

In the High Court of Judicature at ^{Madras} Patna.

(Civil Appellate Side.)

TITLE PAGE.



FR000308

PART I.

(THIS FILE MUST BE PRESERVED FOR EVER.)

Second

APPEAL FROM

No. 677 of 193 1887

Pondann Dos

Appellants,

VERSUS

Bhagavan Patnaik

Respondents.

DATE OF DECISION OF HIGH COURT 28. 2. 1888

DITTO

OF PRIVY COUNCIL

Mohas

In the High Court of Judicature at Patna.

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Second Appeal No. *677* of *194 1887*

Pondann Doss

Appellant.

versus

Bhagavan Patnaik

Respondent.

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Signature of Officer of Court. *Ben*

Compared and found correct.

Date

9.7.41

Record-keeper.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Two day, the *twenty eighth* day of *February*,
One thousand eight hundred and eighty-eight.

PRESENT:—

The Honourable *Sir Arthur J. McCollier*, Kt., Chief Justice.

The Honourable Mr. Justice *Arthur Sivas Aiyar*, C. J. S.

Second APPEAL No. *677* of 1887.

Sodam Dos. Appellant. (*Plff*).

Bhagwant Patnaik. Respondent. (*Def*).

Second appeal against the *Order* of the District Court of *Beahar*
poore in Appeal suit No 211 of 1886, confirming the
decree of the Court of the District Munsiff of
Akha in Original suit No 794 of 1885.

This *Second* Appeal coming on for hearing, the Court delivered the
following

Judgment:— The only
contention urged before us
is that this village was not

6M

in existence at the date
of the Permanent Settlement
and that the office of Kur-
man came into existence
subsequent to the Regulation
~~XXIX~~ of 1802. The finding
of the District Judge is that
there was no evidence that
this Kurman was crea-
ted subsequent to 1802. Upon
this finding the question
whether Regulation ~~XXIX~~ of
1802 is applicable does not
arise.

The second Appeal is
dismissed with costs.

(A true copy)

D. Morgan

Dy. Regs.

App. Sec.

To The District Judge of
(with record). Berhampore 21/77

Process deing

28th February / 88

Sent 17th March / 88

Judgment

S. A. 677 / 87

[Signature]

IN THE HIGH COURT OF JUDICATURE AT MADRAS. 2



Sunday, the twenty-eighth day of February,
One thousand eight hundred and eighty-eight.

PRESENT:—

The Honourable Sir Arthur J. Collins, Kt., Chief Justice
and
The Honourable Mr. Justice Muthusami Sivas, C.S.C.

SECOND APPEAL NO. 677— OF 1887.

Sodam Doss

Appellant.

(Plff.)

Bhagavantatruik

Respondent.

(Deft.)

Second Appeal against the decree of the District Court of
Berhampore in Appeal Suit No. 211— of 1886, confirming
the decree of the Court of the District himself of Loka
in Original Suit No. 794 of 1885.

Decree:—This Second Appeal coming on for hearing: Upon perusing
the grounds of Appeal, the Judgments and Decrees of the Lower Appellate Court
and Court of First Instance and the material papers in the Suit; and upon hearing
the arguments of Mr C. Ramasubramanian Sahib, Vakil for the
Appellant, and of Mr Ch. Pattabirama Siva, Vakil for the
Respondent, this Court doth order and decree that the decree of the Lower
Appellate Court be, and the same hereby is, confirmed, and this appeal dismissed,
and this Court doth further order and decree that the Appellant do pay
to the Respondent Rs. 19-7-— for his costs in opposing this
Second Appeal.

Arthur Collins
Chief Justice
Muthusami Sivas
Judge.

MEMO:

677/1887-2

C. T. Mulla

MEMORANDUM OF COSTS.

Respondents (<i>Defendant</i>) Costs	Rs.	A.	P.
Stamp for Vakalatnamah.....	2	0	0
Pleader's fee on Rs. 270	13	8	0
One printed copy purchased.....	3	15	0

To be paid to the Respondent (*Defendant*)
by the Appellant (*Plaintiff*) } 19-7-00

CPD
1-3-78

Morgan

By Registrar,
Appellate Side.

some
11p

Stamp
Proceedings

28th February / 88

sent 17th March / 88

Decree

S. A. 677 / 87

[Signature]
X
677/1887-

Dismissing the appeal with
costs.

TO

THE DEPUTY REGISTRAR OF THE HIGH COURT,

APPELLATE SIDE,

Madras.

CERTIFICATE.

Second APPEAL No. ⁶⁷⁷~~677~~ of 1887.

Sir,

I certify that the amount received by me from the *respondent*
in the cause aforesaid does not fall short of the Regulation fees.

Madras,

29th July 1887. }

Mattabheray

vanal
Counsel for.

677/1887

IN THE COURT OF THE DISTRICT MUNSIF AT ASKA.

Original Suit No. 794 of 1885.

Plaintiff. versus Defendant.

Podanu Doss.

Bhagavan Patnaik,

Suit to recover 10 bharanams of Karnam's Inam lands and
rupees 45, their mesne profits for 1882-83 and 84.

10 This cause coming on on the 13th day of April 1886 for final disposal, before M. R. Ry. M. Visvanatha Iyer Avergal, Acting District Munsif, in the presence of K. Ramakrishnaiah Pantulu, on the part of the plaintiff, and of P. Narasimhaswamy Pantulu, on the part of the defendant; it is ordered that the suit be dismissed with costs, and that the plaintiff do pay the costs of the defendant.

