

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Parker.

1887.
February 22.
April 19.

CHANDRAMMÁ (DEFENDANT NO. 1), APPELLANT,
and
VENKATRÁJU (PLAINTIFF), RESPONDENT.*

*Regulation XXXIX of 1802, s. 7—Office of karnam in a zamindari village—Succession to
—Female claimant—Incapacity of next heir.*

The karnam of a zamindari village having died, leaving a widow his heir, the zamindar appointed her to the office of karnam. The nearest male sapinda of the deceased karnam (from whom he was divided) sued to establish his right to the office of karnam:

Held, (1) that a woman cannot hold the office of karnam;

(2) that when the immediate heir is incapacitated, the nearest male sapinda of the deceased karnam is entitled to succeed to the office.

APPEAL from the decree of T. Rámasámi Ayyangár, Subordinate Judge at Cocanada, in appeal suit No. 38 of 1885, reversing the decree of T. R. Malhari Ráu, District Múnsif of Peddapuram, in original suit No. 128 of 1884.

The plaintiff sued for a declaration of his right to the office of karnam in a zamindari village and to have the appointment of defendant No. 1 set aside.

On the death of the karnam of the zamindari village of Kandregula, the zamindar, defendant No. 2, appointed defendant No. 1 to succeed him. Defendant No. 1 was the widow and heir of the deceased karnam, and was a minor at the time of her appointment. The plaintiff was the nearest male sapinda of the deceased karnam, from whom, however, he had been divided: he claimed the office on the ground that defendant No. 1, being a female, was incapacitated to fill the office.

The District Múnsif dismissed the suit on the ground that the plaintiff, being divided from the late karnam, had no title to maintain it.

His decree was reversed by the Subordinate Judge, against whose decree defendant No. 1 preferred this second appeal.

* Second Appeal No. 336 of 1886.

Subba Ráu for appellant.

Bhášyam Ayyangár for respondent.

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The arguments adduced in this second appeal appear sufficiently, for the purpose of this report, from the judgments of the Court (Kernan and Parkér, JJ.).

KERNAN, J.—It has been found that the plaintiff was divided from the late karnam of Kandregula village, the husband of the appellant (defendant No. 1), who is the heir of her husband, after whose death she was appointed karnam by defendant No. 2. The plaintiff is karnam of another village called Kanapur and seeks, in this suit, to cancel the appointment by defendant No. 2, and to have a decree declaring him karnam, and to gain possession of mirasi lands attached to the office. The plaintiff is a sapinda of the late karnam and puts forward his claim on the ground that defendant No. 1, being a female, is incapacitated to fill the office.

Regulation XXIX of 1802, s. 7, directs that in filling vacancies in the office of karnam the heir of the preceding karnam shall be chosen by the landholders concerned, except in cases of incapacity, on proof of which the landholders shall be free to exercise their discretion in the nomination of persons to fill vacancies. The plaintiff contends that, by reason of her sex, defendant No. 1 is incapacitated to fill the office. No doubt it has been so decided in this Court (see the cases collected in *Venkata v. Rámá*. (1)) In those cases, the plaintiff, a female, sued the zamíndár to be declared karnam as heir of the deceased karnam. The zamíndár, it was held, was entitled to resist the claim. In this case the female is not plaintiff and the zamíndár has appointed her. However, looking to the duties to be performed by karnam as specified in the regulation, many of which are for public purposes, I am not able to see that the special facts of this case justify the zamíndár in making the appointment, or relieve the appellant, defendant No. 1, from the incapacity arising from her sex.

But the question now is whether the plaintiff, respondent, had title to maintain this suit. He is not the heir of the deceased karnam, and though the heir may be incapacitated, and though the plaintiff is a sapinda of the deceased karnam, is he entitled to the office against the will of the zamíndár? Section 7 of the regulation provides that in filling vacancies in the office of karnam, the

(1) I.L.R., 8 Mad., 257.

