APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Coutts Trotter.

1921, January 5.

VENKATARAMA AYYAR (PLAINTIFF), APPELLANT,

v.

CHANDRASEGARA AYYAR AND ANOTHER (DEFENDANTS NOS. 1 AND 4), RESPONDENTS.*

Unenfranchised personal inam of lands—Attachment in execution of decree, validity of.

Unenfranchised inam lands granted not for future public or private services but as a matter of favour for the maintenance of the donee and his heirs are liable to attachment and sale in execution of a decree against the holder of the inam. *Vissappa* v. *Ramajogi*, (1865) 2 M.H.C.R., 341, and *Bhanappa Garu* v. *Kamanna*, S.A. No. 1397 of 1918 (unreported), followed.

SECOND APPEAL against the decree of C. RANGANAYAKULU NAYUDU Garu, Subordinate Judge of the Temporary Sub-Court, Tanjore, in Appeal Suit No. 57 of 1919, preferred against the decree of K. S. GOPALARATNAM AYYAR, District Munsif of Tiruvadi, in Original Suit No. 446 of 1917.

The facts are set out in the judgment of SADASIVA AYYAR, J.

C. V. Anantakrishna Ayyar for appellant.

C. A. Seshagiri Sastri and *S. Ganapatti Sundaram* for respondent.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The plaintiff is the appellant. This Second Appeal relates only to plaint items 1, 2, 6, 7 and 8. He brought the suit for a declaration, among other reliefs, that the attachment and sale of these items of the plaint lands in execution of the money decree against his father, the fourth defendant, are invalid as the lands are unenfranchised inam lands, and as their attachment and sale are prohibited by law. Both lower Courts decided against the plaintiff's contention.

The only question argued before us is whether unenfranchised inam lands which had been granted, not for the performance of future services either public or private, but as a pure matter of favour for the maintenance of the donee and his heirs, are incapable of alienation and whether such alienation is prohibited by

* Second Appeal No. 573 of 1920.

law or whether such alienation cannot be allowed as being against public policy. In *Sundaramurti Mudali* v. *Vallinayakki Ammal*(1), it was held that each holder of a shrotriyam inam which had been granted for only three lives (namely, one Thanappa Mudali, his son, if any, and the son's son, if any), could not be alienated by will by the adopted son of the first grantee (Thanappa Mudali) who died without issue. The grant there seems not to have been of the land itself but only of the land revenue. SCOTLAND, C.J. (with whom FREEE, J., concurred), citing the authorities on the subject, which were then few, and after considering the Regulations IV of 1831, XXXI of 1836 and XXIII of 1838, held that shrotriyams are in the nature of estates tail in strict settlement and that alienation to a stranger by will was therefore invalid. There are, however, these two material distinctions between the facts of that case and the facts of the present case: (1) the grant in that case was strictly confined to three generations, whereas in the present case it was a hereditary grant to continue from generation to generation; (2) the grant there was of land revenue to which Madras Regulation IV of 1831 directly applied, whereas the present was a grant of the land itself. The case is therefore not governed by the three regulations mentioned in that case or by the Pensions Act of 1871 which superseded those regulations. (I do not lay stress on the fact that the grant there was called shrotriyam grant, whereas the grant in the present case is called Bhattavrithi grant, as there is no distinction in principle between the two kinds of grants.) In *Vissappa* v. *Ramajogi*(2) HOLLOWAY and INNES, JJ., criticise *Sundaramurti Mudali* v. *Vallinayakki Ammal*(1) and point out the distinction between public service inams governed by Regulation IV of 1831 which are made statutorily inalienable by section 2 of that Regulation and mere personal inams, some classes of which inams alone fell under Regulation IV of 1831. It was decided in *Vissappa* v. *Ramajogi*(2) that the Inam Commissioner's certificate and declaration that the inam was inalienable was of no value and that unless there is a statutory prohibition, contracts of alienation would be valid. There, the inam seems to have consisted of the lands themselves and not the

(1) (1863) 1 M.H.C.R., 465. (2) (1865) 2 M.H.C.R., 341.

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land revenue, and the learned Judges distinguish *Sundaramurti Mudali* v. *Vallinayakki Ammal*(1) on that ground also. In *Gunnaiyan* v. *Kamakchi Ayyar*(2) the following observations of BHASHYAM AYYANGAR, J., occur at page 345:

"According to the theory of the common law of the land applicable to hereditary grants of public revenue as inam in favour of individuals and to the interpretation of such Crown grants, succession, in such cases, is or at any rate, is supposed to be limited to the undivided brothers and to the direct lineal heirs, including a daughter's son of the last incumbent as also his widow, and failing them, to the direct lineal heirs of the original grantee. And under that law, it is or it is supposed to be, competent for Government to resume personal inams, when the reversion falls in, or in the language of the Revenue Department, when the inam lapses either by expiration of the lives for which the inam was granted or by reason of the extinction of direct lineal heirs of the body of the original grantee or of a forfeiture incurred by alienation to a stranger."

