

[371] APPELLATE CIVIL.

The 9th January, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE  
MUTTUSAMI AYYAR.

Sri Raja Jagannadha Narayana Ramachandra Raju Pedda Bhaliar Simhulu  
Bahadur, Zamindar of Salur.....(Plaintiff), Appellant

and

Sri Raja Pedda Pakir Raju Pedda Bhaliar Simhulu  
Bahadur Garu.....(Defendant), Respondent.\*

*Possession for 60 years of Zamindari lands granted for maintenance—Nature  
of grant—Presumption.*

Successive enjoyment for three generations without interference of land granted by a Zamindar to a member of his family, in lieu of maintenance, justifies the presumption that the original grant was intended to be absolute.

THE question in this case was whether a grant of land made by the ancestor of the plaintiff Zamindar to the defendant's ancestor (brother of the grantor) for maintenance, was resumable.

No documentary evidence of any grant was produced, but from certain entries in plaintiff's books of account and from certain orders issued by the Collector upon representations made by the plaintiff's father, the Munsif found that there had been no absolute grant, but that the land was granted 'in the manner in which lands are given to ryots.'

Upon appeal the Subordinate Judge found that the evidence showed nothing more than the fact that the land was a grant of the *Jiraiti* [Taxable in opposition to rent-free or Inam lands—(Wilson)] land of the Zamindari, and that the defendant's family had been in possession of it for 60 years as a grant in lieu of maintenance, and upon the authority of *Rajah Nursing Deb v. Koylasnath Roy* (9 M. I. A., 65) held that the land was not resumable, but the absolute property of the defendant, and dismissed the suit.

[372] The plaintiff appealed to the High Court on the ground, *inter alia*, the Subordinate Judge was wrong in law in presuming that the original grant was absolute.

Mr. Gould for Appellant.

Hon. T. Rama Rau for Respondent.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

**Judgment** :—Where a grant of land is made by a Zamindar to a member of his family who is entitled to maintenance, by way of maintenance, it is to be presumed that the grant is resumable, at least on the death of the grantor, *Anund Lal Sing Deo v. Maharaja Dheraj Gurrood Narayun Deo* (5 M. I., A. 82); but where members of a branch of the Zamindari family have for three generations held lands without any interference on the part of the Zamindar for the

\* Second Appeal No. 323 of 1881 against the decree of C. Ramachandra Ayyar, Subordinate Judge of Chicacole, reversing the decree of V. Kamaraju Pantulu, District Munsif of Parvatipur, dated 2nd November 1878.

time being, either in the way of confirmation or revision, the successive enjoyment of the members of the branch justifies the inference that the original grant, if made in lieu of maintenance, was intended to be a grant for the support of the collateral branch in perpetuity.

For these reasons we affirm the decree of the Lower Appellate Court and dismiss this appeal with costs.

**NOTES.**

[See the Notes to (1881) 4 Mad. 193 *supra*.]

[4 Mad. 372]

**APPELLATE CIVIL.**

*The 29th August, 1881, and 18th January, 1882.*

PRESENT :

SIR CHARLES A. TURNER, K.T., CHIEF JUSTICE, AND MR. JUSTICE  
KINDERSLEY.

James Dorragh and Co.....(Plaintiffs), Appellants  
*and*  
Purshotum Devji.....(Defendant), Respondent.\*

*Jurisdiction—Suit for balance due on account current— Place of payment not specified—  
Cause of action.*

D and Co. carrying on business at C shipped goods to London for sale on account of P D and advanced money to P D against the shipments.

P D promised to pay the difference if the amount realised by the sales in London fell short of D and Co.'s advance, costs, and commission. No place of payment was specified.

[373] *Held* in a suit to recover money due on account of such short falls that the whole cause of action arose at C where D and Co. carried on business, where the promise was made, and where the money must be taken to have been payable.

THE plaintiff in this case, who carried on business under the name of James Darragh and Co., in British Cochin, sued the defendant whose residence and place of business was at Muttancheri, in the territory of the Native State of Cochin, to recover Rupees 16,251-2-0, the balance due upon account current on the 10th September 1880.

The defendant for several years had consigned goods through the plaintiff to London for sale, and the plaintiff used to advance moneys against the goods shipped to the defendant. It was agreed between the parties that if the sales realised less than the advances, charges, and commission, the defendant should pay the difference upon demand; but it was not stipulated that such payment should be made at any particular place. The principal items which made up the plaintiff's claim were for short falls on consignments to London, but one item in the account was a small claim on account of a transaction which took place at Aleppy in the Cochin State.

The defendant denied that he was indebted to the plaintiff.

The suit was filed in the Subordinate Judge's Court in British Cochin.

The defendant objected to the Court's jurisdiction on the ground that the whole cause of action did not arise within the jurisdiction of the Court, because

Appeal No. 14 of 1881 against the decree of H. Subbarayyar, Subordinate Judge of South Malabar, dated 13th December 1880.