

APPELLATE CIVIL.

Before Sir Walter Salis Schwabe, Kt., Chief Justice,
Mr. Justice Coutts Trotter and Mr. Justice
Kammaraswami Sastri.

1922,
January
11.

NETI ANJANEYALU (PETITIONER-DEFENDANT),
APPELLANT,

v.

SRI VENUGOPALA RICE MILL, LIMITED, TENALI
(RESPONDENT-PLAINTIFF), RESPONDENT.*

Transfer of Property Act (IV of 1882), sec. 6 (h)—Swastivachakam Service Inam—Attachment in execution—Validity—Opposed to public policy and to the nature of the interest.

Lands held on Swastivachakam service tenure are not subject to attachment in execution of a decree, as the sale of such lands is opposed to public policy and the nature of the interest affected.

Pakkiam Pillay v. Seetharama Vadhyar, (1904) 14 M.L.J., 134, *Govinda Goundar v. Ramien*, (1914) 25 I.C., 600, *Venkataranga Charlu v. Krishnamma Charlu*, (1911) 12 I.C., 710, approved.

LETTERS PATENT APPEAL against the judgment of ABDUR RAHIM, J., in Appeal against the Order of K. KRISHNAMA ACHARIYAR, District Judge of Guntūr, in Appeal Suit No. 119 of 1918, preferred against the Order of A. S. KRISHNASWAMI AYYAR, Temporary Subordinate Judge of Guntūr, in I.A. No. 1667 of 1917, in Original Suit No. 48 of 1917.

The respondent decree-holder attached the lands in dispute in execution of a decree against the appellant and the latter applied for their release on the ground that they were burdened with Swastivachakam service and therefore inalienable. Both the Subordinate Judge and the District Judge held that they were subject to

* Letters Patent Appeal No. 19 of 1920.

attachment. Appellant filed a Civil Miscellaneous Appeal to the High Court, which came on for hearing before ABDUR RAHIM and SADASIVA AYYAR, JJ. As ABDUR RAHIM, J., agreed with the District Judge while SADASIVA AYYAR, J., did not, the Appeal was dismissed under section 98 of the Civil Procedure Code. Against this, the appellant preferred a Letters Patent Appeal.

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Ch. Raghava Rao for appellant.—I contend that the land is not liable to attachment. It is a right to personal service and within the proviso to section 60, clause (f), Civil Procedure Code. The section is broad enough to include any property which is subject to service. The land burdened with service is inalienable. It is a property falling within the meaning of section 6 (d) of the Transfer of Property Act and as such not transferable. It being subject to service, it is restricted in its enjoyment to the owner personally. It is also a public office and as such comes within the restriction of section 6 (h). Moreover, the nature of the interest is personal. It is also an implied term of the grant that the property will not be alienated. Under the orders of the Board of Revenue the Government are entitled to forfeit the grant on alienation. It is a hereditary office meant to be enjoyed by a certain family only. Reference was made to Woodroffe and Ameer Ali's Civil Procedure Code, 1902 Edition, 300, 301, *Srimati Mallika Dasi v. Ratanmani Chakervarti*(1), *Rajah Virmah Valia v. Ravi Virmah Kunhi Kutti*(2), *Gnanasambanda Pandara Sannadhi v. Velu Pandaram*(3), *Narasimma Thatha Acharya v. Anantha Bhatta*(4), *Durga Bibi v. Chanchal Ram*(5), *Pakkiam Pillay v. Seetharama Vadhyar*(6), *Ramayya v.*

(1) (1897) 1 C.W.N., 493.

(2) (1876) I.L.R., 1 Mad., 235 (P.C.), 245.

(3) (1900) I.L.R., 23 Mad., 271 (P.C.), 279.

(4) (1882) I.L.R., 4 Mad., 391.

(5) (1881) I.L.R., 4 All., 81.

(6) (1904) 14 M.L.J., 134.

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Dhara Satchi(1), *Venkatarama Charlu v. Krishnamma Charlu*(2), *Govinda Goundar v. Ramien*(3), *Rajuh Nilmonce Singh Deo v. Kashee Mahtoon*(4), *Lotlikar v. Wagle*(5). The last has not been followed anywhere else. It is referred to in *Minakshisundaram Pillai v. Chockalinga Royer*(6).

Reference was also made to Board's Standing Order, 54.

K. Kamanna and *P. Narayanamurti* for respondent.—Reference made to preamble of the Act. The Transfer of Property Act relates only to the transfer of property and not to the act of a Court in attaching a property and selling it in execution. It is one thing to say a man may not alienate but another to say a Court may not attach. Reference made to *Golak Nath Roy Chowdhry v. Mathura Nath Roy Chowdhry*(7).

