ARUNACHALA NAIDU v. BALAKRISHNA & Co.

SRINIVASA AYYANGAR, J.

Council that is allowed to object at the time with regard to the form or the nature of the security. This again would seem to contemplate beyond all doubt that the whole question with regard both to the granting or refusal of the certificate and the form or the nature of the security should be determined finally by orders made at the same time without any further delay.

It therefore follows that in the present case the certificate having already been granted, what the Court could have done if it was moved properly at the time of the granting of the certificate could not now be done. The petition therefore has to be dismissed, but in the circumstances of the case, it will be dismissed without any order as to costs.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Odgers (and after finding)

Before Mr. Justice Phillips and Mr. Justice Odgers.

1924, December 19.

KRISHNA SASTRI AND 4 OTHERS (DEFENDANTS NOS. 4, 5, 6, 7 AND 8), APPELLANTS

v.

SINGARAVELU MUDALIAR AND 5 OTHERS (PLAINTIFF, DEFENDANTS NOS. 1 to 3 AND 1ST DEFENDANT'S LEGAL REPRESENTATIVE), RESPONDENTS.*

Service inam, enfranchisement of—Effect of, on title of grantee as against strangers—Adverse possession by strangers as against Government for sixty years.

An enfranchisement by Government of a service inam as distinguished from a personal inam confers a new title on the grantee indefeasible not only by the members of his own family but also by strangers even if the latter had held the office and the inam land before then. But it is open to the latter to prove that the land was not inam at all or that they had before the

* Second Appeals Nos. 287 and 288 of 1921.

enfranchisement acquired the land by adverse possession for 60 years as against the Government and thus deprived it of the power to enfranchise it in favour of any one. Case law on the subject discussed; *Lakshminarasimham* v. *Venkataratnayamma*, (1922) 30 M.L.T., 334, dissented from.

SECOND APPEALS against the decrees of R. NARASIMHA AYYANGAR, Subordinate Judge of Chingleput, in A.S. Nos. 105 and 106 of 1919 preferred against the decrees of T. SUNDARAM AYYAR, District Munsif of Tiruvallūr, in O.S. Nos. 267 and 282 of 1918.

The facts are given in the Judgment.

L. A. Govindaraghava Ayyar (with *L. S. Veeraraghava Ayyar*) for appellants.

K. Rajah Ayyar for *S. V. Narayana Ayyar* for respondents.

This case coming on for hearing on the 21st day of March 1923 before AYLING and ODGERS, JJ., their Lordships made the following

ORDER :—

AYLING, J. AYLING, J.—The subject-matter of these appeals is a certain karnam's inam (plaint item 5) which was enfranchised in 1911 in the name of Krishna Sastri (1st appellant in each of the appeals before us). The registered karnam at that time was one Munia Pillai, who had, six years earlier, sold the inam land to Raghava Sastri, son of Krishna Sastri, by Exhibit IV. The enfranchisement in the name of Krishna Sastri was apparently made to save trouble, and to give effect to a clause in Exhibit IV providing for patta being granted in the vendee's name. Apparently Raghava Sastri was really a benamidar for his father (who was village munsif). This explains why Krishna Sastri's name appears in the title-deed.

The suits were brought by the legal representatives of one Duraiswami Mudaliar for recovery and partition

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between them of the said land. It was not denied that the land was originally karnam service inam ; but it was alleged that Duraiswami Mudali and his family had acquired title by prescription (no other title seems to be set up) and were entitled to recover.

The lower Courts have found in favour of these contentions and given decrees in plaintiffs-respondents' favour.

The point argued before us by Mr. Govindaraghava Ayyar on behalf of Krishna Sastri and his sons (appellants) is that, in view of the ruling of the Privy Council in *Venkata Jagannadha* v. *Veerabhadrayya*(1), the grant of the title-deed to Krishna Sastri on enfranchisement must be held to constitute a fresh root of title in the latter, good against all the world, and that the suits should therefore be dismissed.

The lower Appellate Court has found that Krishna Sastri has been in possession since the date of enfranchisement only ; and that prior to 1911 possession was with Duraiswami's family for a long time. How long is not stated, but it must be taken to be more than twelve years, so as to confer title as against private persons.