(Here enter memo. of costs.)

Given under my hand and the seal of the Court this 13th day of April 1886.

(Signed) G. JAGANNADHAROW,

District Munsif

for Ag. District Munsif.

IN THE COURT OF THE DISTRICT MUNSIF AT ASKA.

20

The thirteenth day of April,

One thousand eight hundred and eight-six.

PRESENT:—M. R. Ry. M. VISVANATHA AIYAR AVERGAL,

Ag. District Munsif.

Original Suit No. 794 of 1885.

Plaintiff. versus Defendant.

Podanu Doss.

Bhagavan Patnaik.

1. This is a suit to recover 10 bharanams of Karnam's Inam lands and rupees 45, their mesne profits for 1882-83 and 84.

30 2. The plaintiff's case is that one OmrudhaDoss, who was the Karnam of Kolombo, having died in 1865 without heirs, the Zemindar got the Karnam's duties discharged by various persons; that 8 years ago the defendant was appointed to act as Karnam and was dismissed

C. B. N.

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by the Zemindar two years afterwards; that in 1830 the plaintiff was at first appointed as Acting Karnam and was granted the plaint land as Inam; that on 25th June 1881 the Zemindar confirmed him in the office of Karnam; that ever since then the plaintiff has been discharging the duties of Karnam; that the defendant usurped possession of the Karnam Inam lands in 1882 after the plaintiff enjoyed them for one year.

3. The defendant in his statement pleaded that as he was the adopted son of the late Raghunada Doss, his name is Bhagavan Doss, and not Bhagawan Patnaik; that Sadasiva Doss, his eldest son Vasu-
deva Doss, and then Raghunada Doss and after him the defendant
have been the hereditary Karnams of Kolombo; that on 26--3--63,
the Zemindar reported the then Collector admitting that the defend-
ant was the Karnam, that as the defendant was a minor at the
time he was appointed Karnam, he began to do Karnam's duties
in 1874 or 1875; that the ryots of Kolombo combined together and
complained to the Zemindar that he was instrumental in
getting several of them assessed with License tax, he was
suspended for five months, and plaintiff was appointed to act
for him in March 1880; that as the plaintiff and others
trespassed on his Karnam lands they were fined in Calender Case 834
of 1880 and 323 of 1881; that the dismissal of the defendant and the
appointment of the plaintiff are against the provisions of Regulation
XXIX of 1802.

4. The following documents were filed :—

For the Plaintiff.

- A. Takeed dated 21--12--80 by the Dewan of Kallikote and Atghur to the Acting Karnam and Karji of Kolombo.
- B. Do. dated 25--6--81, by do. to the ryots of Kolombo.
- C. Certified copy of Takeed by the Dewan to the plaintiff, dated 25-6-81.

For the Defendant.

- I. Certified extract from Inam Register for 1254, dated 28--7--45.
- II. Certified extract from Inam Register for 1271.
- III. Do. of the Zemindar's Arzi to Mr. G. S. Forbes, Collector of Ganjam, dated 26--3--63.
- IV. Takeed by Atghur Sheristadar to the defendant, dated 12--8--76.
- C. B. N.

- V. Takeed by Atghur Serishtadar to the Karji, &c., servants of Kolombo, dated 12-3-76.
- VI. Do. by do. to the defendant, dated 28-6-73.
- VII. Notice of attachment by the Deputy Tahsildar of Aska, dated 1-2-79 to the Karnam and Karji of Kolombo,
- VIII. Takeed by the Dewan to the defendant, dated 11-5-30,
- IX. Certified copy of judgment in Calender Case 83 of 1880, dated 24-11-80.
- X. Do. of do. in Calender Case 323 of 1881, dated 17-8-81.
- 10 5. The following issues were framed :—
- I. Is the defendant the legally appointed Karnam of Kolombo.
- II. If so, has he been legally dismissed from office?
- III. Is the defendant the adopted son of Raghunadha Doss?
- IV. Is the plaintiff's nomination valid as against the defendant?
- V. Has the plaintiff a right to recover possession of the Karnam Inam lands and its mesne profits for the years 1882-83 and 84?

- 20 6. The following witnesses were examined :—

For Plaintiff.

1. Budhi Sahu.
2. Havi Utta.
3. Norono Sahu.
4. Karji Nonlopodhano.
5. Balabhadra Doss.

For the Defendant.

1. Bhagavan Doss.
2. Gopbinadhacham Patnaik.
3. Radhamali.

JUDGMENT.

7. The defendant's pleader admitted the genuineness of Exhibits A, B and C but pointed out that in line 7 of Exhibit B *Das* has been altered into Patnaik. The correction is quite apparent and seems to have been subsequently made by the plaintiff or at his instance in order to show that the defendant's name is Bhagavan Patnaik and not Bhagavan Doss. But the defendant is described as Bhagavan Doss in Exhibits A and C of the plaintiff and Exhibits III to VIII.

C. B. N.

8. 1st as regards the 3rd issue.