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SCHWABE, C.J.—In this case an inam was granted by a zamindar to the ancestor of the petitioner on terms that he should do Swastivachakam service in a temple and he and his family should enjoy the inam so long as they did this service. In 1860 the Inam Commissioner confirmed the grant "to be continued so long as the service was performed." This appears from the extract from the Inam Register produced before us. The total area of the land comprised was about 10 acres, the produce or revenue from which would be not more than sufficient to provide a living for the inamdar for the time being.

A judgment having been obtained by the respondent against the present inamdar he applied to attach the land comprised in the inam in execution and he desires

(1) (1913) 25 M.L.J., 635, 636.

(2) (1911) 12 I.C., 710; L.R., 2 M.W.N., 473.

(3) (1914) 25 I.C., 600.

(4) (1878) 25 W.R., 206.

(5) (1882, I.L.R., 8 Bom., 596.

(6) (1905) 15 M.L.J., 10.

(7) (1898) I.L.R., 20 Calc., 273

the Court to sell it to satisfy the judgment debt. On behalf of the inamdar it is contended that so long as the services are rendered, the land is not saleable in execution. Now, it is clear law, that the Court can only sell in execution property which the judgment-debtor can lawfully alienate, and the question to be decided is whether an inamdar can sell the property. It is argued on his behalf that it cannot be attached under section 60 of the Code of Civil Procedure and is inalienable under section 6 of the Transfer of Property Act. Section 60 of the Code of Civil Procedure forbids the attachment of a right of personal service. In my judgment what is sought to be attached in this case is the land, and not the right of personal service, and therefore that section has no application. Section 6, sub-clause (*d*), of the Transfer of Property Act, includes among the properties that cannot be transferred "an interest in property restricted in its enjoyment to the owner personally." It is certainly arguable that this property is restricted in its enjoyment to the owner personally—"owner" meaning the inamdar for the time being. Although I think that is arguable, and it may be that this inam is covered by these words, I prefer to base my decision on another sub-section of the same section. Sub-section (*f*) provides that "a public office cannot be transferred nor can the salary of a public officer." I do not think that this sub-section applies. Sub-section (*h*) provides that "no transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872," that is, which appears to the Court to be contrary to public policy. The latter portion has been incorporated in this sub-section by a later Statute. In my judgment the sale of such property is opposed to the

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nature of the interest affected and also is contrary to public policy. The right to enjoy the property is as long as the inamdar renders services in the performance of which the public have an interest. If the inamdar sold the property it is obvious that he would in all probability no longer perform the services; and further, it is quite opposed to the nature of his interest and duty (namely, that he should enjoy the produce of the land as salary for the public services he has to render) that he should sell it or alienate it, leaving himself without the means of subsistence and without further interest in the place or in the performance of the services. It is also to be observed that, if the property were sold, the purchaser would get no title of any value, for at any moment the property might revert to the zamindar or the Government, as the case may be, when the inamdar ceases to render such services. Further, under Order LIV (1) of the Standing Orders of the Board of Revenue the Government can resume possession of a charitable or religious inam immediately on alienation.

The view that I am taking is supported by authority. In *Pakkiam Pillay v. Seetharama Vadhyar* (1), BENSON and BHASHYAM AYYANGAR, JJ., held that any alienation of land which is held by a person as an emolument attached to a spiritual office in a village is void against the rightful holder. In *Govinda Goundar v. Ramien* (2), which was heard by Sir JOHN WALLIS, C.J., and SESHAGIRI AYYAR, J., it was held that a service inam is land which the owner is incompetent to alienate within the meaning of sections 31 (2) and 32 (1) of the Land Acquisition Act. It is true that a different Statute was in question but the principle underlying that case

(1) (1904) 14 M.L.J. 134.

(2) (1914) 25 I.C., 600.

seems to be the same as in this. In *Venkatarama Charlu v. Krishnamma Charlu*(1), a case of a sale in execution, ABDUR RAHIM and AYLING, JJ., held that an inamdar of land for services similar to this cannot alienate it. We sent for the record of that case and found that the point had been raised and decided before the District Munsif and the District Judge. The point was also one of the grounds of Appeal when the case came up before the High Court, and it must be taken on those facts, that the point was considered and decided by the Court that heard the Appeal. It is to be observed that one of the learned Judges in that case is the Judge who in this case takes the opposite view; presumably his attention was not called to his previous decision in *Venkatarama Charlu v. Krishnamma Charlu*(1). In *Rajah Nilmonee Singh Deo v. Kashee Mahtoon*(2), it was held by MITTER, J., that a service tenure can be sold in execution of a decree for the arrears of its own rent provided that the service due from the holder be of a private kind, and personal to the plaintiff, but not where the service is of a public kind as in the case of a police jaghir. That lays down a proposition that land burdened with the performance of a service of a public nature is inalienable. In my judgment this land was burdened with the performance of a service which is of a public nature.

