

(1926) 08 MAD CK 0083
In the Madras High Court

Vaidyanatha Aiyar and Others

APPELLANT

Vs

Yogambal Ammal and Others

RESPONDENT

Date of Decision : 06-08-1926

Acts Referred:

Citation : AIR 1927 Mad 140 : (1927) ILR (Mad) 441 : (1927) 25 LW 660 :
(1926) 51 MLJ 695

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The 9th and 10th defendants are the appellants before us. The suit is for partition between the members of the family. The family had become divided in status long ago. The present suit is for division by metes and bounds. The plaintiff is the widow of one Muthuswami Aiyar who died in 1904 and claims under his will. The appeal relates to the subject-matter of the fourth issue, namely, items, 1, 4, 6, 7 and 8 which are unenfranchised hereditary personal inams.

2. Two points have been raised for the appellants: (1) That the suit is not maintainable in a Civil Court u/s 4 of the Pensions Act, and (2) that the plaintiff has no right to a share in these items either as heir or as devisee.

3. Taking the first point, Section 4 of the Pensions Act enacts that no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government. Now, remembering that "an enactment of a character which deprives the subject of his right to resort to the ordinary Civil Courts of Justice for relief in certain cases ought to be construed strictly and the Court should not extend its operation further than the language of the Legislature requires" [vide the cases cited in Balvani Ramchandra v. Secretary of State (1905) L.R. 39 B 480] one would think that the proper construction of the section would confine its operation to a grant of land revenue only as opposed to a grant of land. This is the view taken in this Court in Panchanada v. Nilakanda I.L.R.(1883) M 191 where Turner, C.J. says:

That Act contemplates money payments to be received through the Collector or recovered from persons bound to pay revenue.

and therefore the Act does not cover grants of lands revenue free.

4. This is also the view taken by Batty and Russell, JJ., in Balvant Ramchandra v. Secretary of State ILR (1905) B 480. They follow the decision in Panchanada v. Nilakanda ILR (1883) M 791. They also refer with approval to KumaraTirumalai Naik v. Bangaru Tirumalai Sauri Naik (1898) ILR 21 M 310 where it is observed:

It cannot be said that the giving of land free of revenue is a grant of land revenue.

5. Babaji Hari v. Rajaram Ballal ILR (1875) B 75 was quoted as authority. The passage cited runs thus:

The land revenue arising from a man's own holding, when it is remitted, and the land pays nothing, is rather extinguished than granted.

6. I agree with these cases.

7. The appellant relies on two decisions, Rama v. Subba ILR (1888)M 98 and His Highnes Mathu Sri Jeeyamba Bai Saheb Vs. The Secretary of State for India in Council, . It may be that in the former case it is possible to arrive at the conclusion that on a construction of the grant there is a distinct grant of the land revenue apart from the land though there was also a grant of the land. It may be that in such cases the Act applies but if anything more was intended to be laid down in Rama v. Subba ILR (1880) M 98 I am not able to agree with it especially as my view is in consonance with the trend of later decisions of this Court. The second decision relied on by the appellant, His Highnes Mathu Sri Jeeyamba Bai Saheb Vs. The Secretary of State for India in Council, , was a decision of Benson and Sundara Aiyar, JJ. Sundara Aiyar, J. afterwards explained it in Secretary of State v. Subbarayadu ILR (1912) M 559 and it is authoritative only in the light of that explanation. In the later case it was observed:

The plaintiffs alleged that the land itself was their manyam and this position was not contested by any of the defendants. The suit is therefore not one relating to any grant of land revenue.

8. Referring to His Highnes Mathu Sri Jeeyamba Bai Saheb Vs. The Secretary of State for India in Council, it was said:

The instrument of grant, it was held, distinctly made a grant of the taxes due to the Government although it may have been that the kudiwaram also was granted. The grant of the kudiwaram and melwaram was regarded as distinct and several. The ratio of the decision was, that where the Court is able to hold that there is a distinct grant of the land revenue itself the suit relating to it is not within the cognizance of Civil Courts except with the sanction of the Collector.