Our decision must practically turn on the effect to be given to the judgment of the Privy Council in *Venkata Jagannadha* v. *Veerabhadrayya*(1) and we have had a long argument at the bar as to the meaning which their Lordships intended to convey. I have already referred to the view put forward on appellants' behalf. Mr. Rajah Ayyar, who appears for respondents, has argued that the judgment merely deals with the right of the members of the family of the person in whose name the title-deed is issued to claim an interest in the enfranchised property, that it has no application to claim

(1) (1921) I.L.R. 44 Mad., 643 (P.C.).

put forward by outsiders, and that it does not affect the validity of earlier decisions in so far as these relate to claims by outsiders.

I have given the most careful study I can to the terms of the Privy Council judgment and have come to the conclusion that the interpretation sought to be placed on it by appellants' vakil is substantially correct, and not that argued for on behalf of respondents.

Their Lordships make it quite clear that as regards the effect of enfranchisement on title to the property enfranchised, personal inams and service inams stand on a totally different footing. They refer, without disapproval, and as it seems to me with approval, to the decision in *Narayana* v. *Chengalamma*(1) to the effect that in the case of a palaiyam (personal inam) the title-deed granted at enfranchisement did not confer any new title and that enfranchisement had no larger operation than as a release granted by the Crown in respect of its reversionary interest and of the obligation of rendering service. They then proceed to dissent in the most emphatic terms to the extension of this doctrine to a karnam's service inam; and to the view expressed by BHASHYAM AYYANGAR, J., in *Gunnaiyan* v. *Kamakchi Ayyar*(2) that the law laid down as to palaiyams

> " is law bearing on the enfranchisement of inams, whether they be personal inams or service inams."

Now the view of BHASHYAM AYYANGAR, J., in that case is summarized in these words at page 344:

> " In my opinion the enfranchisement of a service inam does not operate as a resumption and fresh grant by Government subject to the payment of a quit-rent, any more than it is so in the case of a personal inam."

This view of BHASHYAM AYYANGAR, J., is expressly adopted by the Full Bench in *Pingala Lakshmipathi* v.

(1) (1887) I.L.R., 10 Mad., 1.

(2) (1903) I.L.R., 26 Mad., 339.

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Bommireddipalli Chalamayya(1) regarding which their Lordships of the Privy Council state in the most explicit terms:

"Their Lordships are of opinion that the Full Bench was in error."

On the other hand the decisions of an earlier Full Bench in *Venkata* v. *Rama*(2) and of a Divisional Bench in *Venkatarayadu* v. *Venkataramayya*(3) are quoted with approval (both being dissented from in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(1)).

The former I shall deal with presently; the latter stated in terms:

"The effect of enfranchisement was to free the lands from their inalienable character and *to empower the Government to deal with them as they pleased.*"

This passage is quoted in the Privy Council judgment.

The case in *Venkata* v. *Rama*(2), also related to a karnam service inam. The post of karnam was held by the defendant at the time of enfranchisement, and the title-deed was issued in his name. The suit was brought by a person who was not in office at the time of enfranchisement, but who was a member of a family hereditarily entitled to preference in appointment, and who, if personally qualified, could have secured the post and the emoluments (prior to enfranchisement) by a suit before the Collector (vide HUTCHINS, J., in his referring judgment at page 251). The defendant on the other hand lost the post of karnam after enfranchisement, another man being preferred to him. Nevertheless the Full Bench held that having been in office at the time of enfranchisement, and having had the title-deed issued in his name, his title could not be

(1) (1907) I.L.R., 30 Mad., 434 (F.B.). (2) (1885) I.L.R., 8 Mad., 249 (F.B.).
(3) (1892) I.L.R., 15 Mad., 284.

questioned by plaintiff. Unless the decision was based on the footing of a new title conferred at enfranchisement, it is difficult to see how it could be supported and that, I think, was the effect of the judgment of the majority Judges.

