

PRIVY COUNCIL.

* P.C.
1892.
November 25.

SRI LAKSHMI NARAYANA ANANGA GARU (DEFENDANT)

and

SRI DURGA MADHAWA DEO GARU (PLAINTIFF).

[On appeal from the High Court at Madras.]

Agreement to maintain Zamindar's collateral relations—Construction—Charge on estate—Impartible Zamindari.

The holder of an impartible zamindari estate, in an agreement with the eldest son of his younger brother, settling family disputes, used words to this effect: "I have agreed to give you, through the Collector, every month Rs. 300, on account of the maintenance of yourself, your younger brothers, three in all, and the rest of your family."

The son of the youngest brother now sued the son and successor of that Zamindar for maintenance according to the agreement:

Held, that the payment was not limited to the life of one, or all, of the brothers, but that the issue of each of the three were included, and that maintenance at a proportionate rate had been rightly decreed to the plaintiff as a charge on the estate.

APPEAL from a decree (28th March 1890) of the High Court, modifying a decree (28th November 1887) of the District Judge of Ganjam.

The appellant, the Zamindar of Pedda Kimedya, in the Ganjam district, was defendant in a suit brought by the respondent, a minor, through his mother and guardian, for Rs. 4,180, as arrears of *Taoji*, or allowance for maintenance, due for 22 months, from February 1885 to December 1886, at Rs. 190 a month, and for a declaration that he was entitled to Rs. 230 a month thenceforward. He claimed, through his father, Kamala Lochana Deo, under an agreement, for maintenance, of the year 1835, executed by the defendant's father, Pitambara Deo, then the Zamindar, in favour of Jogi Deo, elder brother of the plaintiff's father. The agreement, which is set forth in their Lordships' judgment, referred to three brothers, of whom the plaintiff's father was the youngest, and who were the sons of Parasurama Deo, brother of Pitambara,

* Present: Lords HOBHOUSE, MACNAGHTEN, HANNEN and SHAND, Sir R. COUGH and Sir E. FRY.

the contracting Zamindar. Kamala Lochana died on the 9th May 1885, and from that date no further payments under the agreement of 1835 were made. The plaintiff contended that, on its true construction, he was included in its operation. The defendant's written statement, while admitting the making of the instrument, disputed this construction, and denied that he was a son of Kamala Lochana. This last question, however, was not in dispute on this appeal, both the Courts below having found, in concurrence, that he was. The amount of maintenance paid had been, after the deaths of some who shared in it, proportionately reduced.

The District Judge decreed, in favour of the plaintiff, Rs. 760, arrears of maintenance owing to Kamala Lochana at his death, and since then unpaid. He dismissed the rest of the claim. In his judgment he took the view that no claim could be set up by Parasurama's family except under the agreement of 1835, which, in his opinion, applied only to those expressly referred to in it, not extending to their descendants. On appeal, a Bench (MUTTUSAMI AYYAR and BEST, JJ.) reversed this decree and awarded to the plaintiff maintenance from the death of Kamala Lochana, and declared his right, for the future, to be paid Rs. 173 a month. They saw no reason for holding that the provision for maintenance was intended only for the members of the family then alive. They did not consider "that Rs. 230 a month was an excessive "allowance for Kamala Lochana's branch."

Mr. J. D. *Mayne* and Mr. G. P. *Johnstone*, for the appellant, argued that the true construction of the whole agreement of 1835 was that only the family of Jogi Deo, the brother with whom the agreement was made, were entitled to the maintenance mentioned, not the families of all the three brothers. As to the construction of a grant for maintenance, in regard to its duration, reference was made to *Anand Lal Singh Deo v. Dheraj Gurrood Narayan Deo*.

The respondent did not appear.

Their Lordships' judgment was delivered by LORD HOBHOUSE.

JUDGMENT:—The defendant and appellant is the Zamindar of Pedda Kimedya, an impartible raj. The plaintiff belongs to a branch of the same family, and the sole question is, whether the plaintiff is entitled to be paid out of the revenues of the zamindari the amount of a charge created by an agreement made between the defendant's father, Pitambara Deo, who was then Zamindar of

NARAYANA
ANANGA
o.
MADHAWA
DEO.

