
(1925) 11 MAD CK 0022
In the Madras High Court

Yandluri Yellamanda

APPELLANT

Vs

Kunchala Chitambaram (died) and Others

RESPONDENT

Date of Decision : 24-11-1925

Acts Referred:

Madras Proprietary Estates Village Service Act, 1894 — Section 10(2), 10(3)

Citation : AIR 1926 Mad 505 : (1926) 50 MLJ 267

Hon'ble Judges : Wallace, J;Devadoss, J

Bench : Full Bench

Judgement

Devadoss, J.—The plaintiff's suit is for the recovery of his 1/6th share in the plaint property. The defendants contended that the lands in

respect of which the relief was claimed were inam lands and the Civil Court had no jurisdiction to try the suit. Both the Lower Courts have held

that the Civil Court had no jurisdiction to try this suit. The plaintiff has preferred this Miscellaneous Appeal.

2. In order to determine whether the Court has jurisdiction or not we have to see what the averments in the plaint are and what is the cause of

action of the plaintiff. The plaintiff sets out in his plaint that the plaint-land was granted on Cowl on 19th November, 1897 and it expired with the

close of the year, Parithavi, 1912-194,3, and that defendants 2 to 5 have been cultivating the land along with the 1st defendant. The plaintiff and

his father with some of the defendants took possession of the plaint-property and the 2nd defendant instituted Original Suit No. 256 of 1915 on

the file of the District Mun-sif's Court, Ongole and obtained a decree, and took possession of the property on 12th June, 1917. The cause of

action is set out as having arisen on 19th November, 1897 when the 1st defendant obtained a Cowl in respect of the property, on 6th April, 1913

when the Cowl period expired, and on 12th June, 1917 when the defendants 2 to 5 obtained possession under the decree in O.S. No. 256 of

1916. Defendants 2 and 3 set up various pleas one of them being that the suit lands being service inam the Court had no jurisdiction to try the suit.

The Subordinate Judge held that the suit was not cognisable by a Civil Court on the bare finding that the suit land was inam-land.

3. The question is whether this suit is cognisable by a Civil Court or not. The contention of Mr. Narasimhachariar for the respondent is, that no suit

in respect of any service inam-land is cognisable by the Civil Court. Section 21 of the Hereditary Village Office's Act III of 1895 is ""No Civil

Court shall have authority to take into consideration or decide any claim to succeed to any of the offices specified u/s 3 or any question as to the

rate or amount of the emoluments of any such offices or except as provided for in proviso (ii) to Sub-section 1 of Section 13 any claim to recover

the emoluments of any such office."" If a suit is based on the fact that the plaintiff is the holder of the office and therefore entitled to the land the

possession of which he seeks, then that suit would come within Section 21. If a plaintiff brings a suit for the recovery of any land alleging that he is

the holder of the office and that another person who is not the office-holder is in possession of the land that suit also would come within Section

21. But where a" person sues for the possession of land which is his whether it be against a trespasser or against a co-sharer he does not base his

claim on his being the holder of the office but he bases his claim on his right to the land. The mere fact that it is inam land does not mean that the

cause of action is based on his being the holder of the office. Section 21 has to be read along with Section 13. Section 13 provides for a suit

before the Collector "" for any of the village offices mentioned in Section 3 or the emoluments of such offices on the ground that he is entitled under

Sub-section (2) or (3) of Section 10 of the Madras Proprietary Estates Village Service Act of 1894 or under Sub-section 2 or 3 of Section 10 or

Sub-section 2 or 3 of Section 11 or Section 12 of this Act, as the case may be, to hold such offices and enjoy such emoluments."" In this case the

plaintiff does not come into Court for recovery of land on the strength of his being an office-holder and that the lands being the emoluments of the

office. He seeks the Court's aid for recovering possession of the property which has been unlawfully taken from him. He alleges that a Cowl was

granted in 1897 and that the period of the Cowl expired in 1912-1913 and that the defendants are holding-over after the expiry of the lease that he

and his father along with others took possession of the lands. The 2nd defendant filed a summary suit u/s 9 of the Specific Relief Act and got back

possession from the plaintiff and his father. The main contesting defendants in this case are defendants 2, 3 and 4. The 13th defendant from whom

they claim a portion of the land does not seem to contest the suit seriously, though the vakil for the defendants 2 to 4 appears for him as well. The

contention of Mr. Narasimha-chariar is that the 13th defendant claimed the land as his and therefore the suit is one for the emoluments of the office.

The 13th defendant does not say that all the suit land belongs to him. He is one of the persons entitled to a share of the land and the mere fact that

he denies the plaintiff's right would not be sufficient to convert the suit into one for the emoluments of an office. If the contention of the respondent

is to be upheld it would mean that even though a man recovers property by a suit u/s 13 of the Hereditary Village Offices Act, if somebody

trespasses on the land and asserts a claim to it, the jurisdiction of the Civil Court would be ousted. Section 21 does not take away the jurisdiction

of a Court to entertain a suit for the recovery of possession of an inam land from a trespasser, or a tenant holding over or from a co-sharer who in

order to defeat the plaintiff sets up a title in himself and denies the title of the plaintiff.

