

Batchu Ramayya Vs. Dhara Satchi

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Court : Chennai

Decided On : Oct-10-1913

Reported in : (1913)25MLJ635

Appellant : Batchu Ramayya

Respondent : Dhara Satchi

Judgement :

1. We think we should follow the decisions in the cases reported in Ramaswami Naick v. Ramaswami Chetti I.L.R. (1906) M. 255 and Narahari Sahu v. Korithan Naidu (1913) M. W. N. 416 S.C. 24 M.L.J. 462. In the latter case the decision in Angannayya v. Droor Narasinna (1907) 18 M. L J. 247 has been dissented from and we also with all respect dissent from the ruling in Angannayya v. Narasanna (1907) 18 M. L J. 247. It follows that the alienation of the service Inam land by the 1st defendant's husband to the plaintiff was wholly void and Section 43 of the Transfer of Property Act could not be invoked by the plaintiff in his favor.

2. As regards two other contentions urged by the Appellant's learned Vakil, namely (1) that the emoluments of the office consisted only of the assessment, and (2) that it does not appear that the lands had not been enfranchised even before the sale deed to the plaintiff, not only were these points not taken up in the Lower Court or even in the second appeal memorandum but the plaint (as we read it) admits that the enfranchisement was after the date of the plaintiff's sale deed.

3. The point again that if the plaintiff's sale deed is void, he is entitled to recover his purchase money from the defendant was also taken up for the first time in argument before us. The claim for possession is based on the contention that the sale deed is or has become effective while this new claim could only be based on the entirely opposite contention that the sale deed is void and ineffective. This new claim cannot be put forward in this suit without an amendment of the plaint which should not be allowed at this stage.

4. The second appeal is dismissed with costs.

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