VENKATA-RAYADU v. VENKATA-RAMAYYA.

Defendants Nos. 5 to 9 preferred this second appeal.

Bashyam Ayyangar for appellants.

R. Subramanya Ayyar for respondents.

JUDGMENT.—We think that the decision of the Subordinate Judge is opposed to the principles laid down in the Full Bench decision in *Venkata* v. *Rama*(1). The land which formed the emolument of the office of karnam did not become the family property of the person appointed to the office, although he may have had an hereditary claim to the office. The land was designed to be the emolument of the person into whose hand the office of the karnam might pass and was inalienable by him. The effect of enfranchisement was to free the lands from their inalienable character and to empower the Government to deal with them as they pleased. The grant of them to Venkata Narasiah was not a grant to the undivided family, of which he formed a unit, but to him personally, and the future succession and transmission of the land was placed in the same position as any other private property. The plaintiffs were neither holders of the office at the time of enfranchisement, nor in possession of the lands, and their suit, therefore, was, as the Munsif held, not sustainable. We reverse the decree of the Subordinate Judge and restore that of the Munsif with costs in this and the Lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Handley.

1891. October 27. November 11.

HAYAGREEVA (PLAINTIFF), APPELLANT,

v.

SAMI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Easements Act—Act V of 1882, *s.* 24—*Rights accessary to an easement.*

The plaintiff having in a previous suit obtained a decree declaring his right of having the roof of his house projecting over the defendants' land, and discharging water thereon, now sued for a declaration of his right to go upon the defendants' land for the purpose of repairing the roof:

(1) I.L.R., 8 Mad., 249.

* Second Appeal No. 1198 of 1890.

Held, that the plaintiff was entitled to the right claimed as being accessory to the easement already established, but that it should be exercised only once a year and after notice to the defendants.

SECOND APPEAL and memorandum of objections against the decree of L. A. Campbell, Acting District Judge of Coimbatore, in appeal suit No. 32 of 1890, modifying the decree of V. Malhari Rau, District Munsif of Coimbatore, in original suit No. 622 of 1888.

The facts of the case are stated above sufficiently for the purpose of this report.

The District Munsif passed a decree as prayed. The District Judge on appeal modified this decree "by directing that the repairs in question be done within three months from this date."

The plaintiff preferred this second appeal.

Balaji Rau for appellant.

Ramachandra Ayyar for respondents.

JUDGMENT.—We think that the Lower Courts were right in holding that the plaintiff's right to go into defendants' land for the purpose of repairing his wall and roof was a right accessory to the easement which was established in the former suit of having the roof of his house projecting on defendants' land and discharging the water on defendants' land; and the Lower Appellate Court was quite right in holding that there must be some limit of time to the exercise of such accessory right; but we think it was in error in only allowing the right to be exercised on one occasion and thus rendering further litigation necessary when other repairs become necessary in future. We shall modify the decree of the Lower Appellate Court by providing that plaintiff's right of entering upon defendants' land to repair his roof and wall shall only be exercised once a year after one month's notice to defendants and between the hours of 9 A.M. and 5 P.M. Each party will bear his own costs of this second appeal.

The memorandum of objections is dismissed with costs.