

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice King.*

SOORA RAMAKRISHNAMMA (FIRST PLAINTIFF),
APPELLANT,

1934,
September 28.

v.

PASUMARTHI VENKATASURBIAH AND SEVENTEEN
OTHERS (DEFENDANTS 1 TO 17 AND SECOND PLAINTIFF),
RESPONDENTS.*

*Service inam—Dasabandham service inam—Execution sale of—
Validity of.*

Lands burdened with a dasabandham service, which is a service of a public nature, are inalienable as being against public policy and, being inalienable, cannot be sold in execution of a decree against the inamdar.

The observations of SCHWABE C.J. in *Anjaneyalu v. Sri Venugopala Rice Mill, Ltd.*, (1922) I.L.R. 45 Mad. 620, 623, 624 (F.B.), must be taken to be of general applicability and to cover the cases of all public service inams.

APPEAL against the decree of the District Court of Nellore in Appeal Suit No. 96 of 1928, preferred against the decree of the Court of the District Munsif of Kanigiri in Original Suit No. 645 of 1925.

B. Somayya and M. S. Ramachandra Rao for appellant.

Ch. Raghava Rao and A. Sundaram for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by BEASLEY C.J.—In this appeal the question for BEASLEY C.J. consideration is whether a dasabandham inam is

* Second Appeal No. 442 of 1930.

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capable of alienation. According to the footnote to Standing Order 56 of the Standing Orders of the Board of Revenue :

“ A dasabandham inam is a grant of land or of revenue as compensation for the construction of a tank, well or channel; the grant generally, though not invariably, carries with it the condition of keeping the work in repair. If the inam consists of land, it is called Khandam dasabandham; if it is an assignment of revenue, it is called Shamilat dasabandham.”

In the present case the dasabandham inam was sold in execution of a decree against the inamdar and the question was whether the sale was invalid and also whether the inamdar was estopped from questioning that Court sale which he had allowed to be held without protest. Both lower Courts held that the Court sale was invalid because land burdened with the performance of a service of a public nature is inalienable being opposed to public policy. This ruling was based upon the decision in *Anjaneyalu v. Sri Venugopala Rice Mill, Ltd.*(1). The question here is whether the principle has not been too generally stated in that judgment, because it is contended for the appellant that this decision must only be taken as one on the particular facts of the case. There, the lands were burdened with *swastivachakam* service and it was held that this was a public service and not restricted in its enjoyment to the owner personally and the sale of such lands was opposed to public policy and the nature of the interest affected. In dealing with this matter, SCHWABE C.J., on pages 623 and 624, says :

“ In my judgment the sale of such property is opposed to the nature of the interest affected and also is contrary to public policy. The right to enjoy the property is as long as the

(1) (1922) I.L.R. 45 Mad. 620 (F.B.).

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."

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Those words seem to us to be sufficiently wide to cover all service inams of a public nature ; and whilst Standing Order 54 (2) of the Standing Orders of the Board of Revenue gives the Government the power to resume possession, on alienation, of religious or charitable inams—and this is not a religious or charitable inam—we see nothing in the Board's Standing Orders which would prevent a resumption of any inam of a public service nature where the inamdar alienates the lands which are burdened with those public services. Standing Order 56 gives the power to resume in default of service in the case of dasa-bandham inams ; and we are quite unable to see why there should not be a power of resumption of the inam in the case of an alienation which may make the further performance of the service impossible. The service here, in spite of a strenuous argument to the contrary by the appellant, was clearly a public one, namely, the keeping in repair of a tank the water from which benefits the lands of the surrounding ryots. In our view, the observations of SCHWABE C.J. must be taken to be of general applicability and to cover the

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cases of all public service inams. We must hold that lands burdened with a dasabandham service, which is a service of a public nature, are inalienable as being against public policy and, being inalienable, cannot be sold in execution of a decree against an inamdar. The lower appellate Court also found that estoppel cannot be relied upon to defeat a prohibition in law on the ground of public policy. No argument to the contrary was addressed to us by the appellant upon this point and that question therefore does not arise in this appeal. The second appeal must fail and be dismissed with costs.

A.S.V.

APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice King.*

NARAYANA GOUNDAN (PLAINTIFF), APPELLANT,

v.

APPAVU GOUNDAN, MINOR BY HEAD CLERK, DISTRICT
MUNSIFF'S COURT, UDUMALPET, AND ANOTHER
(DEFENDANTS), RESPONDENTS.*

*Code of Civil Procedure (Act V of 1908), O. XXI, r. 83—
Certificate to judgment-debtor under, authorising private
alienation—Grant of—Alienation pursuant to—Attachment
of same property between dates of, in execution of another
decree—Purchaser at sale under—Invalidity of alienation
made pursuant to certificate as against—Sec. 64—Appli-
cability and effect of.*

Certain property having been attached in execution of a decree, the judgment-debtor sought for permission under

* Second Appeal No. 598 of 1929.