Mr. Rajah Ayyar points to the stress which the learned Judges laid on the fact that the appellant was not in office at the time of enfranchisement, and in particular to the concluding paragraph of the judgment of TURNER, C.J.:

> "On the ground that the respondent was not the holder of the office when the lands were enfranchised, I must hold that he has failed to show a title to the lands and that his claim is unfounded. If he had established a title, if he had shown that at the time of the enfranchisement of the inam he had been appointed to the office, the Court, would have had jurisdiction to determine whether the enfranchisement in favour of the appellant could be supported. I would reverse the decrees of the Courts below and dismiss the suits with costs."

It is argued that this is incompatible with the view that the issue of the title-deed conferred a new title. I do not think it is. I think what the learned Judges meant was that if plaintiff had been in office at the time of enfranchisement, it would have been open to the Court to consider whether the enfranchisement in favour of defendant was legal or *ultra vires*. This may be so. It is a point not alluded to in the judgment of the Privy Council, but it is unnecessary to say that the claim before us is not such a contention.

I think the judgment of the Privy Council amounts to stating that the grant of a title-deed at enfranchisement of a service inam (unlike the case of a personal inam) does confer a new title, and that, for this reason, it cannot be questioned by other members of his family. They say in the penultimate paragraph of the judgment:

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"When accordingly, on the 21st March 1906, the title-deed already quoted was granted by way of an inam to the appellant's father and was in express words confirmed to him, his representatives and assigns, to hold or dispose of as he or they think proper, the Board is of opinion that that enfranchisement must be given full effect to, and that it is not subject to be eviscerated or altered by the claim for partition or division put forward in the present suit."

I think this carries with it the implication, that it can no more be questioned by persons unconnected either with the office or with the family of the grantee—as are the plaintiffs in these suits (this is subject to one reservation to which I shall presently allude). The grant of a new title which could be questioned by any outsider who had trespassed on the property would be meaningless.

This is as far as one need go for the purpose of the present case. The reservation to which I have referred is this. It would, I conceive, be open to an outsider claiming an enfranchised service inam to show that either that it was not an inam at all liable to resumption or that he had by prescription acquired a title to the property, good, not only as against the service holder, but also against Government, so that Government's power of disposition was lost. This would, of course, involve adverse possession for 60 years.

I may add that I have not deemed it necessary to discuss earlier rulings of this Court or the effect of the various Madras Acts (discussed by BHASHYAM AYYANGAR, *J.*, in *Gunnaiyan* v. *Kamakchi Ayyar*(1))—all of which must be deemed to have been within the consideration of their Lordships of the Privy Council. As I understand it, our duty is to understand, as well as we can,

(1) (1903) I.L.R., 26 Mad., 339.

and give effect to the authoritative exposition of the law contained in their judgment in *Venkata Jagannadha* v. *Veerabhadrayya*(1).

Our attention was drawn to a recent decision of a Bench of this Court not reported in the Indian Law Report series, *Lakshminarasimham* v. *Venkataratnayamma*(2). From this, in so far as it deals with the bearing of the Privy Council decision on the effect of a title, I must respectfully dissent. I may incidentally remark that the scope and intent of Madras Act VIII of 1869, referred to therein, may be gathered from the preamble. It would appear to be directed to protect the interests of kudivaramdars where the inam consisted only of the melvaram.

The learned vakil for respondents claims the opportunity of showing that he has acquired a complete title by 60 years adverse possession. I would therefore call for a finding from the lower Appellate Court on the following issue:—

Have plaintiffs acquired a title to the suit properties by adverse possession as against Government?

Fresh evidence may be adduced. Finding will be submitted within four months, and seven days will be allowed for filing objections.

ODGERS, J.—The facts are fully set out in the judgment of my learned brother. I deal with the sole question of law raised in the case as to whether the decision of the Privy Council in *Venkata Jagannadha* v. *Veerabhadrayya*(1), is to the effect that enfranchisement of a karnam service inam founds a new root of title in favour of the person in whose name the inam is enfranchised; or whether it has a restricted application, i.e., it only extends to extinguish the claims of the

(1) (1921) I.L.R., 44 Mad., 643 (P.C.). (2) (1922) 30 M.L.T., 334.

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family of such person, and does not apply to the case of a stranger (as in the appeals before us).

