

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

NARASIMMA (PLAINTIFF), APPELLANT,

v.

SURIANARAYANA AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
RESPONDENTS.*

*Revenue Recovery Act—Act II of 1864 (Madras), ss. 32, 42—Encumbrance—
Permanent lease at a low rent.*

One of the villages in a mita was demised by the mittadar to A on a permanent lease, at a rate below both the faisal assessment and the proportion of revenue payable upon it. The lessee's interest was brought to sale in execution of a decree and purchased by B, and ultimately was sold in 1834 to the plaintiff who now sued the tenant in possession to enforce an exchange of patta and muchalka. In the interval, viz., in 1833, the village was sold for arrears of revenue under Madras Act II of 1864 to C and the defendant claimed to hold the land from C :

Held, that the permanent lease was an encumbrance under Revenue Recovery Act, 1864, s. 42, and was voidable by the purchaser at the revenue sale, although it had not been declared to be invalid by the Collector.

SECOND APPEAL against the decree of L. A. Campbell, District Judge of Salem, in appeal suit No. 150 of 1886, reversing the decree of Sultan Moidin, District Munsif of Krishnagiri, in original suit No. 265 of 1885.

Suit to enforce the acceptance of a patta and execution of a muchalka by the defendant.

It appeared that a permanent lease of a village in a certain mita had been granted to one Adam Sahib, and that Adam Sahib's interest had been attached and brought to sale in execution of a decree and purchased by Muniappa Chetti. It was alleged that Muniappa Chetti's interest had passed by various mesne assignments and lastly by a sale-deed, dated 30th January 1884, to the plaintiff. The defendant was in occupation of the village and the plaintiff now sued as above to enforce an exchange of patta and muchalka.

In 1883 the village was sold under the Revenue Recovery Act for arrears of revenue and purchased by one Ramachandra Ayyar and the defendant now pleaded that he held under this purchaser.

* Second Appeal No. 835 of 1891.

The District Munsif passed a decree for the plaintiff. This decree was reversed on appeal and the suit dismissed by the District Judge after a remand of the case. The District Judge observed :—

“A lease of this nature cannot under Hindu Law bind the next owner of the property unless it can be shown to be to the advantage of the property. It cannot be to the advantage of the property that it should be permanently leased for a sum so far below both the faisal assessment and the proportion of the revenue payable on it. This being so, I consider that plaintiff has failed to show his title to hold on as a permanent farmer of the entire village after its sale by Government. He bought after that sale and must be taken to have known of it.”

The plaintiff preferred this second appeal.

Ramachandra Ayyar for appellant.

Subramanya Ayyar for respondents.

JUDGMENT.—It is first urged on behalf of the appellant that the Judge was in error in taking into consideration the evidence adduced by second defendant (whose name had been ordered to be removed from the suit) in proof of the revenue sale. The evidence was adduced when first and second defendants were jointly contending that the former's holding was under second defendant and not under plaintiff; and the finding originally called for had reference to that joint contention. Such being the case, we cannot say that the Judge was wrong in using this evidence in determining the issue as between plaintiff and first defendant. It is next contended that the Judge is in error in holding that plaintiff's perpetual lease is not binding on the purchaser in that it was granted for a sum below the faisal assessment and the proportional revenue payable on it.

A permanent lease is, in our opinion, an encumbrance within the meaning of section 42 of Madras Act II of 1864. It creates an under tenure which diminishes the value of the estate.

As for the contention that the permanent lease in question fell under section 32 of the Act, and that, as there was no declaration by the Collector of its being invalid, it must be upheld, we are of opinion that the absence of a declaration by the Collector is immaterial and will not preclude the purchaser from avoiding the lease on the ground of its being an encumbrance under section 42.

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We are of opinion, therefore, that the decision of the Judge must be upheld for the reasons stated above.

This second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Best.

RANGASAMI (PLAINTIFF), APPELLANT,

v.

RANGA AND OTHERS (DEFENDANTS, NOS. 1 TO 3 AND 5 TO 6),
RESPONDENTS.*

1892.

Sept. 5, 16.

Religious office, assignment of—Res extra commercium—Custom as to assignability.

The plaintiff sued for a declaration of his title as purchaser of a mirasi office in a temple, to which were attached certain duties to be performed as part of a religious ceremony, and for a sum of money representing the emoluments of the office. The first defendant was the plaintiff's vendor, the second defendant claimed title to the office by purchase, the other defendants were the trustees of the temple, and they did not appear on appeal. The Court of first instance passed a decree as prayed, which was reversed on an appeal preferred by the second defendant alone. On second appeal:

Held, that defendant No. 2 was not entitled to a decree on the sole ground that the office was *res extra commercium*.

Per Parker, J.—Had the trustees of the temple appeared in the Court of first appeal and raised the question of the inalienability of the office, it would have been necessary for the Court to have determined the question whether by the custom of the particular institution such alienations were valid.

SECOND APPEAL against the decree of H. H. O'Farrel, District Judge of Trichinopoly, in appeal suit No. 52 of 1889, reversing the decree of V. Swaminadha Ayyar, Additional District Munsif of Trichinopoly, in original suit No. 227 of 1888.

The plaintiff prayed for a declaration of his title as holder of a mirasi office called Tiruvalakkunayakam, in the Sri Ranganatha Swami temple at Srirangam, under a sale-deed, dated 2nd July 1888, by which the office and its emoluments were assigned to him, and for certain reliefs consequential on this declaration. The duties of the office are described sufficiently for the purpose of this report in the judgment of BEST, J. Defendant No. 1 was the previous holder of the office in question and the executant of

* Second Appeal No. 1571 of 1891.