NÁTCHIARAMMÁL v. GOPALAKRISHNA.

In the first suit in which the eldest son was plaintiff, it was decided finally by the High Court that the debt which led to the sale in execution in second defendants favor was a family debt and that the sale was binding upon the son. As this decision is evidence in support of the second defendant's contention, we are bound to accept the finding of the Lower Appellate Court that the second defendant's judgment debt was a family debt. The only question then which arises and which is raised for decision in this appeal is whether a sale in payment of a family debt is a sale subject to the maintenance of those who are entitled under the Hindu law to be maintained by the head of the family. We are of opinion that, though the plaintiffs' maintenance may in certain circumstances be a charge on the husband's property as against a purchaser, it is not so in this case in which the sale is found to have taken place in payment of a family debt which it is the primary duty of the head of the family to pay and against which the claim to maintenance cannot take precedence. We find that the same view has been taken by the High Court at Bombay.

And we think, therefore, that this appeal should be dismissed with costs.

Appeal dismissed.

PRIVY COUNCIL.

P. C.* 1879. November 5th, 6th, and 7th, and December 13th.

RÁJA VENKATA RAO (PLAINTIFF) APPELLANT *v.* THE COURT OF WARDS, ACTING ON BEHALF OF THE MINOR SONS OF RÁJA NARÁYYA RAO, DECEASED, AND OTHERS (DEFENDANTS) RESPONDENTS.

[On appeal from the High Court of Madras.]

Zamindári—Partibility—New Zamindári—Heirs.

In 1793 the ancient zamindári of Núzvíd, which descended to a single heir, having been before British rule a ráj, or principality, held on the tenure of military service was resumed by the Government for arrears of revenue.

In 1802 the Government formed two zamindáris out of it, and granted one of them, since called Núzvíd, to the second son of the Rájá, under a "Sanad-i-milkiat istemrari," which described the zamindári lands, comprised in it, as "the six pargannas of Núzvíd in the "Kondapalli Circar." The provisions of the sanad did not differ from those of an ordinary grant under the Permanent Settlement.

* *Present.*—Sir JAMES WILLIAM COLVILE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, and Sir ROBERT P. COLLIER.

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On the question whether this zamindárí was, or was not, subject to the same rule of impartibility as that to which the ancient and entire zamindárí of Núzvíd had been subject before 1793. Held that the six pargannas, granted in 1802, were a new zamindárí, subject only to the ordinary obligations imposed on zamindáris in general; and the word "heirs" used in the sanad, construed to mean heirs of the grantee according to the ordinary rules of inheritance of the Hindu Law.

The Hansapúr case, *Bir Pertah Sahi* v. *Maharaja Rajender Pertah Sahi* (1) distinguished.

APPEAL from a decree of the High Court of Madras (24th July 1874) confirming a decree of the Civil Court of Gantúr (23rd August 1873).

The facts of the case are sufficiently stated in their Lordships' judgment which was delivered by Sir BARNES PEACOCK:—

This is an appeal from a judgment and decree of the High Court of Judicature at Madras, affirming a judgment and decree of the Acting District Judge of Gantúr, in a suit in which the appellant was the plaintiff, and the deceased respondent, Rájah Naráyya Appa Rao, was one and the principal one, of the defendants.

The suit was brought to recover, amongst other things, a sixth part or share of the zamindárí of the six pargannas of Núzvíd, in the Kondapalli Circar, to which the plaintiff claimed to be entitled by inheritance, as one of the six sons of Rájah Shobhanadri.

It was not disputed that the zamindárí, prior to the year 1802, formed part of an ancient and much larger estate which was indivisible and descendible to a single heir, and that prior to the British rule it was a military jaghir held on the tenure of military service, and in the nature of a ráj or principality.

It is unnecessary to trace the succession to the ancient zamindárí farther back than to the year 1772. It is found by the Judge of the First Court that in that year, Vankatádri, who had succeeded to the estate, died, and was succeeded by his son Narayya, who was proclaimed a rebel, and made a State prisoner in 1783. The entire estate was confiscated and resumed by Government, and in the year 1784 was restored to Venkata Narasimha, the eldest son of Narayya, the rebel. It may be assumed that the estate, which was restored in its entirety, was

(1) 12 Moore's Ind. Ap. 1.

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restored as it existed prior to the confiscation, and that the rule as to impartibility and descent continued as before. See the *Hunsapore Case*, 12 Moore Ind. Appeals, p. 1.

Narayya, the rebel, had three sons, Venkata Narasimha, the eldest, to whom the estate was restored, Rámachandra, and Narasimha.

In 1793 the estate was again resumed by Government for arrears of revenue, and in 1802 two new zamindáris were carved out of it, of which the zamindári of Núzvíd, now the subject of dispute, was granted to the second son, Rámachandra, and the other, Nidadavól, which was of much greater extent, to the eldest son Venkata Narasimha.