There can be no doubt whatever that the decision in *Venkata Jagannadha* v. *Veerabhadrayya*(1), has effected a change in the law. Referring to the judgment of the Full Bench in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(2), reversing the law as laid down in *Venkata* v. *Rama*(3), their Lordships say :

"this procedure has been of course full of perplexity and that perplexity must now, if possible, be brought to an end."

Again their Lordships are of opinion that the Full Bench ruling in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(2), approving and adopting the decision in *Gunnaiyan* v. *Kamakchi Ayyar*(4), was erroneous, that the case of a karnam inam stands on its own footing and that the principles applicable thereto were properly decided in *Venkata* v. *Rama*(3), by the Full Court.

The law as stated in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(2), was that the effect of enfranchisement was not to confer on the persons named in the title-deed any right in derogation of those possessed by other persons in the inam at the time of the enfranchisement. This was a case of a Hindu widow who (as the Full Bench says) could not have been in any view constituted absolute owner by the grant. That the decision in *Venkata* v. *Rama*(3), is capable of the construction sought to be attached to it by the appellants here is obvious from the remarks of the Full Bench in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(2).

"There are undoubtedly observations in the judgments of the learned Chief Justice and of BRANDT, J., which go strongly to support the view that enfranchisement involved a resumption

(1) (1921) I.L.R., 44 Mad., 643 (P.C.). (2) (1907) I.L.R., 30 Mad., 434 (F.B.).
(3) (1885) I.L.R., 8 Mad., 249 (F.B.). (4) (1903) I.L.R., 26 Mad., 339.

of the inam by Government and a fresh grant in favour of the persons named in the title-deed."

The decision however finally adopted as correctly stating the law is *Gunnaiyan* v. *Kamakchi Ayyar*(1). In that case it was held that the enfranchisement of a service inam does not operate as a resumption and fresh grant by Government subject to the payment of a quit-rent, any more than in the case of a personal inam. The enfranchisement of a village service inam stands on the same footing (i.e., as a personal inam) as far as the family in which the village office is hereditary is concerned.

The Privy Council differs from this view and state that the law as to service and private inams is different and that the error in the law here has crept in owing to these distinctions having been confused as it appeared from *Narayana* v. *Chengalamma*(2). Their Lordships say (page 654):

"It is accordingly not to be wondered at that when a case of this nature was brought before the Courts, as in *Narayana* v. *Chengalamma*(2), already referred to, it should have been held that the inam title-deed which had been granted to the palayagar in that case did not confer any new title and that the enfranchisement had no 'larger operation than as release granted by the Crown in respect of its reversionary interest and of the obligation of rendering service.' The decision forms no authority for the same principle being extended to the case of a karnam."

This seems clearly to imply that in the case of a karnam enfranchisement the title-deed would have conferred a new title.

While thus disapproving the decisions in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(3), and *Gunnaiyan* v. *Kamakchi Ayyar*(1), the Privy Council approve that in *Venkata* v. *Rama*(4).

(1) (1903) I.L.R., 26 Mad., 339. (2) (1887) I.L.R., 10 Mad., 1.
(3) (1907) I.L.R., 30 Mad., 434 (F.B.). (4) (1885) I.L.R., 8 Mad., 249 (F.B.).

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"In the opinion of the Board the law of Madras was thus soundly stated (by COLLINS, C.J., and MUTTUSWAMI AYYAR, J.) and that judgment should not have been disturbed."

The facts of *Venkata* v. *Rama*(1), are set out in the referring judgment of HUTCHINS, J. Plaintiff's adoptive father held the karnam office, and died in 1870 when plaintiff was a minor. The defendant-appellant was appointed karnam in 1877 and a year or two later the lands were enfranchised in his name as the person at the time in possession. He had no hereditary claim and was therefore a stranger to the family in which the office ordinarily ran. The plaintiff brought a suit to recover the lands which plaintiff alleged belonged to his ancestors as karnam's inam. The plaintiff's claim was decreed by the Munsif and confirmed by the District Judge. On the appeal to this Court by the defendant the decrees below were reversed.

TURNER, C.J., after discussing the regulations as to the mode of selection, disqualification, etc., of holders of such offices says :

"It may be that in some instances the land is not the emolument of the office, but a reduction of the assessment. In such a case the Government could not resume the land, but only deal with the assessment. But in the case before us the orders of the Revenue authorities show that the lands are and were attached to the office and though the respondent's father may have improperly obtained possession of them, the Government was at liberty to resume them and to confer them on the office-holder, and it did so confer them on the appellant through the Collector in 1877."

