

## APPELLATE CIVIL.

*Before Mr. Justice Miller and Mr. Justice Munro.*

KSHETRAVARO BISSOYI OF NAMANAGARAM (PLAINTIFF),  
APPELLANT,

*v.*

SOBHANAPURAM HARIKRISTNA NAIDU AND OTHERS  
(DEFENDANTS), RESPONDENTS.\*

*Hereditary Village Officer's Act—(Madras) III of 1895, s. 5—Permanent lease not a transfer within the meaning of s. 5.*

Section 5 of Madras Act III of 1895 only prohibits the transfer of ownership.

A permanent lease of lands forming the emoluments of an office does not amount to a transfer of ownership within the meaning of section 5 and is not prohibited by its provisions.

*Vencataswara Yettiapah Naicker v. Alagoo Moothoo Servugaran* [(1861) 8 M.L.A., 327], referred to.

APPEALS against the decrees of J. G. D. Partridge, Agent to the Governor in Ganjám, in Original Suits Nos. 2 and 3 of 1904.

Suits by the plaintiff the Bissoyi of Namanagram in the Parlákimedi Agency to set aside permanent leases of wet and dry lands as set forth in the schedule to the plaints.

Plaintiff's case was that the lands were service inam; that the plaintiff gave leases of them, at certain rents, that he gave notice to the defendants in 1902 cancelling the leases, that the Special Assistant Agent, Chicacole, issued proceedings stating that the leases were invalid and that the defendants refused to relinquish possession.

The Agent held that the permanent lease was not prohibited by section 5 of Madras Act III of 1895 and dismissed the suit.

Plaintiff appealed.

*T. V. Narayanaiah* for appellant.

*P. R. Sundara Ayyar, H. Sitaramaswami* and *N. Rajagopalachariar* for first respondent.

JUDGMENT.—The plaintiff in both the suits out of which these appeals arise is the Bissoyi of Namanagram. He in 1891 and 1899 granted two leases of certain land at rates of rent ordinary and reasonable in amount but permanently fixed. In 1904 he

\* Appeal Nos. 134 and 135 of 1905.

sued to set the leases aside and to recover possession of the lands on the ground that the leases were invalid inasmuch as the lands were service inam lands. The suits were dismissed and the plaintiff appeals. Under section 5 of Madras Act III of 1895 the emoluments attached by the State to certain offices "shall not be liable to be transferred or encumbered." The contention on behalf of the appellant is that the lands in suit are such emoluments and that the grant of a permanent lease amounts to a transfer within the meaning of the section. We shall assume for the sake of argument that the section applies to the lands in suit. The question then is what is the nature of the disposition which is prohibited by the words "shall not be liable to be transferred." It is contended that it is lawful for the plaintiff to lease out the lands in the ordinary way. Further it is clear from the use of the words "or encumbered" after "transferred" that the latter word does not include the transfer of an interest such as is acquired by a mortgage and which leaves the ownership in the transferor. The reasonable inference therefore is that, when it is said the emoluments shall not be liable to be transferred, what is prohibited is transfer of ownership. The question then remains whether the grant of a permanent lease is a transfer of ownership. Under Regulation XXV of 1802 proprietors of land may, subject to certain restrictions, transfer by gift, sale or otherwise their proprietary right in the whole or any part of their zamindaris. In *Vencataswara Yettiapah Naicker v. Alayoo Moottoo Servagaran* (1) their Lordships of the Privy Council held that a permanent lease of a portion of a zamindari is not an alienation, and cannot be considered as a transfer within the words of the Regulation. It is clear from this that the grant of a permanent lease is not a transfer of proprietary right or ownership. We therefore dismiss the appeals with costs.

MILLER  
AND  
MUNRO, JJ.  
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KSHETRABARO  
BISNOY  
2.  
SOBHANA-  
PURAM  
HABIBRISNA  
NAIDU.

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(1) (1861) 8 M.I.A., 327.