

APPELLATE CIVIL.

Before Mr. Justice Subrahmaniam Ayyar and Mr. Justice Sankaran Nair.

1904.
July 27.
August 10.

RAJA OF VIZIANAGARAM (COUNTER-PETITIONER—
TRANSFEREE), DECREE-HOLDER—APPELLANT,

v.

DANTIVADA CHELLIAH (PETITIONER—FIRST DEFENDANT),
RESPONDENT.*

Hereditary Village Offices Act—(Madras Act III of 1895), s. 5—Emoluments of Village offices—Non-liability to attachment or sale by Courts.

The prohibition in section 5 of the Madras Hereditary Village Offices Act (III of 1895) against attachment and sale by the Courts is absolute and deprives Civil Courts of all jurisdiction to give directions for sale of inam lands granted as emoluments for the performance of duties connected with the offices referred to in that section. A decree directing the sale of such lands is *ultra vires*.

EXECUTION PETITION. The decree, which had been obtained *ex parte*, contained an order for the sale of certain mortgaged land, which was admittedly service inam land, being the emoluments attached to the office of village carpenter. The defendant filed a petition in the District Munsif's Court stating this fact and praying that the execution petition might be dismissed. The Munsif, in his order, said: "The decree sought to be enforced is a mortgage decree which directs the realisation of a certain sum of money by sale of the mortgaged lands. The decree-holder now having applied for sale of the mortgaged lands the first judgment-debtor puts in this application under section 244 of the Civil Procedure Code, objecting to the sale of the lands on the ground that they are unenfranchised service inam lands and as such they are inalienable under section 5 of Act III of 1895 and relies on the case quoted in *Kannam Naidu v. Latchanna Dhorai* (1), which forbids the attachment of crops raised on service inam lands. The pleader for the plaintiff argues that this Court which executes the decree cannot go behind

* Civil Miscellaneous Second Appeal No. 5 of 1904, presented against the order of J. J. Cotton, Esq., District Judge of Vizagapatam, in Appeal Suit No. 162 of 1903, presented against the order of M.R.Ry. P. N. Satagopa Nayudu, District Munsif of Vizianagaram, Miscellaneous Petition No. 120 of 1903, in Execution Petition No. 574 of 1902 (Original Suit No. 717 of 1897).

(1) I.L.R., 23 Mad., 492.

the decree which rightly or wrongly directs the sale of the property and this objection as regards the inalienability of the lands mortgaged ought to have been raised in the suit itself Now the point is whether this is a question coming under section 244 of the Code and whether contrary to the terms of the decree, this Court could direct the sale of the lands to be stopped on the grounds that the land is inalienable."

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He considered that he could not refuse to order the sale of the lands and dismissed the application. The District Judge, on appeal, reversed that order. The decree-holder preferred this appeal.

T. Rangachariar for appellant.

V. Ramesam for respondent.

JUDGMENT.—The appellant, the Maharaja of Vizianagaram, obtained a decree *ex-parte* against the respondent on a mortgage, and it contained an order for the sale of the mortgaged land. Though the record prior to, and inclusive of, the decree makes no allusion to the fact, yet in the subsequent proceedings the land is admitted to be service inam, being the emoluments attached to the office of village carpenter, which is among the offices comprised in the Madras Hereditary Village Offices Act (Act III of 1895) Section 5 of that Act runs thus:—"The emoluments of village offices, whether such offices be or be not hereditary, and in the schedule districts as defined in the Scheduled Districts Act, 1874, all such emoluments and other emoluments granted or continued in remuneration for the performance of duties connected with the collection of the revenue or the maintenance of order, shall not be liable to be transferred or encumbered in any manner whatsoever, and it shall not be lawful for any Court to attach or sell such emoluments or any portion thereof." With reference to this section, the lower Appellate Court refused to cause the sale to be held, notwithstanding the direction for sale contained in the decree.