NARAYANA
ANANGA
v.
MADHAWA
DEO.

Pedda Kimeddy, and Jogi Deo, the eldest son of Pitambara's younger brother, and the uncle of the plaintiff. According to the agreement there seem to have been disputes between the elder and younger branches of the family, and the agreement is in the following terms:—Pitambara agrees "to give (yon)"—that is, Jogi Deo—"presently Rs. 10,000 (ten thousand), so that neither you "nor your younger brothers nor the members of your family may "make any demand in future in respect of the household articles, "jewels, &c., or anything, or in respect of the debts incurred by "your deceased father, Parasurama Deo Garu." Their Lordships do not know the meaning of the expression "the debts incurred "by your deceased father." Whether "incurred" is a wrong word used in the translation, or whether the deceased father may have incurred debts in such circumstances as would give a claim against the estate of the elder brother, their Lordships cannot tell; but it is quite clear that there were substantial disputes respecting a substantial property.

The next paragraph of the agreement is as follows: "To "give (you), through the Collector, every month Rs. 300 on "account of the maintenance of yourself, your younger brothers, "three in all, and the rest of your family. As we hereby agreed "that you, your younger brothers, and the other members of the "family shall have no concern whatever henceforward in the said "zamindari, or any other thing, you should enjoy the said *Taoji*" —that is, allowance. Jogi Deo and his two younger brothers are now dead, and the plaintiff is the son of the youngest of them, apparently the only issue of the three. It is contended, on behalf of the defendant, that the payment of Rs. 300 a month was only to endure for the life of Jogi Deo, or, at the most, for the lives of the three brothers. It is immaterial which of those constructions is put forward. Either of them seems to their Lordships to be directly at variance with the terms of the agreement. It cannot be reasonably suggested who is to be included in the expression "the rest of your family," unless the issue of the three brothers are to be included. It seems clear to their Lordships that the respondent, as the issue of one of the brothers, is to be so included, and that is the view taken by the High Court whose judgment is now appealed from. With respect to the amount of the maintenance, it seems to have been altered from time to time, but no question is now brought before their Lordships in regard

to the exact amount which has been decreed by the High Court. Their Lordships see no reason for interfering with the decree of the High Court, and they will humbly advise Her Majesty to dismiss the appeal.

NARAYANA
ANANGA
v.
MADHAWA
DEO.

Appeal dismissed.

Solicitor for appellant : Mr. R. T. Tasker.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

VENCATA MAHALAKSHMAMMA (PLAINTIFF), APPELLANT,

v.

RAMAJOGI (DEFENDANT), RESPONDENT. *

1892.
October 18.
December 23.

Rent Recovery Act—Act VIII of 1865 (Madras), s. 12—Ejectment—Occupancy rights—“onus probandi.”

A zamindari having given to the defendant, who was a cultivating raiyat in the zamindari, a notice to quit, now sued to eject him from his holding. The defendant pleaded that he and his ancestors had been jirayati raiyats from time immemorial and it was found that their holding had lasted at least 150 years.

The defendant had executed and delivered to the plaintiff a muchalka for one year, and he had made no default in payment of rent:

Held, that the plaintiff having failed to prove that the defendant's tenancy had commenced under her or her ancestors, the suit should be dismissed.

Chockalinga Pillai v. Vythealinga Pundara Sannady (6 M.H.C.R., 164) distinguished.

SECOND APPEAL from the judgment of H. R. Farmer, District Judge of Vizagapatam, in appeal No. 148 of 1890, confirming the decision of the District Munsif of Yellamanchili in suit No. 471 of 1889.

Suit in ejectment by a zamindari against a cultivating raiyat on her estate. The defendant claimed a right of permanent occupancy alleging that he and his ancestors had been in possession as jirayati tenants from time immemorial. The plaintiff did not prove that the defendant's tenancy had commenced under her or

* Second Appeal No. 1987 of 1891.