Upon the death of Rámachandra, he was succeeded by his only son Shobhanadri. In 1816 the third brother, Narasimha, brought a suit against his eldest brother, the Zamindár of Nidadavól, and against the guardian of the minor Zamindár of Núzvíd, in which he claimed one third of the whole property as being joint and divisible family property. He obtained a decree in his favor in the original Court. This was reversed on appeal by the Sadr Court, and his suit was dismissed. The ground of the decision was that the act of the Government in creating the two zamindáris was an act of State, and that the Zamindárs held by a title which the Courts could not question. No appeal was preferred against the decree of the Sadr Court, which became final. The unsuccessful plaintiff died some time after the decree, and an arrangement was made by which the two Zamindárs settled an annual sum upon his family for their maintenance. This was afterwards commuted into a grant of land in full of all claims past and future. Whatever, therefore, might have been the rights of the third brother, Narasimha, they have been extinguished.

On the 7th December 1864 the eldest of the said three brothers, the Zamindár of Nidadavól, died, leaving two childless widows, and a will, in which he expressed a wish that his estates should be divided equally between his widows. The Collector, in reporting the facts to the Board of Revenue, expressed his opinion that the elder wife should be recognized as successor, and that no division of the estates should be allowed, as they were of ancient origin.

Shobhanadri, the second holder of the newly-created Núzvíd Zamindárí, had six sons. In 1866 his extravagance and mismanagement of the estate had caused quarrels between himself and his eldest son, Narayya, the principal defendant and the original first respondent, for the settlement of which the assistance of the Collector and the Government was invoked. In consequence of these disputes, Shobhanadri presented a petition to Government in November 1866, praying that orders might be issued for the division of his estate among his sons. On the 7th January 1867 the Government replied, referring him to the Collector, to whom instructions had been communicated on the subject of his petition. What those instructions were does not appear. From what follows, however, it is evident, as stated by the respondents in their case, that his request for a division was refused.

Shobhanadri died on the 28th October 1868, leaving six sons, of whom the plaintiff was one. The eldest, Narayya, was placed in possession of the zamindárí by the Collector, and on the 19th December was registered under the orders of the Board of Revenue as Zamindár of Núzvíd.

On the 30th November 1868 Venkata Narasimha, the plaintiff and present appellant, petitioned Government praying for a division of the zamindárí, and was informed in reply that the estate was not divisible. He repeated his application on the 26th January 1869, referring to the wish expressed by his father that the zamindárí should be divided among his sons. To this petition the Government again replied that the zamindárí could not be divided, except under the provisions of Regulation XXV of 1802, or in conformity with a decree of a competent Court.

On the 20th October 1871 the plaintiff commenced his suit against the deceased respondent, Narayya, as the principal defendant, and joined his four other brothers as co-defendants.

The first defendant, Narayya, put in a written statement, and contended that the disputed zamindárí was an ancient zamindárí and of the nature of an impartible ráj. The other defendants upheld the plaintiff's right to a division of the zamindárí, but stated that the plaintiff had no cause of action against them.

On the 8th July, the First Court framed, amongst others, the following issue, viz., "Whether the real property constituting the zamindárí of Núzvíd is divisible or not," and having found

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that issue against the plaintiff dismissed his suit, so far as it related to the zamindárí in dispute.

The High Court, upon appeal, affirmed the decision of the First Court, whereupon the plaintiff appealed to Her Majesty in Council against the judgment and decree of the High Court.

Pending the appeal, the first and principal defendant, Rája Narayya, who was the first respondent, died, and by order of revivor the Court of Wards were made respondents in his place.

The case has been fully argued on both sides, and the only question to be considered is whether when the ancient zamindárí was divided into two, the newly constituted zamindárí of Núzvíd now in dispute was subject to the same rule as regards impartibility and inheritance as that to which the entire ancient zamindárí was subject.

The sanad under which the zamindárí of Núzvíd was granted to Rámachandra is dated the 8th December 1802. It is directed to Rámachandra, describing him as the Zamindár of the six pargannas of Núzvíd in the Kondapalli Circar, and, after reciting the benefits to be derived from a permanent settlement of the revenue, it was declared, in the 2nd paragraph, that the Government had resolved to grant to Zamindárs and other landholders and their heirs and successors a permanent property in their lands in all time to come, and to fix for ever a moderate assessment of public revenue on such lands.