The defendant's adoption by the late Raghunada Doss has been satisfactorily established by the evidence of his 2nd witness, a relation of his natural father, who says he attended the adoption, and of his 3rd witness, the widow of Anurdha Doss, cousin of the late Raghunadha Doss. These witnesses say that Raghunada adopted his wife's brother's son, the defendant, when he was less than one year old. The fact of his adoption is strongly corroborated by the contents of Exhibit III, an arzi written by the Kallikote Zemindar in 1863 to the then Collector. Were it not for the adoption, the defendant would have been known by the name of Bhagawan Patnaik and not by the name of Bhagawan Doss. The surname of his natural family is Patnaik, while that of his adoptive family is *Das*. 10

9. The plaintiff examined five witnesses to show that the defendant was not adopted by the late Raghunada Doss. They say that they were not aware of any adoption, and that the defendant divided from his natural brothers and got a share out of the property of his natural father.

The 5th witness is an inhabitant of another village and his evidence as to the portion is hearsay. The 4th witness is the Karji of Kolombo. He says he does not know into how many shares the property of the natural family was divided. The 3rd witness is a neighbour of the house of the defendant's natural brother; he says he was present at the division. The 2nd witness is an Inamdar of a neighbouring village. He says that the defendant performed the funeral rites of his natural father, though his eldest son Chakrapani was present. The 1st witness also was not present at the division. Every one of these says that the defendant's name is Bhagawan Patnaik and not *Das*. The 1st witness' wife was deserted by him on account of some suspicion of criminal intimacy between her and the defendant. The said witness and witnesses 3, 4 and 5 all belonging to Bolasi caste. The other residents of the village are all of the same caste. In consequence of the part that the defendants took in distraining the property of the defaulters of the license tax in the village and of the criminal intimacy between the defendant and the wife of the plaintiff's 1st witness, the ryots combined together and complained to the Dewan of the Zemindar of Atghur and Kallikote and got him first suspended and ultimately dismissed in consequence of the criminal prosecution of the ryots and the Dewan for criminal 20 30

C. B. N.

trespass into his Karnam Inam lands by the latter and of the conviction by the Sub-Magistrate and the Appellate Court.

10. The evidence of the plaintiff's witness is unworthy of credit and is opposed to documentary evidence. I therefore find that the defendant is the legally adopted son of the late Raghunada Doss. From Exhibit III it is clear that the defendant is the rightful Karnam of Kolombo, and that his natural father was doing Karnam's duties on behalf of his minor natural son. After the death of Gadhadharapat Naik, his elder son Chakrapani did the duties of Karnam on behalf of the defendant. The defendant seems to have begun to discharge the duties of Karnam in 1876. There is nothing to show that he was appointed as temporary Karnam. The plaintiff has failed to show that the defendant has been dismissed by the Zemindar for any valid reasons. Exhibits I and II show that the adoptive father of the defendant was the registered Karnam of Kolombo. The Zemindar could not legally remove the defendant from the office of Karnam except by a decree of a competent Civil Court on the ground of his misconduct.

11. I therefore find that the other issues also against the plaintiff,

12. My decree is that the plaintiff's suit be dismissed with all costs and that he do pay the costs of the defendant.

Pronounced in open Court on the 13th day of April 1886.

(Signed) G. JAGANNADHAROW,

*District Munsif.
for Ag. District Munsif.*

Decree on Appeal No. 211 of 1886.

Section 579 of the Code of Civil Procedure.

IN THE DISTRICT COURT OF GANJAM AT BERHAMPORE.

Appellant. versus Respondent.

Podanu Doss.

Bhagavan Patnaik.

Appeal from the decree of the Court of the District Munsif of Aska in Original Suit 794 of 1885, dated the 13th day of June 1886.

C. B. N.

S. A. 677--2

677/1886-9

Memorandum of Appeal.

<i>Plaintiff.</i>	<i>versus</i>	<i>Defendant.</i>
Podanu Doss, Karnam, residing at Rukkakona of Bitturi Mutta in Atagada Taluq. .		Bhagavan Patnaik, Trader, residing at Nimmapodoro of Paikpada Mutta in Ghum- sur Taluq.

The plaintiff abovenamed appeals to the District Court of Ganjam, at Berhampore, "against the decree of the District Munsif of Aska in the above suit, dated the 13th day of April 1886, for the following reasons, namely :—

10

It was not proved that defendant is the adopted son of Raghunada Patnaik, the original Karnam.

2. Some of the documents to witness No. III and others are not admissible in evidence.

3. From the evidence of Karji and others of Kolombo in which village the suit Karnam lands are situated, it does not appear that the defendant is the adopted son.

4. The reasons given by the Lower Court for discrediting that evidence are not sufficient.

This appeal coming on for hearing on the 23rd day of February 1887 before J. Thomson, Esquire, Acting District Judge, in the presence of P. L. Narasimharow Pantulu, Vakil for the appellant, and of Babu B. C. Chatterjee, Vakil for the respondent; it is ordered that the decree of the Lower Court be, and the same hereby is, confirmed, and this appeal dismissed with costs in both Courts.

2

The costs of this appeal incurred by respondent amounting to rupees 14 0-0 are to be paid by appellant. The costs of the Original Suit are to be paid by plaintiff.

(Here enter memorandum of costs.)

Given under my hand this 23rd day of February 1887.

30

(Signed) J. THOMSON,
Ag. District Judge.

IN THE DISTRICT COURT OF GANJAM,

Wednesday, the twenty-third day of February,
One thousand eight hundred and eighty-seven.

PRESENT :—J. THOMSON, Esquire, *Ag. District Judge.*

Appeal Suit No. 211 of 1886.

(*Plaintiff*) Appellant. versus (*Defendant*) Respondent.

Podanu Doss.

Bhagavan Patnaik.