In that particular case, the land in question was service inam land which had been enfranchised. The observations above quoted do not themselves support the contention that the lands granted as personal inam are not attachable or alienable as the observations deal with grants of land revenue and not of lands themselves as inam. In *Subraya Mudali* v. *Velayudu Chetty*(3) it was held that except those classes of pensions which fall under section 11 of the Pensions Act, other classes of pensions are attachable and saleable. In *Varadayya* v. *Nammalwar*(4), MUNRO and ABDUR RAHIM, JJ., held similarly that it is only those pensions and grants which fall under section 11 that are inalienable. *Jogirdar Rama Rao* v. *Kottippi Thimma Reddi*(5) merely followed *Varadayya* v. *Nammalwar*(4), and *Subraya Mudali* v. *Velayudu Chetty*(3). In *Bhanappa Garu* v. *Kamanna*(6), BAKEWELL, J., and myself referring to unenfranchised personal inam lands observed as follows:

"We have not been referred to any authority (except a Standing Order of the Revenue Board which states that on such alienation, full assessment can be imposed), for the proposition that an alienation by such an inamdar is declared or made legally void and we are not

(1) (1863) 1 M.H.C.R., 465.
(2) (1903) I.L.R., 26 Mad., 339.
(3) (1907) I.L.R., 30 Mad., 153.
(4) (1910) 20 M.L.J., 88.
(5) (1920) 11 L.W., 398.
(6) S.A. No. 1397 of 1918 (unreported).

prepared to assent to such a proposition in the absence of definite authority to that effect."

Mr. Anantakrishna Ayyar, for the appellant, admitted that the Pensions Act and the Regulations of the thirties had no application, and he did not deny that the decision in *Bhanappa Garu* v. *Kamanna*(1) was a direct authority against him. I think that *Vissappa* v. *Ramajogi*(2) is also a direct authority against him. He, however, argued that the question was not fully argued or considered in *Bhanappa Garu* v. *Kamanna*(1), that he did not depend upon the Regulations, that he relied upon the nature of the original grant itself which must be deemed to have forbidden any alienation of the land granted, and that his argument that the original grant should be deemed to have prohibited alienation is corroborated by the observation of BHASHYAM AYYANGAR, J., in *Gunnaiyan* v. *Kamakchi Ayyar*(3) and also by the Standing Order of the Board of Revenue, Volume II, page 295. I have already referred to *Gunnaiyan* v. *Kamakchi Ayyar*(3). Standing Order 52, paragraph 1, clause (5), sub-clause (iii), says :

"Alienation of the inam is prohibited."

But it proceeds to say in clause (7) that an alienee by gift, purchase or otherwise, though his title may be legally defective and the inam may be liable to resumption in consequence will be allowed the benefits of rule 5, namely, to have the inam enfranchised or converted into a freehold on payment of an annual quit-rent without the option of refusal. Thus the prohibition of alienation mentioned in the Standing Order was merely intended to indicate that the Government had the right of resumption in consequence of the prohibited alienation, though it would not exercise that right if the alienee agreed to enfranchisement and to pay the ordinary rent or to pay a quit-rent without the option of refusal. This so-called prohibition is therefore not based on any grounds of public policy except the protection of the rights of the Government, and so long as such protection is carried out there is no reason to consider the prohibition as an absolute prohibition even if it has the force of law (which is very doubtful). I think therefore that the view of the lower Courts is correct that

(1) S.A. No. 1397 of 1918 (unreported).
(2) (1865) 2 M.H.C.R., 341. (3) (1903) I.L.R., 26 Mad., 339.

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alienation being incidental to ownership of property and no restriction of this general power of ownership in the case of inam lands having been clearly indicated by statute or by any rules having the force of statute except so far as it is necessary to preserve the rights of the Government, it is not necessary to construe the Standing Order as more than indicating the nature of the tenure of the land, namely, that it is subject to resumption by Government on alienation and not to indicate that alienation is absolutely prohibited as unlawful.

In the result, I would dismiss the Second Appeal with costs.

COUTTS TROTTER, J.

COUTTS TROTTER, J.—I am of the same opinion for the same reasons.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

1921, January 17.

PARASURAMA UDAYAN AND ANOTHER (FIRST AND SECOND DEFENDANTS), APPELLANTS,

v.

VEDAJI BASKAR THIRUMAL ROW SAHIB, BY HIS NEXT FRIEND RAO SAHIB J. I. CHRISTMAS PILLAI AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 3, 4 AND 5), RESPONDENTS.*

Trustee of a temple—Delegation of powers of the trustee—Power to appoint and dismiss hereditary temple servants—Delegation of such power to an agent, whether valid—Dismissal of archaka by agent, whether valid.

A trustee of a temple cannot appoint an agent to do acts which involve the exercise of judicial discretion by himself. He cannot therefore delegate to an agent his power of appointing and dismissing hereditary temple servants, who cannot be dismissed without sufficient cause being established. *Krishnamacharlu* v. *Rangacharlu*, (1893) I.L.R., 16 Mad., 73, referred to.

SECOND APPEALS against the decree of T. M. FRENCH, the Temporary Subordinate Judge of Vellore, in Appeal Suit No. 214 of 1918, preferred against the decree of A. P. P. SALDANHA, the District Munsif of Vellore, in Original Suit No. 116 of 1917 (Original Suit No. 1245 of 1915 on the file of the Court of the District Munsif of Arni).

This Second Appeal, and another connected with it, arose out of suits instituted by the Jagirdar of Arni, through his next friend,

* Second Appeals Nos. 1081 and 1785 of 1919.