

MARUDA-
MUTHU
NADAN
v.
SRINIVASA
PILLAI.

In the result, we set aside the decrees of the Courts below and give judgment for plaintiffs for possession of the land sued for on their paying Rs. 230 within three months from this date, failing which the suit will stand dismissed with costs throughout. If the payment is duly made each party will bear their own costs throughout.]

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1897.
April 5, 6.

PICHUVAYYAN (PLAINTIFF), APPELLANT,

v.

VILAKKUDAYAN ASARI (DEFENDANT No. 2), RESPONDENT.*

Regulation VI of 1831 (Madras), s. 3—Village service inam—Village blacksmith—Limitation.

The mortgagee of maniam land attached to the hereditary office of village blacksmith sued in the Court of a District Munsif for possession, to which he claimed to be entitled under his mortgage; and there was evidence that he had been in possession for many years up to a date not long prior to the suit:

Held, that, as the plaintiff could have sued only under Regulation VI of 1831 in a Revenue Court, he could not, under Limitation Act, 1877, section 28, acquire a title by prescription to the land.

SECOND APPEAL against the decree of W. Dumergue, District Judge of Madura, in Appeal Suit No. 178 of 1895, reversing the decree of S. Ramasami Ayyangar, District Munsif of Sivaganga, in Original Suit No. 481 of 1894.

The plaintiff, alleging that he was the possessory mortgagee, sued to eject the defendants from the land alleged to be comprised in his mortgage. He obtained a decree in the Court of first instance and the second defendant appealed to the District Court.

The District Judge said:—"The plaint land is admittedly maniam land attached to the hereditary office of village blacksmith and is in the possession of the second defendant who is the holder of the office. The District Munsif has held, *inter alia* that the mortgage is valid and that the second defendant is estopped from questioning its validity, but he has entirely over-

* Second Appeal No. 290 of 1896.

looked the provisions of Regulation VI of 1831. One of the objects of that Regulation, as stated in the preamble, was to declare that all emoluments attached to various hereditary village and other offices (other than the office of Kurnam established by Regulation XXIX of 1802) in the Revenue and Police departments, 'are inalienable by mortgage, sale, gifts or otherwise' and Civil Courts are precluded by section 3 from taking cognizance of any claims to the enjoyment of any of the emoluments annexed to such offices. In *Ravutha Koundan v. Muthu Koundan*(1), the question to be decided was whether a certain and alleged to be 'maniam' was or was not 'maniam' and this question was held to be within the jurisdiction of a civil tribunal, but in *Palamalai Padayachi v. Shanmuga Asari*(2) the Full Bench decided that a suit for the possession of the emoluments of an hereditary office is not maintainable in a Civil Court. No doubt in that case the plaintiff claimed also a right to the office, but, considering the terms of the preamble and of section 3, Regulation VI of 1831, the same rule is, in my opinion, applicable to this case also, where the plaintiff seeks to obtain possession of the maniam lands and to eject the office holder. Hence the decree of the Lower Court must be reversed and the plaintiff's suit dismissed with costs throughout."

The plaintiff preferred this second appeal.

Kuppusami Ayyar for appellant.

Desikachariar for respondent.

JUDGMENT.—Blacksmith and carpenter inams are within the purview of Regulation VI of 1831 (letter from the Sadr Adalat to Government, dated 30th June 1852, and *Palamalai Padayachi v. Shanmuga Asari*(2)). The plaintiff did not allege in his plaint a title by adverse possession for over twelve years, nor was there any issue on such plea. Moreover as the plaintiff could have sued only under Regulation VI of 1831 in a Revenue Court but not in a Civil Court for recovery of the inam land and as the Indian Limitation Act does not prescribe any period of limit for suits under the Regulation, the plaintiff could not under section 28 of the Act acquire a title by prescription.

The second appeal, therefore, fails and is dismissed with costs.

(1) I.L.R., 13 Mad., 41.

(2) I.L.R., 17 Mad., 302.