By Clause 4 the settlement was fixed at a certain amount. By Clause 7 it was said, "You shall be at free liberty to transfer, without the previous consent of Government, or of any other authority to whomsoever you may think proper, either by sale, gift, or otherwise, your proprietary right in the whole, or in any part of your zamindárí; such transfers of your land shall be valid and recognized by the Courts and officers of Government, provided they shall not be repugnant to the Muhammadan or the Hindu laws, or to the regulations of the British Government." And, finally, after annexing to the grant certain stipulations, the 15th Article declared that "continuing to perform the above stipulations, and to perform the duties of allegiance to Government, you are hereby authorized and empowered to hold in perpetuity to your heirs, successors, and assigns, at the permanent assessment herein named the zamindárí of The name of the

zamindárí is not inserted, but at the end of the sanad there was added a list headed 'A list of the villages in the zamindárí of the six pargannas of Núzvíd, in the Kondapalli Circar.'"

The name of the zamindárí in dispute appears, therefore, to be in strictness, "The zamindárí of the six pargannas of Núzvíd, in the Kondapalli Circar," but for convenience it is treated as the zamindárí of Núzvíd.

The provisions of the sanad differed in no respect from those which are contained in every ordinary deed of permanent settlement; the feudal or military tenure was at an end; the six pargannas to which the sanad related became a new zamindárí, subject only to the payment of a fixed land revenue, and subject to the ordinary stipulations and the performance of the duties ordinarily imposed upon Zamindárs.

It is stated in the written statement of the first defendant, "that under the empire of the Mahomedans the ancient zamindárí of Núzvíd was extensive, and was governed by its chiefs with absolute power and independence; but under the policy of the British Government the same has become divested of its military character, and dwindled into a large peishkash paying zamindárí."

This is doubtless a correct statement.

In the former state of things indivisibility and impartibility and descent to a single heir were the ancient nature of the tenure, and with good reason when the estate was subject to military services and under the government of a chieftain, and was in the nature of a ráj or principality; but when the ancient zamindárí was resumed and two new estates were created out of it, of which the Zamindárs ceased to be liable to military service, or to be independent chiefs, but held merely as ordinary Zamindárs, subject to the payment of a fixed assessment of revenue, there was no reason why the rule of impartibility or descendibility to a single heir, according to the rule of primogeniture, should be extended to the newly created estates.

There was no State policy which required that the new estate of Núzvíd should be indivisible, otherwise Clause 7 would not have been inserted in the sanad. If Rámachandra had transferred by gift, sale, or otherwise any portion of his zamindárí such portion would not have been impartible or descendible, according to the

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rule of primogeniture to a single heir of the transferree, if a Hindu or Muhammadan. Indeed it was expressly stipulated in the sanad that transfers in whole or in part should be valid, provided they should not be repugnant to the Hindu or Muhammadan laws, which they would have been if they had been limited to the eldest son or other single heir of a Hindu or Muhammadan transferree. There was no reason why the new zamindárí should have been made impartible or limited to Rájah Rámachandra and his heirs according to the rule of primogeniture, when, so far as Government was concerned, he might have divided it by will amongst several devisees.

The limitation in para. 15 of the sanad was to his heirs, by which, according to their Lordships' interpretation, his heirs according to the ordinary rule of Hindu law were intended. Rámachandra did not at the date of the sanad hold an estate descendible to a single heir according to the rule of primogeniture, and there is no reason why the limitation to his heirs should be construed to mean a single heir according to the rule of primogeniture, when the descent from his transferrees would be regulated by the ordinary rules of inheritance. If the Government had intended to make the estate impartible, and to limit the succession to a single heir according to the rule of primogeniture, instead of to the heirs of the grantee, according to the rule of Hindu law, there is no doubt they would have expressed their intention in unambiguous language. Their Lordships have nothing to do with the case of Venkata's new zamindárí of Nidadavól, and therefore abstain from any expression of opinion as to whether it was impartible or descendible to a single heir or not. Nor are they, nor were the Civil Courts, bound by any views of the revenue authorities as to the effect or construction of the grant or the intention of the Government. Nor has the decision of the Sudder Court in Narasimha's case any bearing upon the construction of the sanad of 1802, or upon the rights of the parties to the suit. In the Hunsapore case, *Bir Pertab Sahi* v. *Maharaja Rajender Pertab Sahi* (1) the zamindárí was an impartible ráj, which by family usage and custom descended to the oldest male heir, according to the rule of primogeniture, subject to

(1) 12 Moo. I. A., p. 1.

the obligation of making babuana allowances to the junior members of the family for maintenance. It was seized and confiscated by the British Government in 1767, in consequence of the rebellion of the Rája, who was expelled by force of arms. The Government, having kept possession until 1790, granted it in that year to a younger member of the family, on whom subsequently they conferred the title of Rája. There was no fresh sanad, and the only question raised was, what was the nature of the estate granted; whether it was a fresh grant of the family ráj with its customary rule of descent, or merely a grant of the lands formerly included in the ráj, to be held as an ordinary zamindárí. In that case, the estate whilst in the hands of the Government had never been broken up, and it was held that it was the intention of the Government to restore the zamindárí as it existed before the confiscation, and that the transaction was not so much the creation of a new tenure as the change of the tenant by the exercise of a *vis major*. There the estate was transferred in its entirety, but in this case the estate was divided into two distinct zamindárís, and a new sanad granted allowing the same to be alienated in part or in whole, and making it inheritable by a person and his heirs and assigns for ever, that person being one who had never held an estate descendible to his eldest male heir.

