

(1914) 09 MAD CK 0013
In the Madras High Court

Vusa Chandrakantam and Others

APPELLANT

Vs

Vusa Subbarayudu

RESPONDENT

Date of Decision : 01-09-1914

Acts Referred:

Citation : AIR 1915 Mad 554 : 25 Ind. Cas. 685 : (1914) 1 LW 827

Hon'ble Judges : Napier, J; Ayling, J

Bench : Division Bench

Judgement

1. This is a suit to establish respondent's (plaintiff's) right to, and to recover possession (after partition) of, a one-third share in certain inam lands

attached as emoluments to a fanning service"" performed by dancing girls to the god Sri Visweswara Swami in the village of Pedda-puram. The

District Munsif gave a decree for recovery of possession and for a declaration of plaintiff's title during his life-time. The Subordinate Judge has

amended the decree by removal of the limitation and has given a decree practically as sued for.

2. Plaintiff's title rests on a kararnama, Exhibit A, executed in 1854 by one Syamala, who then held the office and emoluments. She had at the time

two daughters (from whom appellants Nos. 1 and 2 are descended) and a son of a deceased daughter (the present plaintiff). To these three

persons jointly she made over all her properties (including the service inam lands), directing at the same time (according to the plaint) that the two

daughters should continue to perform the service. Shortly afterwards she died; and from that time till 1909 plaintiff claims to have been in joint

enjoyment of the suit property along with his aunts and after them their female descendants who were actually performing the service. In 1909

appellants Nos. 1 and 2, who had then succeeded to the service, effected a mortgage of the suit lands. Thereupon plaintiff sued to establish his title and recover possession of a one-third share.

3. It is beyond dispute that the suit lands are service lands and attached to the fanning service"" and are strictly speaking inalienable; that is to say,

any alienation by an office holder is invalid after that office holder's life-time, and does not bind his or her successor (vide *Minakshisundaram Pillai*

v. Chockalinga Royer 15 M.L.J. 10. and *Pakkiam Pillay v. Seetharama Vadhyar* 14 M.L.J. 134.

4. It is, however, contended that plaintiff being a member of the family, this rule does not apply. We cannot accept such a contention. The Munsif

says (and we do not understand the Subordinate Judge to differ from him) that the suit land is inam attached to service which is usually rendered

only by dasi women in Hindu temples. We have no doubt that plaintiff is by reason of his sex incapacitated from performing the service. The

Subordinate Judge says the service can be performed by proxy: but there is no suggestion in the plaint that plaintiff has arranged for a proxy to do

the service on his behalf. In fact after setting out that Syamala directed that her daughters Venkatachellam and Nilaohellam should do service, the

plaint contains no further reference to the performance of service, but deals simply with the enjoyment of the inam lands.

5. We must take it, then, that plaintiff never did, nor could have done, the service to which the emoluments are attached.

6. We may add that in any case Syamala's daughters were the next immediate heirs to the office on her death : and that she could not transfer the

office to plaintiff, even if he was not disqualified from holding it vide *Narayana v. Ranga* 15 M. 183 : 2 M.L.J. 19 .

7. In these circumstances, the fact that plaintiff. was a close relation of the office holders does not affect the invalidity of the alienation in his favour.

8. Even if his alleged joint possession with the office holders were regarded as adverse, this would not give him a title even to a share of the income

of the lands vide the remarks of the Privy Council in *Bhaiaji Thakur v. Jharula Das* 24 Ind. Cas. 501 : 18 C.W.N. 1020: 1 L.W. 549 : 27 M.L.J.

100 : 16 M.L.T. 210 : (1914) M.W.N. 636 ; but as a matter of fact, it is clear that his enjoyment was permissive. At the time of Exhibit A, he was

a child and even after he grew up, his aunts and their immediate successors raised no objection to his participating in the income of the service inam lands. The present office holders are less complaisant.

9. It has been suggested before us that appellants Nos. 1 and 2 are personally estopped from contesting his claim, but we find nothing to this effect in the plaint and no issue which covers such a plea.

10. We must set aside the decree of the lower Appellate Court and dismiss the suit with costs throughout.