ABDUL v. AYAGA.

The Court (Muttusami Ayyar and Wilkinson, JJ.) delivered the following

JUDGMENT:—Two questions are argued in this appeal, viz., that the suit is bad owing to multifariousness, and that the finding of the Subordinate Judge that the alienations are not binding on the tarwad is unwarranted and not borne out by the evidence. As to the first point, the plaintiffs, who are junior members of the tarwad, sue the karnavan, certain members of the tarwad who side with him, and certain alienees for a declaration that certain documents executed by the karnavan are not binding on the tarwad or its property. It is not denied that if they had prayed for the removal of the karnavan the alienees would be necessary parties. The same view was taken in the decision referred to by the Subordinate Judge (*Vasudeva Shanbhaga* v. *Kuleadi Narnapai*(1)) with reference to a Hindu family, and we see no reason why a declaratory suit should be treated differently from a suit for possession inasmuch as the title to be adjudicated upon is the same in both.

Their Lordships then proceeded to consider the evidence in the case, and agreeing with the findings of the Subordinate Judge, dismissed the appeal with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar.

VENKAYYA (PLAINTIFF), APPELLANT,

v.

SURAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1889. Jan. 7. Feb. 8.

Civil Procedure Code, s. 13—Res judicata—Decree in suit by a karnam as such binds his successor.

The karnam in a certain mitta sued to recover certain land as part of the *mirasi* property attached to his office. It appeared that the plaintiff's father and predecessor in office had sued to recover the same land by virtue of his office and that his suit had been dismissed:

Held, that the plaintiff's claim was *res judicata*.

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(1) 7 M.H.C.R., 290.

* Second Appeal No. 126 of 1888.

VENKAYYA v. SURAMMA.

SECOND APPEAL against the decree of V. Strinivasacharlu, Subordinate Judge of Cocanada, in appeal suit No. 22 of 1887, affirming the decree of T. R. Malhari Rau, District Munsif of Peddapur, in original suit No. 22 of 1886.

Suit by a karnam to recover certain land on the ground that it was part of the *mirasi* property attached to his office. The plaintiff's father and predecessor in office had brought suit No. 312 of 1883 to recover the same land "by virtue of his office and by the custom" and had failed: the plaintiff met the plea of *res judicata* founded on the decree in that suit by the argument that he did not claim under his father's title but sued in his own right as holder of the office.

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

The plaintiff preferred this second appeal.

Subba Rau for appellant.

Ramachandra Rau Saheb for respondents.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Muttusami Ayyar, J.).

JUDGMENT.—The appellant is a karnam in the mitta of Viravaram in the Godavari District, and the father of respondent No. 1 belonged to a collateral branch of the karnam's family. The land in dispute originally formed part of the emolument attaching to the office of karnam. According to the judgment in original suit No. 312 of 1883, it had been severed from the office more than 40 years ago, and passed into the possession of the respondent's branch of the family in the life-time of her paternal great-grandfather. Her father died in 1877, and during his life-time neither the appellant's father nor his grandfather sought to re-attach the land to the office. Prior to his death, the father of respondent No. 1 bequeathed his property to her, and the land in litigation passed into her possession. Thereupon, the appellant's father instituted original suit No. 312 of 1883 for its recovery, but that suit was dismissed on the ground that it was barred by limitation. Shortly after, he resigned his office, and appellant was appointed in his stead. The resignation and the appointment are found by the Courts below to have been contrived for the purpose of reviving the litigation set at rest by the final decree in original suit No. 312 of 1883. The appellant was appointed in August

1885, and he brought the present suit in 1886. The ground of claim was that the land was attached to his office, that respondent No. 1 somehow or other got into possession and leased it out to respondents Nos. 2 and 3. Respondent No. 1 contended that the appellant's appointment was illegal, that his claim was *res judicata*, and that it was barred by limitation. The Subordinate Judge held on appeal that the claim was *res judicata* and that it was barred by limitation, and dismissed the suit on both points. His decision is impugned in second appeal.

We consider the decision in original suit No. 312 of 1883 is binding on the appellant and the claim was properly held to be *res judicata*. It is conceded that such would be the case if the land in question were private property, but it is contended that the emolument attached to an office is in the nature of a salary assigned to that office, and is either no property at all or at least public property, and that each karnam acquires a fresh right to enjoy the emolument on his appointment, and is entitled to enforce it by a new suit, though his predecessor in office might have sued in respect of the same cause of action and failed. We are unable to accede to this suggestion, for, when land is held on a service tenure it does not cease either to be property or private property. If the revenue due thereon was remitted by the Crown on condition that it was to be appropriated to a specific purpose, the Crown might assess the land when the revenue ceased to be so appropriated. According to the custom of the country, the land in dispute is the hereditary property of the karnam's family, held subject to the obligation of rendering service as karnam. The incident peculiar to the tenure consists in each office-bearer having property therein while lawfully in office without power to sever it from the office and with the obligation to transmit it to his successor in office. If in breach of his duty an office-bearer alienates the land and severs it from the office, his successor has a right to avoid the alienation and to sue to re-attach it to the office within 12 years from the date of his appointment. If he fails to do so, he and his future successors are barred alike, the suit brought by him being regarded not as one brought to enforce his individual right but as one instituted by the representative for the time being of the reversion. The view suggested for the appellant, viz., that each successor may sue again on his appointment to the office, involves in it the anomaly of practically abrogating the Limitation Act.

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The suit brought by the appellant's father was brought in the interest of all future successors consequent on the jural relation between the office and the land, and the decision passed therein is, therefore, binding on the appellant.

As to the cases cited, *Papaya* v. *Ramana*(1) is only an authority for the proposition that though Regulation XXIX of 1802 does not contain a prohibitory provision, similar to that which is found in Regulation VI of 1831, yet lands attached to the office of a karnam in permanently-settled estates cannot be alienated by the holder of the office for the time being, from the very nature of the tenure on which the land is held. In that case, the alienation was made by the father of the then second and third appellants and the suit was brought within 12 years from the alienor's death and the date when the succession to the office devolved on them. The question now before us did not arise in that case. *Babaji* v. *Nana*(2) is a clear authority in support of the principle on which we think this case should be decided. Nor is the case of *Radhabai* v. *Anantarav Bhagvant Deshpande*(3) in favor of the appellant. That was a case in which the service *vatan* had been enfranchised. It was urged that, notwithstanding the enfranchisement, the *vatan* was inalienable by family custom. It was held that in the absence of fraud and collusion, judgment against one holder of such service *vatan* was *res judicata* as regards a succeeding holder, and the actual decision, therefore, is against the appellant before us. The case of *Seshaiya* v. *Gauramma*(4) decided, no doubt, that possession of a lopaikari holder or a member of the karnam's family by claim of coparcenary right was not necessarily adverse and might be taken to be permissive. But this is a matter which must have been urged in the former suit in which it was decided that the land vested in the respondent's branch in a family partition which took place more than 40 years previously. We are not now at liberty to go behind the decree passed in it and consider it on the merits. This second appeal cannot be supported, and we dismiss it with costs.

(1) I.L.R., 7 Mad., 85.
(2) I.L.R., 1 Bom., 535.
(3) I.L.R., 9 Bom., 198.
(4) 4 M.H.C.R., 339.