The word heirs used in the sanad must, in their Lordships' opinion, be construed to mean the heirs of the grantee according to the ordinary rules of inheritance of the Hindu law.

With reference to the effect of the sanad of 1802, some reliance was attempted to be placed on an agreement said to have been entered into between Venkata Narasimha and his brother Rájah Rámachandra, dated 17th July 1795, but their Lordships do not think that it was legally proved, and therefore reject it. In considering the effect of the sanad of the 8th December 1802 reference may be had to the letter of Mr. John Read, the Collector of Masulipatam, to the Secretary of the Land Revenue Settlement Commission, dated 25th July 1802, in which he submitted a plan for the division of the ancient zamindárí of Núzvíd, and offered an opinion as to the respective claims of Venkata Narasimha and of Rámachandra, preparatory to the introduction of the permanent settlement. In that letter, of which their Lordships are of

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opinion that the official copy of the copy filed with the Board of Revenue (which was an official record) was under the circumstances admissible in evidence, Mr. Read says:—

"A perusal of the late Collector's correspondence will show that Rámachandra Rau's claim to participate in the zamindárí has been long and steadily maintained, so late, indeed, as the 17th July 1795. The views of Venkata Narasimha Appa Rau and Rámachandra Rau underwent the discussion of their relatives and adherents. In consequence, an agreement was exchanged, providing for the division of the estate, effects, and zamindárí of their deceased father, conformable to the usage in such cases.

"No doubt remains of the execution of this agreement, although I cannot find it received the sanction of the Collector. The elder Appa Rau pretends to state that the document was forcibly taken, and has presented what he terms a corrected plan for the division of the zamindárí. The charge of forcible exchange I believe to be incorrect and the agreement, to which Venkata Narasimha Appa Rau appeals, is no more than a loose memorandum in the handwriting of the Rajahmundry Peishkar."

Their Lordships will, therefore, humbly advise Her Majesty to reverse the judgments and decrees of both the Lower Courts, and to order that the appellant do recover one-sixth part or share of the villages included in the zamindárí of the six pargánnas of Núzvíd, in the Kondapalli Circar, together with his costs in both the Lower Courts in proportion to the value of that property.

It was found by the First Court that the Kamatam lands and gardens in various villages to a total value of Rupees 58,500, of which a garden valued at Rupees 300 is in the plaintiff's possession, and also the forts, houses, granaries, stables, &c., valued at Rupees 1,23,500, form part of the zamindárí, and were, therefore, indivisible under the first issue, and no appeal was preferred against that finding.

Their Lordships will, therefore, further humbly advise Her Majesty that the said Kamatam lands and gardens, forts, houses, granaries, stables, &c., above mentioned, be declared to be part of the zamindárí above mentioned, and that the appellant is entitled to recover one-sixth part or share thereof, with the exception of the said garden valued at Rupees 300 in the plaintiff's possession.

Their Lordships will further recommend to Her Majesty that

the amount of mesne profits from the date of dispossession of the share of the property ordered to be recovered to the date of restoration thereof be assessed in execution.

The costs of this appeal must be paid out of the estate of Rajah Narayya Appa Rau, deceased, the original defendant and respondent.

Solicitors for Appellant: Messrs. *Frank, Richardson* and *Sadler*.

Solicitor for Respondents: Mr. *H. Treasure*.

APPELLATE CRIMINAL.

Before Sir Charles A. Turner, Kt., C.J., and Mr. Justice Muttusámi Áyyár.

LINGAM RAMANNA AND TWO OTHERS (PRISONERS) APPELLANTS.* 1880. May 3.

Abetment—Supplying food.

The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime: but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it.

THIS was a case referred under Section 263 of the Code of Criminal Procedure by the Sessions Judge of the Godávari Division.

Upon considering this case, Counsel not appearing on behalf of the prisoners, the Court (TURNER, C.J., and MUTTUSAMI ÁYYAR, J.) delivered the following

JUDGMENT:—The prisoners Lingam Ramanna, Miriyala Baladu and Valala Bulleya were charged, firstly, with having, on the 18th November 1879, abetted dacoity which was committed in consequence of such abetment; and, secondly, with having on the same day abetted dacoity which was not committed in consequence of such abetment. The evidence adduced at the trial is the following: that on the night of the 18th November the second and third prisoners were seen proceeding to Marripoliem with four bullocks laden with grain, wheat, paddy, and cholam; that

* Criminal Appeal No. 113 of 1880.