

APPELLATE CIVIL.

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

1891.
Nov. 24.

VENKATARAYADU AND OTHERS (REPRESENTATIVE OF DEFENDANT
No. 5 AND DEFENDANTS NOS. 6 TO 9), APPELLANTS,

v.

VENKATARAMAYYA AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

*Hindu Law—Karnam, hereditary office of—Enfranchisement of endowment—
Devolution of land enfranchised.*

The holder of a hereditary office of karnam had two undivided sons, in favour of one of whom he resigned his office. Subsequently a revision of the village establishment took place, the new karnam was removed from the office, and the lands, which constituted its endowment having been enfranchised by the Inam Commissioner, a title-deed in respect of them was issued to him. After his death without issue his nephews sued to establish their right to the land:

Held, that the land passed to the grantee personally and not to his family, and, consequently, devolved, on his death, as private property.

SECOND APPEAL against the decree of M. B. Sundara Rau, Subordinate Judge of Ellore, in appeal suit No. 50 of 1888, reversing the decree of R. Hanumantha Rau, District Munsif of Tanuku, in original suit No. 94 of 1885.

Suit for the possession of certain land with mesne profits.

One Seetanna held the hereditary office of karnam of Tanuku, of which the land now in question formed the endowment. He had two sons undivided from him, of whom one was the father of the plaintiffs, and the other (Venkata Narasiah) was the husband of defendant No. 2. Seetanna having grown old, resigned his office in favour of Venkata Narasiah, who became karnam in his place; the land was enjoyed by them in common. Subsequently a revision of the village establishment took place, Venkata Narasiah was removed from the office of karnam, and the endowment of the office was enfranchised by the Inam Commissioner who issued to Venkata Narasiah a title-deed in respect of the land in question. After the death of Venkata Narasiah, the land was registered in the name of

* Second Appeal No. 2 of 1891.

defendant No. 2 as his heiress and she alienated it to defendants Nos. 4 to 17.

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The plaintiffs sought to recover the land as property belonging to their family, or, by virtue of a hereditary title, claiming that defendant No. 2 was entitled to maintenance only.

The District Munsif held that the suit was not maintainable. The Subordinate Judge passed a decree for the plaintiffs. He referred to the case cited in the judgment of the High Court and said —

“The facts of that case widely differ from those on which the present case stands.

“In that case the officeholder had never a hereditary right to the office. He was a stranger, and the lands were enfranchised in his name. Plaintiff was one of the persons who had a hereditary right to the office. He was an adopted son of one of the persons who had a similar right. Soon after his adoptive father’s death, the lands were resumed by Government, and the application made on his behalf for restoration of such lands to the plaintiff was rejected. No further steps were taken to have this order of rejection set aside in appeal for more than three years after that order, and the lands were enfranchised in the name of defendant, the officeholder, who had no hereditary right to it. After enfranchisement of the lands in the name of the officeholder, the plaintiff lodged his suits for the lands. His claim was rejected by the High Court on the ground that he held no office at the date of enfranchisement, and that the plaintiff had therefore no title to the lands. The case shows a contest between a new comer to the office and one whose claim to it and the lands was rejected some years ago.

“The present case is this. Seetanna, the father of Venkata Narasayya, resigned his office in favour of his son on account of his old age, and the latter was enlisted as a karnam in his stead. Both the father and Venkata Narasayya lived together and enjoyed the profits of the lands, until the latter’s death. Plaintiffs are sons of an undivided brother and they are men having a hereditary right both to the office and emoluments thereof on the death of Venkata Narasayya or his father.

“On the death of the appellant, plaintiff, in the case in which the Full Bench decision was passed, had no such hereditary right, for they do not stand in the line of heirs to one another.”

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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.

HAYAGREVA (PLAINTIFF), APPELLANT,

v.

SAMI AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Easements Act—Act V of 1882, s. 24—Rights accessory 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) 1.L.R., 8 Mad., 249.

* Second Appeal No. 1198 of 1890.