

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Phillips.

DIVI PUNNIAH (FIRST DEFENDANT), APPELLANT,

v.

1916.
November,
24.

GORANTLA KOTAMMA AND SIX OTHERS (PLAINTIFF AND HER
LEGAL REPRESENTATIVES), RESPONDENTS.*

Charitable inams—Resumption of, by Government—Patta granted to one of the previous trustees—Suit by representative of another trustee for share—Effect of resumption—Distinction between resumption and enfranchisement of personal or service inams.

Where the Government resumed certain lands which were held previously as charitable inam and 'after imposing an assessment' granted a patta to one of the persons who were the trustees thereof prior to the resumption.

Held, that the representative of another trustee had no right to claim a share in the land, as against the trustee to whom the patta was given.

The principles regulating the ownership of enfranchised lands in cases of enfranchisement of personal or service inams, afford no guidance in cases of resumption of charitable inams.

In cases of enfranchisement, there is a change not of ownership of the land but of the tenure on which it is held; in cases of resumption, the land previously the property of the trust is at the absolute disposal of the Government who can grant it to any one who becomes the owner subject to the obligations ordinarily attached to ryotwari tenure.

Gunnaiyan v. Kamakchi Ayyar (1903) I.L.R., 26 Mad., 339 and *Pingala Lakshmi-pathi v. Bommireddipalli Chalamayya* (1907) I.L.R., 30 Mad., 434, distinguished.

SECOND APPEAL against the decree of T. VARADARAJULU NAYUDU, the Subordinate Judge of Guntūr, in Appeal No. 578 of 1911, preferred against the decree of C. VIRASWAMI REDDI, the District Munsif of Ongole, in Original Suit No. 581 of 1909.

The plaintiff sued for partition and recovery of a half share in the suit lands. She alleged that the lands were previously "charitable inam lands" which were subsequently converted by the Government into jirayati lands, and that a patta was issued to the first defendant alone in fasli 1317 as the purpose for which the lands were given as inam was not fulfilled. She claimed that the property was common family property, and that she was entitled to a half share in respect of her husband's right in

* Second Appeal No. 2424 of 1914.

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the lands after resumption and that the granting of the patta to the first defendant alone did not affect her antecedent right thereto. The original Court dismissed the suit on the ground that the plaintiff had not shown that she was in possession within twelve years prior to suit. The lower Appellate Court reversed the decree and granted a decree for partition of a half share in favour of the plaintiff, holding that the plaintiff was proved to be in management of the trust within twelve years before suit and that the resumption of the land and the grant of patta to the first defendant alone did not affect the title of the plaintiff to the lands at the time of resumption. The defendant preferred a Second Appeal.

T. Prakasam and *P. Chenchiah* for the appellant.

T. V. Venkatarama Ayyar and *R. Rajagopala Ayyar* for respondents Nos. 2 to 7.

OLDFIELD
AND
PHILLIPS, JJ.

JUDGMENT.—The dispute in this Second Appeal is regarding the right to a tope site. The tope was, in the words of the plaintiff, “transferred from charitable inams by Government and assessed to jirayati” or shortly “resumed”, patta being granted to first defendant. The lower Appellate Court gave plaintiff a decree for a half share of the land on partition on the ground that she represented the interest of one of the two trustees of the tope before its resumption, defendant representing the other. The lower appellate court applied *Gunnaiyan v. Kamakchi Ayyar*(1) and *Pingala Lakshmi pathi v. Bommireddipalli Chalamayya*(2), dealing with the case on principles applicable to cases of enfranchisement of personal or service inams.

Those principles in our opinion afford no guidance in cases of resumption of charitable inams. In cases of enfranchisement there is a change, not in the ownership of the land, but in the tenure on which it is held. In cases of resumption the land previously the property of the trust becomes the property of the person, to whom Government grants it, subject of course to the obligations ordinarily attached to ryotwari tenure. It has not been shown and we do not think that Government is bound to grant land, which it has resumed, to the former trustee or to any particular person; on the other hand the matter is in its discretion and, if its grantee happens to be a former trustee, it

(1) (1903) I.L.R., 26 Mad., 339. (2) (1907) I.L.R., 30 Mad., 434 (F.B.).

is not to be assumed that the re-grant was made to him on that account or that any other person can claim to participate in the grant on the ground that he also shared in the original trustee's rights.

Taking this view, we allow this second appeal and dismiss the suit with costs throughout.

K.R.

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—
OLDFIELD
AND
PHILLIPS, JJ.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

SYED HASAN RAZA SAHIB SHAMSUL ULAMA AND TWO
OTHERS (DEFENDANTS NOS. 1, 4 AND 5), APPELLANTS,

1916,
November, 20
and
December, 5.

v.

MIR HASAN ALI SAHIB AND TWO OTHERS (PLAINTIFF AND
DEFENDANTS NOS. 2, 6 AND 7), RESPONDENTS.*

Election—Public body—Vacancy—Election to fill up vacancy by less than a majority of voters, validity of—Appointment of a minor as Muthawalli of a mosque, validity of.

According to a scheme framed by the High Court, a mosque in Madras was governed by a managing committee of five members, including the President, and three *Muthawallis* working under them, and vacancies in the committee were to be filled by election by an electoral body consisting of the remaining committee members and the three *Muthawallis* and the committee was to appoint "competent men" as *Muthawallis* for the mosque.

In 1906, one *M.M.* who was then eleven years of age, was appointed by the committee as one of the *Muthawallis*. In 1914 the electoral body consisted of the president, three other members of the committee and two *Muthawallis* excluding *M.M.* Notice of a meeting to fill up a vacancy in the committee in 1914 was served on all the members of the electoral body except *M.M.* Three members of the electoral body attended the meeting at which the plaintiff was elected. There was no rule or practice fixing the quorum for meetings of the electoral body:

Held:—

(1) that plaintiff having been elected at a meeting attended by less than a majority of those entitled to vote, his election was invalid,

(2) that the election of *M.M.* as *Muthawalli* while he was a minor was invalid *ab initio*, and

* City Civil Court Appeal No. 9 of 1916.