The learned Chief Justice holds that respondent had failed to show title as he was not the holder of the office when the lands were enfranchised. If he could have shown that at the time of enfranchisement he had been appointed to the office, the Court could have determined whether the enfranchisement in favour of

(1) (1885) I L.R., 8 Mad., 249 (F.B.).

the appellant could be supported. These observations are not referred to by the Privy Council and in my opinion afford no ground for the suggestion that the only effect of enfranchisement is to bar the claims of the family.

From MUTTUSWAMI AYYAR, J.'s judgment it is clear that the contention for the appellant was (page 265) that the title-deed gave him a valid title to the land. The following passage of MUTTUSWAMI AYYAR, J.'s judgment was quoted with approval by the Privy Council (page 267):

"According to the law, therefore, as it stood prior to the enfranchisement of the inam, a right to the land could only be legally acquired through the right to the possession of the office, and neither the respondent's father nor the respondent had then any vested interest in the office to sustain an action in the nature of an ejectment."

Also in the judgment of BRANDT, J., the following passage may be quoted:—

"I think it may be taken that such lands were enfranchised in favour, not of the family generally, but of the office-holder for the time being, in which case they would presumably descend not to all the members of the family, but to the branch or heirs of the person in whose favour it was enfranchised."

The decision in *Venkatarayadu* v. *Venkataramayya*(1), was quoted and approved by the Privy Council.

"'The effect' said COLLINS, C.J., in that case 'of enfranchisement was to free the lands from their inalienable character and empower the Government to deal with them as they pleased.'"

In *Dharanipragada Durgamma* v. *Kadambari Virrazu*(2), the Court said of the Full Bench in *Venkata* v. *Rama*(3), (page 48)

"that decision proceeded on the broad ground that the plaintiff did not hold the office of karnam at the time of the

(1) (1892) I.L.R., 15 Mad., 284. (2) (1898) I.L.R., 21 Mad., 47.
(3) (1885) I.L.R., 8 Mad., 249 (F.B.).

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enfranchisement and, therefore, had no title to sue for the lands and that the land when enfranchised was at the disposal of Government and alienable to whomsoever the Government pleased. It regarded the inam title-deed as evidence of the grant of the land personally to the grantee, and that was the view followed in the case on which the Subordinate Judge relies, *Venkatarayadu* v. *Venkataramayya*"(1).

So also *Subbaraya Mudali* v. *Kamu Chetti*(2); the right of a widow of a deceased manyam service holder was held after enfranchisement (after his death) to confer a right not limited to that of a widow's estate.

This decision is also quoted with approval by the Privy Council, their Lordships saying that it was expressly decided as following the Full Bench decision in *Venkata* v. *Rama*(3).

As against this line of decisions, Mr. Raja Ayyar contends that on the Madras Acts, IV of 1862, IV of 1866 and VIII of 1869 the only effect of enfranchisement is to remove the service obligation. Act IV of 1866, preamble, states that certain inams have been enfranchised from the condition of service and placed in same position as other descriptions of landed property in regard to their future succession and transmission and by section 2 the title-deed is to be sufficient proof of enfranchisement.

Act IV of 1862 is to the same effect.

Act VIII of 1869 lays down that nothing in the inam deed is to destroy the rights of any description of holders or occupiers of land from which any inam is derived or drawn or affect the interests of any person other than the inam holder. By the preamble the doubt removed is limited to cases where the inam holders do not possess the proprietary right in the soil but only the right of receiving the rent or tax payable

(1) (1882) I.L.R., 15 Mad., 284. (2) (1900) I.L.R., 23 Mad., 47.
(3) (1885) I.L.R., 8 Mad., 249 (F.B.).

to Government, etc. This seems to me to point to the well-known distinction vested on the owners of the melwaram and kudivaram. None of the Acts appear to me to help the respondent in his contention.

