

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.

KUMARASAMI PILLAI (DEFENDANT), APPELLANT,

1896.
November 8.

v.

ORR AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Karnams in a permanently settled estate—Regulation XXV of 1802, ss. 8, 11—Regulation XXIX of 1802, s. 5—Right to dismiss a karnam—Delegation of such right to lessees of zamindari—Damages accrued by a karnam's neglect of a statutory duty.

The lessees of a zamindari are not entitled to sue for the removal of a karnam from office, though their lease contains a provision purporting to authorise them to appoint and remove karnams, but if they suffer any loss from the karnam's neglect of his statutory duty, they are entitled to bring an action for damages against him.

APPEAL against the order of W. Dumergue, District Judge of Madura, in appeal suit No. 594 of 1895, setting aside the decree of C. Gopalan Nayar, Subordinate Judge of Madura (East), in original suit No. 22 of 1895 and remanding that suit for disposal on the merits.

The plaintiffs held from the Zamindar of Sivaganga a lease of his estate which, *inter alia*, authorised them to "proceed in their own names to exercise all the powers which would be exercised by the zamindar, including the appointment and removal of village karnams and other servants for the management and improvement of the said zamindari." The plaintiffs alleged that they had suffered loss by reason of the omission of the defendant, who was the karnam of a village in the zamindari, to render due accounts and to perform certain other duties, and they sued to have him removed from office and for damages.

The District Munsif held that the suit was not maintainable for the reason that the plaintiffs were not the proprietors of the zamindari and had not been registered as transferees under Regulation XXV of 1802, section 8. He referred to *Cherukomen v. Ismail*(1), *Rajah Vurmah Valia v. Ravi Vurmah Kunhi Kutty*(2),

* Appeal against Order No. 57 of 1896.

(1) 6 M.H.C.R., 145.

(2) I.L.R., 1 Mad., 235.

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Valamarama v. Virappa(1), *Ramachandra v. Appayya*(2), *Subramanya v. Somasundara*(3), and *Ayyappa v. Venkatakrisnamarazu*(4).

The District Judge held that the suit was maintainable and set aside the decree and remanded it to be disposed of on the merits. He distinguished the cases cited by the Subordinate Judge and supported his view by a reference to *Syed Ali Saib v. Zamindar of Salur*(5), and *Vizianagaram Maharaja v. Suryanarayana*(6).

The defendant preferred this appeal.

Mr. R. F. Grant for appellant.

Mr. Norton and Mr. Ryan for respondent.

JUDGMENT.— If the plaintiffs have, in fact, suffered any damage from a neglect of a duty imposed by statute on the karnam, they are entitled to bring a suit to recover such damage.

Section 11 of Regulation XXV of 1802 does not restrict or take away this right. As regards that portion of the plaintiffs' action, which relates to their claim to remove the karnam from his office, the first question is whether the plaintiffs in their right as lessees (independently of the clause in their lease purporting to transfer to them the right to bring such a suit) can maintain that portion of their claim. Section 11 clearly gives this power to the zamindar or proprietor and to no one else. Inasmuch, therefore, as the plaintiffs' assignment does not make them proprietors or zamindars within the meaning of the Regulation, they cannot sue.

Section 5 of Regulation XXIX of 1802 cannot be read as conferring a general right to bring such an action on any person interested, but must be read in conjunction with section 11 of Regulation XXV already referred to.

The next point raised by plaintiffs' counsel was that the zamindar had, by a special provision in the plaintiffs' lease, assigned to the plaintiffs the right to bring a suit to remove karnams and therefore the plaintiffs were entitled to maintain this part of their claim.

Having regard to the nature of the power in question, we think it was not one which could be transferred. *Delegata potest as non potest delegari.*

(1) I.L.R., 5 Mad., 145.

(2) I.L.R., 7 Mad., 128.

(3) I.L.R., 15 Mad., 127.

(4) I.L.R., 15 Mad., 484.

(5) 3 M.H.C.R., 5.

(6) I.L.R., 9 Mad., 307.

We therefore think that plaintiffs cannot maintain so much of their action as relates to the removal of the defendant from his office. The order of the District Judge remanding the suit for trial, so far as the plaintiffs' right to claim for damages is concerned, is right. It must, however, be modified as to the remainder of the claim and the suit to this extent be dismissed.

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Each party must bear their own costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Boddam.

SUBRAMANIA AYYAR (DEFENDANT), APPELLANT, No. 2,

1896.
November 12

v.

SITHA LAKSHMI (PLAINTIFF'S REPRESENTATIVE), RESPONDENT.*

Transfer of Property Act—Act IV of 1882, s. 127—Onerous gift to an infant—Acceptance.

Land was given by the defendant to the wife of the plaintiff burdened with an obligation. She accepted the gift and died in infancy leaving the plaintiff her heir. The plaintiff now sued to make good his title to the land against the donor:

Held, that the gift was complete as against the donor and that the plaintiff was entitled to a decree.

SECOND APPEAL against the decree of T. Ramachandra Rau, Subordinate Judge of Trichinopoly, in appeal suit No. 154 of 1893, reversing the decree of G. Narasimhalu Naidu, District Munsif of Kulitalai, in original suit No. 363 of 1891.

The plaintiff sued as the heir of his wife who was the daughter of defendant No. 2, and died when an infant, to recover certain land which had been given to her by her father under a deed of gift which was in the following terms:—

“Deed of gift in respect of Manjakani (dowry), dated 1st February 1889, executed by Subramania Ayyar, son of Rangaiyer, Brahman, saivite, cultivator, residing at Mutharasanallur, Trichinopoly Taluk, to Venkatasubbammal, wife of Somarasampettah Gopalaiyer, and my eldest daughter, Brahman, saivite and housewife residing at the said Mutharasanallur, is as follows:—

* Second Appeal No. 981 of 1895.