Appeal against the decree of the District Munsif of Aska in
Original Suit No. 794 of 1884.

10

JUDGMENT.

Appellant (plaintiff, Podanu Doss claiming to be Karnam of Kolombo village Zemindary) seeks to recover the Inam lands attached to the office with mesne profits of rupees 45 for the 3 years 1882--84. The Lower Court found that the respondent (defendant Bhagavan Doss was the legally appointed Karnam of the village and not legally dismissed; that he was the adopted son of Raghunada Doss, a former holder of the office; that the plaintiff's nomination (appointment) was not valid against defendant, and plaintiff had no right to recover the Karnam Inam lands and the mesne profits claimed.

20

2. The suit might have been briefly disposed of by a finding that respondent was appointed Karnam of the village—*vide* B under the Zemindar's Dewan's hand, and III and had not been shown to have resigned the office or to have been legally dismissed.

30

3. The question of his inherent right to hold the office was, however, raised and an issue framed to try if he was, as he claimed to be, the adopted son of Raghunada Doss whose right is not disputed. To that point the oral evidence is directed, and on careful perusal of it, I see no reason to differ from the Lower Court's estimate of its value. The plaintiff proved nothing but his witnesses ignorance of the adoption, and in the case of two witnesses at least the impossibility of their knowing of themselves; whereas the two witnesses for the defendant depose distinctly to the fact of which they were eye-witnesses. One is the adoptor's sister and the other was a Karnam working directly under the Zemindar, who swears the Zemindar's permission to the adoption was obtained and that it was registered in the accounts. The plaintiff, with the Zemindar's Dewan at his back, does not cross-examine him.

4. Grounds for ill-feeling on the part of 3 at least of appellant's witnesses towards respondent are also shown. This ill-feeling is

C. B. N.

ascribable to the respondent being suspected of too much familiarity with one of the witnesses wives and to his having got several assessed to the License tax and their goods distrained for payment and also to his having got some of them and the Dewan also convicted for criminal trespass on his Inam lands.

5. It is urged here that the adoption was improbable because respondent's father had an undivided brother who had a son at the time, and that there is no evidence from the village itself as to the adoption. The Karji, 4th witness for appellant, it is said, ought to have known, as also the 5th witness. But the brother's widow says respondent's adoptive father wished to adopt a son—as was natural—; the cause of the absence of village evidence is already explained—the village is all one caste—, and the 4th and 5th witnesses are distinctly hostile to respondent and their evidence carries no conviction to my mind.

10

6. It is also said that respondent got a share of his natural father's property. If adopted he could not claim it but might get it, but there is no proper proof that he shared as stated.

7. An objection of more substance is that the Karnam's Inam account of 1861—Exhibit II—shows Gouridoss or Nityananda Doss adopted son of the brother (Anurudha Doss) of respondent's adoptive father to be Karnam. Respondent's Vakil says this was probably partiality on the part of the common guardian of the family who signed the paper; but it seems to me Gouridoss was called Kurnam as the son of his father Anurudha who had been filling the Karnam office in succession to respondent's adoptive father; and that neither the family (which was joint) nor the Zemindar troubled themselves about making any formal appointment.

20

8. The abovenamed Anurudha dying about 1861, it is suggested that quarrels then arose between his widow and respondent's adoptive mother and that the adoption was then only broached. The adoption may have come to significance then only, but the fact remains that it was then recognised clearly by the Zemindar, Exhibit III, and respondent's name was registered.

30

9. It is further said that if the respondent was not adopted he was not a Karnam appointed under Section 7 of Regulation XXIX of 1802, that his appointment as Karnam was only a temporary arrangement, and that the holders of such appointments cannot claim the privileges of Section 5. I find no support in this case for any of these propositions or of the hypothesis.

C. B. N.

10. Then again it is said the Karnikam was not brought into existence at or under Regulation XXIX of 1802 as appears from Exhibit II stating that there are no entries of Inam or Karnams for Fuslis 26 and 41. This is met by Exhibit I stating that the Inam lands were for 200 years in the family. *Prima facie* the Regulation was passed to provide for officering the villages then existent. But its scope is subject to development according as the Zemindaries would develop, and if the creation of the office or the appointment of the holder were of yesterday, it would appear that the Zemindar has no power to remove a Karnam except in terms of the Regulation. But I see no reason to think this Karnamship is subsequent to the Regulation.

11. On the oral and documentary evidence there is no room to doubt that respondent was adopted by Raghunada, Doss an office holder; that he was actually appointed to the office by the Zemindar; that he discharged its duties, incurred the enmity of the villagers and of the Dewan, and that his extrusion as been attempted by appointing another in his place. The claim of appellant to the Inam lands cannot be attended to till the respondent's tenure of the Karnam office is legally determined.

12. This appeal is dismissed with costs to respondent in both Courts,

(Signed) J. THOMSON,
Jg. District Judge.

MEMORANDUM OF SECOND APPEAL.

Before the District Munsif's Court of Aska,

Original Suit No. 794 of 1885.

Before the District Court of Berhampore,

Appeal Suit No. 211 of 1886.

Before the High Court of Judicature at Madras,

Second Appeal No. 677 of 1887.

	<i>In the Court of</i>	<i>In the</i>	<i>In the</i>
	<i>First</i>	<i>District</i>	<i>High</i>
	<i>Instance.</i>	<i>Court.</i>	<i>Court.</i>
Podanu Doss	... Plaintiff.	Appellant.	Appellant.
<i>versus</i>			
Bhagavan Patnaik ..	Defendant.	Respondent.	Respondent.