On behalf of the appellant, it is contended that, as between the parties to the decree, the order for sale therein contained must be carried out, notwithstanding the prohibition of law relied on by the lower Appellate Court. If the interdiction upon alienation by parties or attachment or sale by Court, were merely for the benefit of particular persons it would, no doubt, be open to them to waive the benefit, introduced in their favour, and, on such waiver, the transfer could be given effect to, and a sale, necessary for that

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purpose, might take place. Again, even when enactments prohibiting transfers have had wider objects, such transfers have been held binding upon the actual individuals making the transfer, on the principle of a personal estoppel by reason of a personal interest possessed by these individuals. But where the prohibition has some object of public policy in view the rule is to enforce the prohibition literally and strictly (compare *Hard Castle* on 'Interpretation of Statutes,' third edition, pages 392 and 397). There can be no doubt that section 5 referred to has been framed on considerations of such a policy and in order to guard against the dissociation from the specified offices, to any extent whatever of the emoluments attached thereto, as that cannot but impair the efficiency of the services to be rendered by the officers and consequently affect injuriously the interests alike of the Government and of the sections of the public concerned.

In these circumstances the prohibition, in question, must be taken to be absolute and to deprive civil courts of all jurisdiction to give a direction for sale of such inam property as that in question. And the decree in so far as the direction for sale goes was altogether *ultra vires* and incompetent to confer the right intended (see *Vasanji Haribhai v. Lallu Akhu*(1) and Courts are bound on the matter coming to their notice, to abstain from enforcing the direction.

As to the cases of *Sadashiv Lalit v. Jayantibai*(2) and *Narayan Khandu Kulkarni v. Kalgaunda Biradar Patel*(3) cited for the appellant, the former of which, was the case of a right to officiate at religious ceremonies in a certain village, and the latter a case of *Kulakarni Vatan land* both apparently, fall under the second of the heads stated above, *i.e.*, cases of estoppel on the ground of personal interest of the individual transferers. The provisions of section 5 of the *Bombay Hereditary Offices Act* (Act III of 1864) bearing on the question of a vatandar's power to alienate vatan land, which was under consideration in the second of the above cases, differ indeed essentially from the provisions of section 5 of the *Madras Act* for they imply that a vatandar has unrestricted power of transfer of vatan lands when the transferee is a vatandar of the same vatan, and in other cases, that he could transfer, with

(1) I.L.R., 9 Bom., 285 at p. 288.

(2) I.L.R., 8 Bom., 185.

(3) I.L.R., 14 Bom., 404.

the sanction of the Government. And Sarjent, C.J., and Telang, J., naturally enough, doubted whether provisions of the qualified character of section 5 of the Bombay Act should be construed as making an alienation to a person outside the family void, as between the grantor and the grantee. These cases are clearly distinguishable from the present.

The appeal fails and is dismissed with costs.

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APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmania Ayyar.*

SANDHU TARAGANAR AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

1901.
August 22,
30.

HUSSAIN SAIHIB AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code--Act XIV of 1882, s. 244--Question relating to the execution, discharge or satisfaction of decree--Parties to the suit or their representatives.

A decree-holder in a suit purchased land at a Court auction which was held in execution of his decree. He made an application for delivery of possession which was dismissed. His heirs, after his death, made further applications, which were also dismissed. The heirs then sold the land to the present plaintiffs who thereupon brought the present suit to recover possession of the land :

Held, (1) that the right of the plaintiffs to recover possession of the land was a question relating to the execution, discharge, or satisfaction, of the decree ;

(2) that the question arose between the parties to the suit in which the decree was passed, or their representatives ; and

(3) that the suit was not maintainable, having regard to section 244 of the Code of Civil Procedure.

Surr for possession. The land in question had originally belonged to the defendants. A decree had been passed against them in Original Suit No. 131 of 1887, and the decree-holder had brought the land to sale and purchased it at a Court auction in execution of his decree. The decree-holder then made an application under section 318 of the Code of Civil Procedure for delivery of possession,

* Second Appeal No. 1586 of 1902, presented against the decree of J. Hewetson, Esq., District Judge of Tinnevely, in Appeal Suit No. 82 of 1902, presented against the decree of M.R.Ry. P. Govinda Menon, Additional District Munsif of Tinnevely, in Original Suit No. 225 of 1901.