CHANDRAMMÁ heirs of the preceding karnam shall be chosen by the landholder; V^{v.} VENKATRÁJU. except, in case of incapacity, the landholder shall be free to exercise his discretion in the nomination of the person to fill the vacancy.

The zamíndár has not nominated the plaintiff to the office. Therefore, he has no title to maintain this suit, unless the true construction of the regulation is that when the immediate heir is incapacitated, a sapinda of the deceased karnam, who is not his heir, is entitled to succeed to the office. There is no such provision in the regulation. This case is an illustration of the inconveniences of such construction; as here the plaintiff is divided from the family of the deceased karnam and is already a karnam in another village. I am not aware that the exact point has yet been raised and decided. But many cases appear to have been decided adopting such construction—see *Venkayya v. Subbaráyudu*.(1) I think, therefore, the appeal must be dismissed with costs.

PARKER, J.—The karnam of Kandregula having died, the zamíndár, defendant No. 2, appointed his widow, defendant No. 1, to the office. She was no doubt the nearest heir to the deceased, but was incapacitated, by her sex, from holding the office of karnam—*Venkataratnamma v. Rámdnujasámi*.(2)

The plaintiff, the present claimant, is found to be the nearest male sapinda of the deceased, and the question is whether he has a right to sue, though not the nearest heir.

The tendency of the decisions has been that under Regulation XXIX of 1802, s. 7, the zamíndár is bound to appoint from among the heirs of the deceased karnam, in order that the office may remain hereditary in the family, but passing over the nearest heir in case of personal incapacity—*Venkatanáráyana v. Subbaráyudu* (3) and *Venkayya v. Subbaráyudu*.(1) If the incapacity arise from minority, and another member of the family be appointed, he cannot be displaced on the nearer heir attaining majority—*Venkatanáráyana v. Subbaráyudu*.

We were referred to the judgment of this Court in second appeal No. 735 of 1882 (unreported). That was a case in which a minor had been appointed karnam and sued for the emoluments of the office, and all that the Court held was that he was entitled to the emoluments until the appointment was regularly set aside.

(1) I.L.R., 9 Mad., 283.

(2) I.L.R., 2 Mad., 312.

(3) I.L.R., 9 Mad., 214.

That case has, therefore, no bearing upon the present, which is a suit to set aside an appointment.

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Under the circumstances the decree passed by the Subordinate Judge was right and the second appeal must be dismissed with costs.

APPELLATE CIVIL.

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

RÁMACHANDRA (PLAINTIFF), APPELLANT,
and

NARÁYANASÁMI (DEFENDANT), RESPONDENT.*

1886.
November 16.
1887.
March 30.

*Rent Recovery Act (Madras Act VIII of 1865), s. 13—who entitled to proceed under—
Attachment held good as to part.*

A granted two villages in perpetuity to B under a deed, reserving a certain rent to himself which was to be recovered "according to the Act" if it fell into arrear. The rent remained unpaid for two years, and A obtained an attachment for the whole arrear under the Madras Rent Recovery Act:

Held, (1) that A was entitled to proceed as landlord under the Madras Rent Recovery Act;

(2) that the attachment held good for such amount of rent as was recoverable under that Act—*Rámasámi v. The Collector of Madura*(1) discussed.

APPEAL against the decree of H. T. Knox, Acting District Judge of North Arcot, reversing the decree of G. W. Fawcett, Acting Sub-Collector of North Arcot.

This was a summary suit brought under Act VIII of 1865 against the manager of the Kangundi Zamindari under the Court of Wards to procure the release of property alleged to have been illegally distrained and to recover damages.

The plaintiff held under a deed of grant from the Kangundi Zamindár, (exhibit A) dated 22nd October 1875, therein described as a "permanent pattá" of certain villages, reserving a rent of Rs. 350 "payable according to the kist bunds of each year," with regard to which it contained the following term:—

* Second Appeal No. 963 of 1885.

(1) I.L.R., 2 Mad., 67.