The plaintiff abovenamed begs to appeal to the High Court of Judicature at Madras against the decree of the District Court of C. B. N.

Gaujam, at Berhampore, dated 23rd February 1837, for the following, among other reasons :—

- I. The provisions relating to the office of Karnam under Regulation XXIX of 1802 have no application to the present case.
- II. The office having been created since the permanent settlement, the Zemindar it as liberty to dispense the services of any encumbent for the time being and appoint a new person in its stead.
- III. There is no distinct finding that the office existed prior to the settlement, and the onus lay on the defendant to show that it so existed of which there is no evidence. 10
- IV. The plaintiff having been regularly appointed by the Zemindar is entitled to recover the lands.
- V. Even if the Regulation applied that the defendant's ancestors have not been formally appointed, the defendant has no title to insist on the continuance of the office in his favour or to resist the claim of the plaintiff who has been formally appointed.
- VI. Exhibit III does not create an indefeasible right in the defendant to continue in office or affect the Zemindars to appoint any other person. 20
- VII. Exhibit II shows that the office is of a date subsequent to the settlement. Exhibit I does not show that the office existed prior to the settlement.

(Signed) C. RAMACHENDRA ROW SAHIB,

4-7-87.

Vakil for Appellant.

Ex d. C. Bashiem Naidu.

the only contentions
 urged before us. ^{to} That
 this decree was not in
 existence at the date of
 the Permanent Settlement
 & that the office of Zamindar
 came into existence
 subsequent to the Reg.
 Act of 1802 - The finding
 of the S. C. is that there
 was no evidence that
 this Kurnamdar was
 created subsequent to
 1802. Upon this finding the
 question under Reg. Act
 of 1802 is applicable
 does not arise.
 2^d Appeal dismissed
 1st Inst. Alb
28. 2. 88
Am

65

HIGH COURT.

SECOND APPEAL
No. 677 of 1887.

GANJAM
District Court.

Appeal Suit No. 211 of 1886.

Podanu Doss,

(Plaintiff) Appellant.

By Mr. Ramachendra Row Sahib.

versus

Bhagavan Patnaik,

(Defendant) Respondent.

NATURE OF CLAIM. } Suit to recover certain Inam lands with mesne profits.

IN THE COURT OF FIRST INSTANCE. } Plaintiff filed
Decree passed 13-4-86.

IN THE LOWER APPELLATE COURT. } Appeal filed
Decree passed 23-2-87.

IN THE HIGH COURT. } S. A. presented 4-7-87.
S. A. admitted 21-7-87.
S. A. filed 22-7-87.

Enclosures two and Vskalut.

S. Appeal valued at rupees 270-0-0

Stamp duty paid, rupees 20-4-0.

To be heard on

22nd Feb 1888
 23rd
 28th 22nd 1888
 Out 1888
 10

677/1887-12

discrepancy

IN THE COURT OF THE DISTRICT MUNSIF AT ASKA.

Original Suit No. 794 of 1885.

Plaintiff. versus Defendant.

Podanu Doss.

Bhagavan Patnaik,

Suit to recover 10 bharanams of Karnam's Inam lands and rupees 45, their mesne profits for 1882-83 and 84.

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(Here enter memo. of costs.)

Given under my hand and the seal of the Court this 13th day of April 1886.

(Signed) G. JAGANNADHAROW,
District Munsif
for Ag. District Munsif.

IN THE COURT OF THE DISTRICT MUNSIF AT ASKA.

20

The thirteenth day of April,

One thousand eight hundred and eight-six.

PRESENT:—M. R. Ry. M. VISVANATHA AIYAR AVERGAL,
Ag. District Munsif.

Original Suit No. 794 of 1885.

Plaintiff. versus Defendant.

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30 2. The plaintiff's case is that one OmrudhaDoss, who was the Karnam of Kolombo, having died in 1865 without heirs, the Zemindar got the Karnam's duties discharged by various persons; that 8 years ago the defendant was appointed to act as Karnam and was dismissed

C. B. N.

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by the Zemindar two years afterwards; that in 1830 the plaintiff was at first appointed as Acting Karnam and was granted the plaint land as Inam; that on 25th June 1831 the Zemindar confirmed him in the office of Karnam; that ever since then the plaintiff has been discharging the duties of Karnam; that the defendant usurped possession of the Karnam Inam lands in 1832 after the plaintiff enjoyed them for one year.

3. The defendant in his statement pleaded that as he was the adopted son of the late Raghunada Doss, his name is Bhagavan Doss, and not Bhagawan Patnaik; that Sadusiva Doss, his eldest son Vasudeva Doss, and then Raghunada Doss and after him the defendant have been the hereditary Karnams of Kolombo; that on 26--3--63, the Zemindar reported the then Collector admitting that the defendant was the Karnam, that as the defendant was a minor at the time he was appointed Karnam, he began to do Karnam's duties in 1874 or 1875; that the ryots of Kolombo combined together and complained to the Zemindar that he was instrumental in getting several of them assessed with License tax, he was suspended for five months, and plaintiff was appointed to act for him in March 1880; that as the plaintiff and others trespassed on his Karnam lands they were fined in Calender Case 834 of 1881 and 323 of 1881; that the dismissal of the defendant and the appointment of the plaintiff are against the provisions of Regulation XXIX of 1802.