4. In *Muvvula Seetham Naidu v. Doddi Rami Naidu* (1909) 20 MLJ 91 it was held "" that a suit for a Village Officer's inam land on the expiry of a

lease granted by such village officer to the defendant is cognisable by the Civil Courts as the plaintiff has only to prove the letting and expiry of the

term and he is not called upon to prove his title which the defendant will be estopped from disputing. "" The learned Judges observe at page 210: ""It

is reasonable to hold, notwithstanding the apparent generality of the language of Section 21, that the jurisdiction of the Civil Court is taken away in

those cases in which it is conferred on the Revenue Court by Section 13. "" The respondent relied strongly upon the concluding sentence of the

judgment ""the plaintiff will not be entitled to base his suit on the title to the inam "". This sentence does not mean that if the defendant chooses to say

that the plaintiff is not entitled to the land the jurisdiction of the Civil Court is ousted. What is meant by the sentence as we understand it is, that the

plaintiff is not entitled to sue on his title to the inam, that is, on his being the office-holder and therefore entitled to the land. In another case in the same volume *Gavara Ramantla v. Adabala Rattayya* (1909) 20 MLJ 94 the Chief Justice and Mr. Justice Krishnaswami Aiyar held that "" A suit in the Civil Courts for land, not based on the ground that such land constituted part of;he emoluments of any of the offices described in Section 13 of the Madras Act III of 1895, is not barred by Section 21 of the Act. "" In that case the plaintiff sued for recovery of land, on the ground that they were private property of the plaintiff. The Subordinate Judge held that the Civil Court had no jurisdiction to entertain the suit on the ground that the land was inam land and that the suit was practically for the recovery of the emoluments of Naikwadi office. The learned Judges held that the suit was maintainable in a Civil Court. They observe at page 237: "" The present suit does not fall within that section (meaning Section 21). It is not a claim to succeed to any of the offices mentioned in Section 13. It does not raise the question as to the rate or amount of the emoluments of any such office. "" The words "" any claim to recover the emoluments of any such office "" u/s 21 do not apply to the present suit, since the suit is not a suit for land based on the ground that the land constitutes part of the emoluments of the office. "" In the present case the plaintiff does not base his suit for the recovery of the land on his being the holder of the office and that the lands constitute the emoluments of the office. The observation of the learned Judges are applicable to the present case. The case *Kesiram Narasimhulu v. Narastmhulu Pat-naidn* (1906) Mad 126 does not apply to the present case. There the plaintiff sued to recover possession of the land alleging that it was the emoluments of his office of Karnam and that the defendant resisted the plaintiff's claim on the ground that the land was not the emoluments of his office but the private property of the plaintiff which passed to the defendant in execution of a decree obtained by him against the plaintiff. The plaintiff's land was attached in execution of a decree for money and in spite of the objection made by him on the ground that the attachment was prohibited by Section 5 of Act III of 1895 (the land being Karnam's inam), it was brought to sale and purchased by the defendant. He then sued before the Collector for recovery of the land alleging that he was a karnam and that the land, was the inam attached to the office. The Board of Revenue on second appeal gave a declaratory

decree in favour of the plaintiff as to his-title to the assessment of the land leaving him to sue if so advised, in a Civil Court to recover possession of

the land. The plaintiff sued in the Civil Court. But on a difference of opinion between two learned Judges the matter came up before a Full Bench.

The plaintiff did not deny the debt nor did he seek to set aside the sale on any ground other than the inalienability of the land. As observed by

Miller, J. at page 131: "" He can therefore only succeed by showing (1) that he is the Karnam of the village entitled as such to enjoy the

emoluments, and, (2) that the lands for which he sues is the emolument of his office. These must be the grounds of his suit and these are the

grounds which-give him his right of action before the Collector u/s 13(1). "" The Full Bench held that the suit was for the emoluments of a village

office based upon the title of the plaintiff as the holder of the office. As already observed, the plaintiff herein does not base his claim as being the

holder of the village office.

5. In *Kotiah v. Reddamma* (1916) IMWN 278 Seshagiri Aiyar, J. held that Act III of 1895 was not intended to take away the jurisdiction of the

Civil Court where trespass is alleged against the defendant. This decision was upset in L.P.A. Nos. 105 and 106 of 1916 on the facts, by a Bench

consisting of Spencer and Phillips, JJ. vide *Pattayya v. Kotiah* (1917) MWN 7. The learned Judges held that the suit ""was essentially one for the

recovery of the emoluments of a carpenter's or blacksmith's service inam. They observe at page 8: "" In suits where the plaintiff seeks to recover on

the ground of a bare trespass and no question of title is involved as in *Muvvula Seetham Naidu v. Doddi Rami Naidu* (1909) 20 MLJ 91 or, on

the ground that the land is private property as in *Gavara Ramanna v. Adabala Rat-tayya* (1909) 20 MLJ 94 the suit is not based on any cause of

action out of the plaintiff's right to recover the property as an emolument of an office and in such cases the Civil Court's jurisdiction may not be

ousted. In such cases it is not necessary that the plaint should contain any mention of the fact that the land is an emolument of an office."" This

observation is applicable to the present case.

6. Mr. Justice Spencer and Mr. Justice Ramesam observe in *Vanchinatha Iyer Vs. Rajagopala Iyer and Others*, Of course a suit in which the

plaintiff does not need to rely on his right to the office and its emoluments, in

order to succeed, such as would be the case in the instance cited in the words of Subramania Aiyar, J. at page 210 of Muvvula Seetham Naidu v. Doddi Kami Naidu (1909) 20 MLJ 91 stands on a different footing

meaning that such a suit is not exempted from the cognisance of a Civil Court by Section 21 of the Hereditary Village Offices Act,

7. The principle of these decisions is that a suit for possession of land not based on the fact that the plaintiff is the holder of the office and that the

land is attached to that office, is cognisable by a Civil Court. The mere fact that the defendant denies the title of the plaintiff would not be sufficient

to oust the jurisdiction of the Civil Court.

8. In the result the judgments of the Lower Courts are set aside and the suit is remanded for disposal on the merits. The plaintiff will have his costs

of Civil Miscellaneous Appeal and the costs of the suit in the Lower Courts will abide its result.

Wallace, J.

9. I agree. I have nothing to add.