9. I also agree that where there is a distinct grant of the land revenue even

though the land is also granted the Act applies. But I am not to be taken as holding that the decision in *Rama v. Subba* ILR (1880) M 98 and *His Highness Mathu Sri Jeeyamba Bai Saheb Vs. The Secretary of State for India in Council*, are correct as to the construction of the grants in those cases. That point does not arise in this case. All that I can now say is, if the construction of the grants in those cases is right, I agree with the principle of law applied. The position of the words "land revenue" next to the words "pension or grant of money," I think, also supports this view. There is only one other decision of this Court to which I shall refer; it is *Desayi alias Allam Raju Nanjunadhiah Vs. Desayi alias Allam Raju Venkatasubbiah*, where it was held that the Pensions Act does not apply to a claim among the members of the family for partition but I shall not commit myself to the preceding sentence "These observations are of great value in considering the right of an alienee to recover possession of an inam". The actual decision is that the Act did not apply. I therefore hold in this case that the Pensions Act is, not a bar to the maintainability of the suit. I may add that the decision in *Panchanada v. Nilakanda* ILR (1883) M 191 arose in connection with this very family. *Venkatarama Aiyar v. Chandra-sekara Aiyar* 40 M L J 344 is another decision relating to the same family. The last decision leads me to the second point.

10. Mr. Krishnaswami Aiyar argues for the appellant that under terms of the Inam Settlement (vide Ex. V which is the inam register), the land was confirmed under Rule 5, Clause 3 of the Inam Rules of 11th October, 1859. But this was not agreed and it was, ultimately confirmed under Rule 5, Clause 1. Sub-cl. (1) of Clause 1 of Rule 5 says that succession is limited to direct lineal heirs. As the widow cannot succeed as an heir, it is argued that the plaintiff cannot succeed as she claims under a will of her husband which is an alienation within the meaning of Clause 3. Now the object of Clause 3 is to protect the interests of Government and the prohibition therein can only mean that, as against the Government, all alienations are inoperative, not that they are void. So long as Government do not step in to enforce their rights, whatever they are, by ignoring the alienation, I do not think it is open to others to question a transaction which amounts to alienation. This is the view taken in *Venkatarama Aiyar v. Chandrasekhara Aiyar* ILR (1921) M 632 also in *Boyanapalli Venugopal Rao Gam v. Venkata Narasimha Rao* (1911) 2 M.W.N. 384 and *Lakshmipathi v. Narasimham* (1916) 3 L W 590. I agree with all these decisions. The appellant refers to *Subhan Ali v. Imami Begam* (1925) ILR 53 C 971 (P C), but I do not think that case has any application here. I agree with the respondent's contention that so long as lineal heirs of the grantee remain the Government has no right to resume and the property descends like ordinary property. This is not a case in which a special rule of succession is laid down for each individual holder of his share of the inam. It may also be pointed out that from 1904 up to 1917 the plaintiff has been allowed by the other members of the family to be in possession of her husband's share by receipt of the corresponding income and the appellants before us themselves recognised her right. Ex. 14 is a lease taken by the 9th defendant in

favour of himself, the plaintiff, and Jagadisa Aiyar, father of defendants 4 to 8. His explanation that the document so taken was all arranged by the 1st defendant, cannot be accepted. It appears from the registration endorsement that the document was delivered to the 9th defendant, though he does not now choose to produce the original and produces only the registration copy. The plaintiff having been recognised to be the owner of her husband's share for more than twelve years claiming under her husband's will, she has acquired title by prescription against the other sharers who also seem to be estopped from denying her title. The second point also fails.

11. The result is, the appeal is dismissed with costs of the plaintiff.

12. In the appeal, some grounds were taken against the 11th defendant's decree, but the appellant has not paid any Court-fee in respect of it and it is dismissed with proportionate costs of the 11th defendant, pleader's fees being calculated on the proportionate shares of the 11th defendant in the items 1, 4, 6, 7 and 8.

13. The 11th defendant has filed a memorandum of objections claiming profits subsequent to the institution of the suit. It is conceded by the appellants that he is entitled to it and the omission is probably the result of a slip. The memorandum of objections will be allowed but there will be no order as to costs. The other parties will pay their own costs.

14. This appeal having been posted to be spoken to this day, the Court (Ramesam and Curgenvan, JJ.) delivered the following

15. The mesne profits decreed in favour of plaintiff and 11th defendant will be ascertained by the Court below and a supplemental final decree will be passed. No part of the mesne profits is to be left to be determined in execution as was originally directed by the Court below.