4. The following documents were filed :—

For the Plaintiff.

- A. Takeed dated 21--12--80 by the Dewan of Kallikote and Atghur to the Acting Karnam and Karji of Kolombo.
- B. Do. dated 25--6--81, by do. to the ryots of Kolombo.
- C. Certified copy of Takeed by the Dewan to the plaintiff, dated 25-6-81.

For the Defendant.

- I. Certified extract from Inam Register for 1254, dated 28--7--45.
 - II. Certified extract from Inam Register for 1271.
 - III. Do. of the Zemindar's Arzi to Mr. G. S. Forbes, Collector of Ganjam, dated 26--3--63.
 - IV. Takeed by Atghur Sheristadar to the defendant, dated 12--8--76.
- C. B. N.

- V. Takeed by Atghur Serishtadar to the Karji, &c., servants of Kolombo, dated 12-8-76.
- VI. Do. by do. to the defendant, dated 28-6-73.
- VII. Notice of attachment by the Deputy Tahsildar of Aska, dated 1-2-79 to the Karnam and Karji of Kolombo.
- VIII. Takeed by the Dewan to the defendant, dated 11-5-80.
- IX. Certified copy of judgment in Calender Case 83 of 1880, dated 24-11-80.
- X. Do. of do. in Calender Case 323 of 1881, dated 17-8-81.

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5. The following issues were framed :—

- I. Is the defendant the legally appointed Karnam of Kolombo.
- II. If so, has he been legally dismissed from office?
- III. Is the defendant the adopted son of Raghunadha Doss?
- IV. Is the plaintiff's nomination valid as against the defendant?
- V. Has the plaintiff a right to recover possession of the Karnam Inam lands and its mesne profits for the years 1882-83 and 84?

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6. The following witnesses were examined :—

For Plaintiff.

- 1. Budhi Sahu.
- 2. Havi Utta.
- 3. Norono Sahu.
- 4. Karji Nomlopodhano.
- 5. Balabhadra Doss.

For the Defendant.

- 1. Bhagavan Doss.
- 2. Gophinadhacham Patnaik.
- 3. Radhamali.

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JUDGMENT.

7. The defendant's pleader admitted the genuineness of Exhibits A, B and C but pointed out that in line 7 of Exhibit B *Das* has been altered into Patnaik. The correction is quite apparent and seems to have been subsequently made by the plaintiff or at his instance in order to show that the defendant's name is Bhagavan Patnaik and not Bhagawan Doss. But the defendant is described as Bhagavan Doss in Exhibits A and C of the plaintiff and Exhibits III to VIII.

C. B. N.

3. 1st as regards the 3rd issue.

The defendant's adoption by the late Raghunada Doss has been satisfactorily established by the evidence of his 2nd witness, a relation of his natural father, who says he attended the adoption, and of his 3rd witness, the widow of Anurdha Doss, cousin of the late Raghunadha Doss. These witnesses say that Raghunada adopted his wife's brother's son, the defendant, when he was less than one year old. The fact of his adoption is strongly corroborated by the contents of Exhibit III, an arzi written by the Kallikote Zemindar in 1863 to the then Collector. Were it not for the adoption, the defendant would have been known by the name of Bhagavan Patnaik and not by the name of Bhagawan Doss. The surname of his natural family is Patnaik, while that of his adoptive family is *Das*.

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9. The plaintiff examined five witnesses to show that the defendant was not adopted by the late Raghunada Doss. They say that they were not aware of any adoption, and that the defendant divided from his natural brothers and got a share out of the property of his natural father.

The 5th witness is an inhabitant of another village and his evidence as to the portion is hearsay. The 4th witness is the Karji of Kolombo. He says he does not know into how many shares the property of the natural family was divided. The 3rd witness is a neighbour of the house of the defendant's natural brother; he says he was present at the division. The 2nd witness is an Inamdar of a neighbouring village. He says that the defendant performed the funeral rites of his natural father, though his eldest son Chakrapani was present. The 1st witness also was not present at the division. Every one of these says that the defendant's name is Bhagavan Patnaik and not *Das*. The 1st witness' wife was deserted by him on account of some suspicion of criminal intimacy between her and the defendant. The said witness and witnesses 3, 4 and 5 all belonging to Bolasi caste. The other residents of the village are all of the same caste. In consequence of the part that the defendants took in distraining the property of the defaulters of the license tax in the village and of the criminal intimacy between the defendant and the wife of the plaintiff's 1st witness, the ryots combined together and complained to the Dewan of the Zemindar of Atghur and Kallikote and got him first suspended and ultimately dismissed in consequence of the criminal prosecution of the ryots and the Dewan for criminal

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C. B. N.

trespass into his Karnam Inam lands by the latter and of the conviction by the Sub-Magistrate and the Appellate Court.

10. The evidence of the plaintiff's witness is unworthy of credit and is opposed to documentary evidence. I therefore find that the defendant is the legally adopted son of the late Raghunada Doss. From Exhibit III it is clear that the defendant is the rightful Karnam of Kolombo, and that his natural father was doing Karnam's duties on behalf of his minor natural son. After the death of Gadbadharapat Naik, his elder son Chakrapani did the
 10 duties of Karnam on behalf of the defendant. The defendant seems to have begun to discharge the duties of Karnam in 1876. There is nothing to show that he was appointed as temporary Karnam. The plaintiff has failed to show that the defendant has been dismissed by the Zemindar for any valid reasons. Exhibits I and II show that the adoptive father of the defendant was the registered Karnam of Kolombo. The Zemindar could not legally remove the defendant from the office of Karnam except by a decree of a competent Civil Court on the ground of his misconduct.

