

was any intentional deceit on the appellant's part or that the respondent has by his adoption been deprived of any rights in his natural family—*Vishnu v. Krishnan*(1). PICHUVANYAN
v.
SUBBAYYAN.

We must reverse the decree of the District Judge and restore that of the District Munsif.

The appellant is entitled to his costs in this and in the Lower Appellate Courts.

APPELLATE CRIMINAL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

QUEEN-EMPRESS

v.

RAMASAMI.*

1889.
August 21.

Penal Code, s. 353—Public servant—District Municipalities Act (Madras Act IV of 1884), s. 41.

A Municipal Inspector is a public servant within the meaning of s. 41 of the Madras District Municipalities Act.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by G. W. Fawcett, Acting District Magistrate of Trichinopoly.

Kallaya Pillai, the occupier of a certain house in Trichinopoly, was called on by the Municipal Council to remove an obstruction in the public street. He neglected to do so, and was served with a notice under section 264 of the District Municipalities Act (Madras Act IV of 1884) to the effect that if he did not remove the obstruction as required, the municipal council would have it removed and would recover from him the cost of its removal. The notice having been disregarded, the council removed the obstruction and demanded the cost (Rs. 7-0-7) from him. This demand also was unheeded, and the chairman accordingly issued a warrant of distress on him. When the Municipal Inspector came to levy the distress, Ramasami Pillai, the father of Kallaya Pillai, who had

(1) I.L.R., 7 Mad., 3.

* Criminal Revision Case No. 286 of 1889.

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meanwhile come to live in the house, assaulted him, pushing him out of the house. Ramasami Pillai was thereupon charged under section 353 of the Penal Code with the offence of using criminal force to deter a public servant from the discharge of his duty as such. The Town Sub-Magistrate, without taking evidence as to the alleged assault, held that the levy of distress was irregular, in that the warrant should have been issued on the father as owner of the house and not on the son, and that the Inspector was consequently a trespasser and might be lawfully resisted. He accordingly discharged the accused.

The report of the case by the Acting District Magistrate, after stating the above facts, continued as follows:—

“It is not necessary, at present, to discuss the procedure of the municipal council previous to the issue of the demand, though I may remark that it was apparently correct. It is sufficient, first, that the distress warrant entrusted to the Inspector for execution was, according to the prosecution evidence, a direction given by a public servant, the chairman of the council acting apparently ‘in good faith under colour of his office,’ and, secondly, that the Inspector was also a public servant apparently ‘acting in good faith under colour of his office’—*vide* Indian Penal Code, section 99, cl. 1 and 2—and the accused person had no right of private defence against the Inspector’s seizure, even if it was not—and even this was not shown—justifiable by law.

“I called on the Sub-Magistrate to explain on this point, and he replies (1) that the Inspector was not a public servant, and (2) that though he was acting under the direction of a public servant, his act, *i.e.*, the distress, was directed against a person other than that named in the public servant’s (the chairman’s) direction. This position is untenable, even leaving out of consideration the second part of it, for the Inspector is distinctly a public servant under section 41 of Act IV of 1884.”

The Acting Government Pleader (*Subramanya Ayyar*) for the Crown.

Tyagarajayyar for the accused.

JUDGMENT:—The Inspector is clearly a public servant within the meaning of section 41, Madras Act IV of 1884, and if, as stated by the Magistrate, he was assaulted in the execution of a distress upon property in which the father may, perhaps, have a

joint interest, the offender will be liable to punishment under section 353 of the Penal Code.

The order of discharge is set aside and the case must be re-tried.

QUEEN-
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v.
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APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Wilkinson.

NARASANNA (PLAINTIFF), APPELLANT,

v.

GANGU AND ANOTHER (DEPENDANTS NOS. 1 AND 6), RESPONDENTS.*

Hindu law—Deva dasi—Inheritance.

On the death of a prostitute dancing girl her adopted niece, belonging to the same class, succeeds to her property, in whatever way it was acquired, in preference to a brother remaining in caste.

SECOND APPEAL against the decree of L. Moore, Acting District Judge of Cuddapah, in appeal suit No. 73 of 1886, confirming the decree of S. Dorasami Ayyangar, District Munsif of Cuddapah, in original suit No. 484 of 1885.

Suit to recover certain land, alleged by plaintiff to have been the property of his father, which, on his death, passed into the possession of the plaintiff's sisters. Defendant No. 1 was the widow of Konappa, the plaintiff's brother, and defendant No. 6 was her daughter, who claimed title as the adopted daughter and heiress of a dancing girl Pedda Lakshmi, the plaintiff's sister. The plaintiff was divided from the rest of the family and had received, from his father, his share of the family property.

The District Munsif dismissed the suit, and, on appeal, his decree was affirmed by the District Judge.

The plaintiff preferred this appeal.

Rama Rau for appellant.

Sadagopacharyar for respondents.

The further facts of the case and arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment.

JUDGMENT:—The Acting District Judge has found that the sisters, Pedda Narasi and Lakshmi, each took one-fourth share in

* Second Appeal No. 652 of 1887.