

Appellate Jurisdiction (a)

Special Appeal No. 430 of 1868.

M. SESHAIYA..... *Special Appellant.*

M. GAURAMMA... .. *Special Respondent.*

Plaintiff brought a suit to recover land which had been enjoyed by her husband, the kurnum of a village, but which, on his death, had been given to the defendant with the office of kurnum. The land had been originally attached to the office, but the plaintiff's husband for a long time before his death was enjoying the land as his private property.

Held,—that the miras of the land continued to be attached to the office, notwithstanding that it may have been for some time enjoyed as private property, that the property being annexed to the office was indivisible, and as the Collector, in ejecting the plaintiff, appropriated the land to the office by putting it in the possession of the kurnum whom he appointed in place of the plaintiff's husband, the plaintiff had no right to recover.

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THIS was a Special Appeal against the decision of Venkata-dri, the Principal Sadr Amin of Rajahmundry, in Regular Appeal No. 203 of 1867, reversing the decree of the Court of the District Munsif of Peddapur in Original Suit No. 282 of 1866.

The plaintiff brought this suit seeking to recover certain inam land which was held by her late husband as kurnum of the village of Peapur.

The plaint stated that plaintiff's deceased husband Gopolaiya having died in 1859 2 putties and 3 tums of palle mirasi inam land, yielding a sist of rupees 50 a year, was on the plea of the occurrence of a vacancy in the office put in the possession of the then list kurnum by the Collector. The defendant's father enjoyed the same up to 22nd December 1863, and died. The defendant has been enjoying the same ever since.

In his statement, the defendant asserted that under the minutes passed by the Government to the effect that in case of the extinction of Lopayakaribhagasthulu (holders of minor shares) in the mirasi inam lands, the same should be put in possession of such kurnums as were

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performing the duties of the office, and the land in question was put in possession of the defendant's father in 1859 on the demise of the plaintiff's husband; that the defendant's father and the defendant held the enjoyment thereof on performing the karanikam business ever since.

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The Munsif dismissed the suit on the ground that the plaintiff should have first obtained power from the Zemindar for holding the karanikam office and brought the suit afterwards for recovery of the disputed land connected with the same, but she could not recover the land without holding the karanikam office.

The Principal Sadr Amin, on appeal, reversed the decree of the Munsif. The following is taken from the Judgment of the Appellate Court:—

It has been represented in the plaint that the disputed land was from long time since enjoyed in succession as a lopaykari share by the family of the plaintiff's husband, and the defendant did not raise any objections on the above matter.

Though the said land was originally miras, yet, as the same was not enjoyed for long time by the persons that were performing the duties of kurnum office the Court is of opinion that the defendant does not in any way possess right to the same.

As the said land is one of the mirasi lands included in the zemindary of Pitthapuram, the Collector had no power under any regulations to dispossess the plaintiff of the same on the death of her husband and to put the same in that of the defendant, and the Court recollects that the Inam Commissioner issued circular orders on the 28th March 1860 to the effect that the proprietors of such minor shares are not to be disturbed of their enjoyment.

The Court decides, in reversal of the original decision, that the disputed land should be put in the possession of the plaintiff.

The defendant appealed specially to the High Court against the decree of the Principal Sadr Amin upon the ground that

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No member of the family of a kurnum except the individual performing the duties is entitled to the lands and emoluments attached to the office.

In his return to an issue sent by the High Court, the Principal Sadr Amin found that the land claimed was originally attached to the office of the kurnum of the village, but that prior to the death of plaintiff's husband it had ceased to be attached to that office, and that at the date of his death and for a long period before he was enjoying the land as his private property.

Sloan, for the special appellant, the defendant.

The Court delivered the following

JUDGMENT:—The question in this suit was whether the plaintiff, who, on the death of her husband the kurnum, was ejected by the Collector, had a right to recover this land from the present kurnum who is the son of the person who was appointed to fill the vacancy occasioned by the death of plaintiff's husband.

In return to the issue sent by us, the Principal Sadr Amin has found that the land claimed was originally attached to the office of the kurnum of the village, but that prior to the death of plaintiff's husband it had ceased to be attached to that office, and that at the date of his death and for a long period preceding it he was enjoying the land as his private property.

The village in which the land is situated forms part of a zemindary. Regulation VI of 1831 applies only to unsettled districts, and there is no distinct provision in Regulation XXIX of 1802 (relating to the office of kurnum in settled districts) for securing from alienation the land attached to such offices. But the rules of the Inam Commissioner on which the Principal Sadr Amin relies apply only to the rights of the alieners of service Inam lands in unsettled districts, and land which has been appropriated to the support of a certain office must *prima facie* be held to have been intended to remain attached to it so long as the office continues; and in questions of this nature unless it were clearly shewn or could be presumed that since the original appropriation of the land it had been re-

sumed and re-granted to the claimant or those through whom he claims, it must be held that the land continues to be attached to the office.

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In the present suit no evidence has been offered, and the case of the plaintiff which is simply that the land ceased to be attached to the office of kurnum because it had been enjoyed as a lopayakari share excludes any such presumption. We therefore think that the miras of the land must be held to have continued to be attached to the office notwithstanding that it may have been for some time enjoyed as private property, such enjoyment having been confessedly by members of the kurnum's family by claim of co-parcenership right. The property being annexed to the office was indivisible, and as the Collector who was then in management of the zemindary in ejecting plaintiff appropriated the land to the office by putting it in the possession of the kurnum whom he appointed in room of plaintiff's husband, plaintiff can have no right to recover.

On the above grounds the decree of the Principal Sadr Amin must be reversed and the plaintiff's suit dismissed, and the plaintiff will bear the costs of suit in the original and appeal stages and in this special appeal.

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Special Appeal No. 514 of 1868.

S. NAMASEVAYAM PILLAY *Special Appellant.*

ANNAMMAI UMMAL *Special Respondent.*

The plaintiff, the divided brother of the defendant's deceased husband, sued to obtain a declaration of his independent legal right to betroth the infant daughters of his deceased brother by the defendant to persons of his own choosing without the interference of the defendant and of her obligation to accept any persons whom he may select and provide for the celebration of their marriages.

Held.—That the exclusive right sought to be enforced by the plaintiff was not warranted by Hindu law, apart from the legal position and rights of the defendant as the guardian of her daughters and possessor of her husband's property, which however presented still stronger grounds of objection to the plaintiff's claim.

THIS was a Special Appeal against the decision of F. S. Child, the Civil Judge of Tinnevely, in Regular Appeal No. 290 of 1867, confirming the decree of the

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