11. I therefore find that the other issues also against the plain-
 20 tiff.

12. My decree is that the plaintiff's suit be dismissed with all costs and that he do pay the costs of the defendant.

Pronounced in open Court on the 13th day of April 1886.

(Signed) G. JAGANNADHAROW,

District Munsif.
for Ag. District Munsif.

Decree on Appeal No. 211 of 1886.

Section 579 of the Code of Civil Procedure.

IN THE DISTRICT COURT OF GANJAM AT BERHAMPORE.

Appellant. *versus* *Respondent.*

Podanu Doss,

Bhagavan Patnaik.

Appeal from the decree of the Court of the District Munsif of Aska in Original Suit 794 of 1885, dated the 18th day of June 1886.

C. B. N.

S. A. 677—2

677/1887-15

Memorandum of Appeal.

Plaintiff.

versus

Defendant.

Podanu Doss, Karnam,
residing at Rukkakona of
Bitturi Mutta in Atagada
Taluk.

Bhagavan Patnaik, Trader,
residing at Nimmapodoro of
Paikpada Mutta in Ghum-
sur Taluk.

The plaintiff abovenamed appeals to the District Court of Ganjam, at Berhampore, against the decree of the District Munsif of Aska in the above suit, dated the 18th day of April 1886, for the following reasons, namely :—

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It was not proved that defendant is the adopted son of Raghunada Patnaik, the original Karnam.

2. Some of the documents to witness No. III and others are not admissible in evidence.

3. From the evidence of Karji and others of Kolombo in which village the suit Karnikam lands are situated, it does not appear that the defendant is the adopted son.

4. The reasons given by the Lower Court for discrediting that evidence are not sufficient.

This appeal coming on for hearing on the 23rd day of February 1887 before J. Thomson, Esquire, Acting District Judge, in the presence of P. L. Narasimharow Pantulu, Vakil for the appellant, and of Babu B. C. Chatterjee, Vakil for the respondent ; it is ordered that the decree of the Lower Court be, and the same hereby is, confirmed, and this appeal dismissed with costs in both Courts.

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The costs of this appeal incurred by respondent amounting to rupees 14 0-0 are to be paid by appellant. The costs of the Original Suit are to be paid by plaintiff.

(Here enter memorandum of costs.)

Given under my hand this 23rd day of February 1887.

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(Signed) J. THOMSON,
Ag. District Judge.

IN THE DISTRICT COURT OF GANJAM,

*Wednesday, the twenty-third day of February,**One thousand eight hundred and eighty-seven.*PRESENT:—J. THOMSON, Esquire, *Ag. District Judge.**Appeal Suit No. 211 of 1886.**(Plaintiff) Appellant. versus (Defendant) Respondent.*

Podanu Doss.

Bhagavan Patnaik.

Appeal against the decree of the District Munsif of Aska in
Original Suit No. 794 of 1884.

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JUDGMENT.

Appellant (plaintiff, Podanu Doss claiming to be Karnam of Kolombo village Zemindary) seeks to recover the Inam lands attached to the office with mesne profits of rupees 45 for the 3 years 1882—84. The Lower Court found that the respondent (defendant Bhagavan Doss was the legally appointed Karnam of the village and not legally dismissed; that he was the adopted son of Raghunada Doss, a former holder of the office, that the plaintiff's nomination (appointment) was not valid against defendant, and plaintiff had no right to recover the Karnam Inam lands and the mesne profits claimed.

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2. The suit might have been briefly disposed of by a finding that respondent was appointed Karnam of the village—*vide B* under the Zemindar's Dewan's hand, and *III* and had not been shown to have resigned the office or to have been legally dismissed.

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3. The question of his inherent right to hold the office was, however, raised and an issue framed to try if he was, as he claimed to be, the adopted son of Raghunada Doss whose right is not disputed. To that point the oral evidence is directed, and on careful perusal of it, I see no reason to differ from the Lower Court's estimate of its value. The plaintiff proved nothing but his witnesses ignorance of the adoption, and in the case of two witnesses at least the impossibility of their knowing of themselves; whereas the two witnesses for the defendant depose distinctly to the fact of which they were eye-witnesses. One is the adoptor's sister and the other was a Karnam working directly under the Zemindar, who swears the Zemindar's permission to the adoption was obtained and that it was registered in the accounts. The plaintiff, with the Zemindar's Dewan at his back, does not cross-examine him.

4. Grounds for ill-feeling on the part of 3 at least of appellant's witnesses towards respondent are also shown. This ill-feeling is

C. B. N.

ascribable to the respondent being suspected of too much familiarity with one of the witnesses wives and to his having got several assessed to the License tax and their goods distrained for payment and also to his having got some of them and the Dewan also convicted for criminal trespass on his Inam lands.

5. It is urged here that the adoption was improbable because respondent's father had an undivided brother who had a son at the time, and that there is no evidence from the village itself as to the adoption. The Karji, 4th witness for appellant, it is said, ought to have known, as also the 5th witness. But the brother's widow says respondent's adoptive father wished to adopt a son—as was natural—; the cause of the absence of village evidence is already explained—the village is all one caste—, and the 4th and 5th witnesses are distinctly hostile to respondent and their evidence carries no conviction to my mind. 10

6. It is also said that respondent got a share of his natural father's property. If adopted he could not claim it but might get it, but there is no proper proof that he shared as stated.

