamakchi Ayyar* 20 M.k 339, the suit lands, as in the present case, and not the assessment formed the emoluments of the office and it was held that the enfranchisement did not operate as a resumption and fresh grant by the Government. This was approved by the Full Bench in *Pingala Lakshmipathi v. Bommireddipalli Chalamayya* 30 M. 434. where it was laid down, that the enfranchisement disannexes the inam from the office, converts it into ordinary property, and releases the reversionary right of the Crown in the inam,

but that it does not confer on the person named in the title-deed any right in derogation of those possessed by other persons in the inam, at the time of the enfranchisement." It follows that the title of Sivakami was in no way enlarged by the enfranchisement. If her estate at the time of the enfranchisement was that of a widow, the enfranchisement did not make it anything more.

3. In 1886 when her husband Venkatasubba Aiyar died, Sivakami took as his widow the interest he had in the suit property. No doubt Venkatasubba Aiyar had not acquired any title as against the true owner, as he had been in adverse possession only from 1878, but his possession gave him, as against every one but the true owner, an interest capable of being inherited, devised or conveyed—vide, *Narayana Row v. Dharmachar* 26 M.k 514, when the inam was enfranchised, the widow's estate which Sivakami took in 1886 remained a widow's estate, and the enfranchisement did not convert into her absolute property.

4. As to the second point there is no foundation for the contention that Sivakami had obtained an absolute right to the property by adverse possession in 1902 when she executed Exhibit X. It is not shown how her original widow's estate changed into something else. Here lapse of time would not change the character of that estate. In Exhibit XVII, dated the 16th October 1893, and in Exhibit XIII, dated the 8th March 1901, Sivakami referred to the suit properties as the properties which she acquired from her husband and which she had been enjoying with patta in her name. In Exhibit X, the only other document to which we have been referred, Sivakami, no doubt, said she had been enjoying with absolute right, but we are not referred to any evidence that she ever set up such a right to the properties before, or any right other than as the widow of her husband.

5. We dismiss the second appeal with costs.