In *Vusa Chandrakantam v. Vusa Subbarayudu*(3), it was held that an inamdar can alienate for his lifetime and in *Midnapore Zamindari Company v. Appayasami Naicker*(4), it was held by Sir JOHN WALLIS, C.J., and SPENCER, J., that a palayam, which is the holding of land for military services, was inalienable by the

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(1) (1911) 12 I.C., 710; (1911) L.R., 2 M.W.N., 473.

(2) (1876) 25 W.R., 206.

(3) (1914) 16 M.L.T., 347.

(4) (1913) I.L.R., 41 Mad., 749.

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common law beyond the life-time of the holder and while he rendered service.

Now the question whether or not the inamdar could alienate this land during his lifetime while he rendered service does not really arise directly here, because the present application is for sale of the land out and out; but, as the execution creditor would have a right, if such land is alienable for such period, to sell for that period if he could do so, I think it right that I should express my views on that subject. Those cases may be distinguishable; *Midnapore Zamindari Company v. Appayasami Naicker*(1), on the ground that it was a different kind of inam; *Vusa Chandrakantam v. Vusa Subbarayudu*(2), on the ground that it means that the inamdar can let the property during the time that he is rendering the services. If that is the meaning I should find nothing objectionable in those decisions, for I can see nothing contrary to the interest of the inamdar and nothing contrary to public policy in the letting by the inamdar of the land, so that although the land is cultivated by someone else, he provides for himself what was intended he should have, namely a subsistence out of the land. This he would get in the shape of rent which answers the purpose just as well as obtaining profits from the actual cultivation of the land. But if those cases mean that he can sell out and out for the period of time during which he lives and renders services, I do not agree with them, because such an alienation would in my view be quite contrary to public policy for the reasons I have already given.

We were referred to a case, *Lotlikar v. Wagle*(3). This case was relied on by ABDUR RAHIM, J., in the Court below in this case as an authority in favour of the

(1) (1918) I.L.R., 41 Mad., 749.

(2) (1914) 16 M.L.T., 347.

(3) (1882) I.L.R., 6 Bom., 596.

view that he took that such land as is comprised in this inam could be alienated. Now that case was heard by the Subordinate Judge and Assistant Sessions Judge before the passing of the Transfer of Property Act, 1882, and it is to be observed that the Transfer of Property Act was not made applicable to Bombay until 1893 and therefore when the case came up before the High Court, the Transfer of Property Act did not apply. That case turned on the interpretation of Bombay Act II of 1863 and we need not here consider whether the Court there took the right or the wrong view ; but it is an error to think that in that case it was held that under the Transfer of Property Act, the interest of an inamdar to be enjoyed during his lifetime and while he renders services can be attached in execution and sold, or that that case is an authority for the proposition advanced on behalf of the creditor in this case. The points raised in this case were not, and indeed could not be argued in that case.

It follows that in my judgment this Appeal must be allowed with costs throughout.

COURTS TROTTER, J.—I am of the same opinion and I think that the result that my Lord has come to is consistent with the current of decisions in this Court. There are no doubt decisions of this Court which say that an inamdar of this character can alienate by way of lease his inam property for a period. I believe in one decision to which I was a party, *Kupparaju Venkatasubiah v. Murugula Sheik Silar Sahib*(1), it is said to the extent of his lifetime. Of course, then, it would be limited to the period during which he is willing to perform the services in respect of which he enjoys the

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inam; but I should like to point out that although it may be that he is entitled to grant a leasehold of the property during the period of his enjoyment, it by no means follows that it would not be contrary to public policy that the right he has to create such a leasehold estate should be sold under the orders of Court, because then the result might be attained that the inamdar would have left upon his hands the burden of the service without continuing to enjoy the revenue of the property which was provided to keep him in sufficient comfort to be able to perform the services for which it was granted. I agree that the Appeal must be allowed with costs throughout.

KUMARA-
SWAMI
SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree.

M.H.H.

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*Before Mr. Justice Oldfield and Mr. Justice
Venkatasubba Rao.*

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Civil Procedure Code (Act V of 1908), O. IX, r. 13—Provincial Small Cause Courts Act (IX of 1887), sec. 17 (1), proviso—Small Cause Suit—Ex parte decree—Setting aside of—Application within time—Payment of full amount under sec. 17 (1), proviso, after time limited—Delay, whether can be excused—Limitation Act (IX of 1908)—Rules of High Court.

Order IX, rule 13, Civil Procedure Code, is applicable to suits in Provincial Small Cause Courts, as the order has not

* Civil Revision Petition No. 411 of 1922.