7. An objection of more substance is that the Karnam's Inam account of 1861—Exhibit II—shows Gouridoss or Nityananda Doss adopted son of the brother (Anurudha Doss) of respondent's adoptive father, to be Karnam. Respondent's Vakil says this was probably partially on the part of the common guardian of the family who signs the paper; but it seems to me Gouridoss was called Karnam as the son of his father Anurudha who had been filling the Karnam office in succession to respondent's adoptive father; and that neither the family (which was joint) nor the Zemindar troubled themselves about making any formal appointment. 20

8. The abovenamed Anurudha dying about 1861, it is suggested that quarrels then arose between his widow and respondent's adoptive mother and that the adoption was then only broached. The adoption may have come to significance then only, but the fact remains that it was then recognised clearly, by the Zemindar, Exhibit III, and respondent's name was registered. 30

9. It is further said that if the respondent was not adopted he was not a Karnam appointed under Section 7 of Regulation XXIX of 1802, that his appointment as Karnam was only a temporary arrangement, and that the holders of such appointments cannot claim the privileges of Section 5. I find no support in this case for any of these propositions or of the hypothesis.

C. B. N.

10. Then again it is said the Karnikam was not one brought into existence at or under Regulation XXIX of 1802 as appears from Exhibit II stating that there are no entries of Inam or Karnams for Fuslis 26 and 41. This is met by Exhibit I stating that the Inam lands were for 200 years in the family. *Prima facie* the Regulation was passed to provide for officering the villages then existent. But its scope is subject to development according as the Zemindaries would develop, and if the creation of the office or the appointment of the holder were of yesterday, it would appear that the Zemindar has no power to remove a Karnam except in terms of the Regulation. But I see no reason to think this Karnamship is subsequent to the Regulation.

11. On the oral and documentary evidence there is no room to doubt that respondent was adopted by Raghunada, Doss an office holder; that he was actually appointed to the office by the Zemindar, that he discharged its duties, incurred the enmity of the villagers and of the Dewan, and that his extrusion as been attempted by appointing another in his place. The claim of appellant to the Inam lands cannot be attended to till the respondent's tenure of the Karnam office is legally determined.

12. This appeal is dismissed with costs to respondent in both Courts,

(Signed) J. THOMSON,
Ag. District Judge.

MEMORANDUM OF SECOND APPEAL.

Before the District Munsif's Court of Aska,

Original Suit No. 794 of 1885.

Before the District Court of Berhampore,

Appeal Suit No. 211 of 1886.

Before the High Court of Judicature at Madras,

Second Appeal No. 677 of 1887.

	In the Court of	In the	In the
	First	District	High
	Instance.	Court.	Court.
Podanu Doss	... Plaintiff.	Appellant.	Appellant.
<i>versus</i>			
Bhagavan Patnaik ..	Defendant.	Respondent.	Respondent.

The plaintiff abovenamed begs to appeal to the High Court of Judicature at Madras against the decree of the District Court of C. B. N.

Gaujam, at Berhampore, dated 23rd February 1887, for the following, among other reasons :—

- I. The provisions relating to the office of Karnam under Regulation XXIX of 1802 have no application to the present case.
- II. The office having been created since the permanent settlement, the Zemindar it as liberty to dispense the services of any encumbent for the time being and appoint a new person in its stead.
- III. There is no distinct finding that the office existed prior to the settlement, and the onus lay on the defendant to show that it so existed of which there is no evidence. 10
- IV. The plaintiff having been regularly appointed by the Zemindar is entitled to recover the lands.
- V. Even if the Regulation applied that the defendant's ancestors have not been formally appointed, the defendant has no title to insist on the continuance of the office in his favour or to resist the claim of the plaintiff who has been formally appointed.
- VI. Exhibit III does not create an indefeasible right in the defendant to continue in office or affect the Zemindars to appoint any other person. 20
- VII. Exhibit II shows that the office is of a date subsequent to the settlement. Exhibit I does not show that the office existed prior to the settlement.

(Signed) C. RAMACHENDRA ROW SAHIB,

4-7-87.

Vakil for Appellant.

Ex d. C. Bashiem Naidu.

HT
MJ

HIGH COURT.

SECOND APPEAL
No. 677 of 1887.

GANJAM
District Court.

Appeal Suit No. 211 of 1886.

Podann Doss,

(Plaintiff) Appellant.

By Mr. Ramachendra Row Sahib.

versus

Bhagavan Patnaik,

(Defendant) Respondent.

NATURE
OF
CLAIM. } Suit to recover certain Inam
lands with mesne profits.

IN THE
COURT OF
FIRST
INSTANCE. } Plaintiff filed
Decree passed 13-4-86.

IN THE
LOWER
APPELLATE
COURT. } Appeal filed
Decree passed 23-2-87.

IN THE
HIGH
COURT. } S. A. presented 4-7-87.
S. A. admitted 21-7-87.
S. A. filed 22-7-87.

Enclosures two and Vakalat.

S. Appeal valued at rupees 270-0-0

Stamp duty paid, rupees 20-4-0.

To be heard on

Monday 22nd Febry/88.
23rd Febry/88.
Tuesday 28-2-88
Ort
9

2) High

3) High Court Decree

28-2-88

4) 2 sets of J's H's

GA2/1887-19

GA2/1887-19