There is however a case of this Court *Lakshminarasimham* v. *Venkataratnayamma*(1), wherein it was held by SPENCER, J., on the authority of Act VIII of 1869 that no independent title is created by a grant of title-deeds and that no title arises from the title-deed that was not already inherent in plaintiff or her husband. RAMESAM, J., held that *Venkata Jagannadha* v. *Veerabhadrayya*(2), did not apply to a case of conflict between the title of an office-holder and that of a person other than an office-holder claiming on the ground that he was named in the title-deed, as the title-deed in that case was issued to the office-holder.

It appears to me from the result of my examination of *Venkata Jagannadha* v. *Veerabhadrayya*(2), and of *Venkata* v. *Rama*(3), that the Privy Council judgment went further than that. There are the clear words of COLLINS, C.J., in *Venkatarayadu* v. *Venkataramayya*(4), as approved by the Privy Council and also in my opinion the inferences to be drawn from the Privy Council judgment itself indicated above to the effect that enfranchisement does confer a title like any other deed of conveyance on the person to whom it is granted, and it is not necessarily confined to grants to persons either holding the office at the time of enfranchisement or those claiming the right to do so; though ordinarily no doubt as the land follows the office, the title would be conferred on the office-holder at the time of enfranchisement; with respect therefore I am unable to concur in the narrow construction placed on the Privy

(1) (1922) 30 M.L.T., 334. (2) (1921) I.L.R., 44 Mad., 643 (P.C.).
(3) (1885) I.L.R., 8 Mad., 249 (F.B.). (4) (1892) I.L.R., 15 Mad., 284.

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Council judgment in *Lakshminarasimham* v. *Venkataratnayamma*(1). I think their Lordships of the Privy Council meant to lay down a broad general principle and as will be seen from the extracts quoted, their language was by no means limited to the facts of the actual case before them.

I may also add that in my view the decision in *Lakshminarasimham* v. *Venkataratnayamma*(1) as to the effect of Madras Act VIII of 1869 is for the reasons stated by me erroneous.

I therefore think that the point contended by Mr. Govindaraghava Ayyar for appellants must succeed.

I agree with the order proposed by my learned brother.

In compliance with the order contained in the above judgment the Subordinate Judge of Chingleput submitted the following

FINDING:—

* * *

8. Thus on a consideration of the material evidence and the general probabilities, I am of opinion that the plaintiffs and their ancestors had been in possession and enjoyment of the lands for over sixty years prior to 1911 and that such possession not being shown to be permissive was adverse to the Government and the office holder. I accordingly find on the issue remitted that plaintiffs acquired a title to the plaint properties by adverse possession as against the Government.

These second appeals coming on for final hearing after the return of the finding of the lower Appellate Court, the Court (PHILLIPS and ODGERS, JJ.) delivered on the 29th day of October 1924, the following

JUDGMENT:—

The Subordinate Judge has found that plaintiffs were in possession of the suit lands for more than 60

(1) (1922) 30 M.L.T., 334.

years before 1911, but objection is taken by appellants that there is no evidence to support this finding. The Subordinate Judge relies on oral statements of witnesses that plaintiffs' family were in possession for a very long period, but except for the statement of plaintiffs' witness No. 1 that his family was in possession for 150 years, a fact which is certainly not within his personal knowledge, there is no evidence which fixes the date of possession as early as 1851, and this is essential in order to prove adverse possession for 60 years. It is not sufficient to prove possession for a long period but, as pointed out by the Privy Council in *Secretary of State for India* v. *Chellikani Rama Rao*(1) possession for the whole period of 60 years must be affirmatively proved. In the present case there is no such evidence, but only evidence of long possession which the Subordinate Judge has held to be for over 60 years on the general probabilities. This he is not justified in doing and we cannot therefore accept his finding. The burden of proof was on plaintiffs' and they have failed to discharge it.

The appeals must therefore be allowed and the suits dismissed with costs throughout, including the costs of the guardian of the 6th respondent in both second appeals.

These second appeals coming on for orders this 19th day of December 1924 on account of the 5th respondent not being served with notice, the Court delivered the following

JUDGMENT :—

The 5th respondent is given up. The second appeals are dismissed as against her.

N.R.

(1) (1916) I.L.R., 39 Mad., 617 (P.C.).