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the moveables decreed, but as, to use the Judge's own words, plaintiff failed to show that she had any case at all with regard to the immoveable property claimed, she should have been ordered to pay costs on so much of her claim as was disallowed. I would modify the decree of the Lower Court accordingly and allow the memorandum of objections with costs.

APPELLATE CIVIL.

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

1892. Sept. 21, 22, Oct. 3.

LAKSHMIPATHI (DEFENDANT), APPELLANT,

v.

KANDASAMI (PLAINTIFF), RESPONDENT.*

Hindu law—Impartible poliem—Evidence of impartibility—Pannai lands attached to the poliem—Maintenance and marriage expenses of junior member of the family of poligar.

The step-brother of the holder of a poliem in the Madura district, of which the gross income was about Rs. 15,000 a year, sued him for a partition of the estate and in the alternative for maintenance. It appeared that the poliem had been held on military tenure from the sixteenth century, that it had never been partitioned, and that the custom of impartibility obtained in a large number of similar poliems in the same district. In 1821 and in 1842 enquiries were made of members of the zamindar's family and other persons connected with the zamindari as to the nature of the estate, and their recorded answers showed that they understood the estate to be impartible and that it descended to a single heir:

Held, (1) that the poliem was impartible;

(2) that the plaintiff was entitled to decree for a monthly payment to him of Rs. 60 for his maintenance.

The plaintiff's claim extended to certain "pannai" lands within the limits of the zamindari; some of which had been handed down from zamindar to zamindar since 1831, others having been purchased by the plaintiff's father. The High Court found that they had been recognised and dealt with as part and parcel of the zamindari:

Held, that the pannai lands were impartible, and the plaintiff was not entitled to a share in them or in the cattle, &c., used for cultivating them.

The plaintiff further claimed a sum of Rs. 4,000, the amount of a loan alleged to have been contracted by him for the purposes of his marriage. It appeared that the cost of the marriage had been defrayed from the bride's brother:

Held, that the plaintiff was not entitled to a decree on this account, although if he had incurred debts for the purposes of his marriage the defendant would have been liable.

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* Appeal No. 109 of 1891.

APPEAL against the decree of C. Venkobachariar, Subordinate Judge of Madura (West), in original suit No. 21 of 1890.

Suit against the Poligar of Edayyakottai for the partition of family property including the poliem, and in the alternative for maintenance. The plaintiff also claimed from the defendant the sum of Rs. 4,000, the amount of his marriage expenses.

The Subordinate Judge held that the poliem was impartible, but passed a decree for the partition of certain "pannai" lands situated within the limits of the estate and the cattle used in their cultivation and also of certain jewels. He further decreed that the defendant pay to the plaintiff Rs. 60 a month for his maintenance and Rs. 2,000 on account of his marriage expenses.

The further facts of the case appear sufficiently for the purposes of this report from the following judgment of the High Court.

Bhashyam Ayyangar for appellant.

Rama Rau and *Mahadeva Ayyar* for respondent.

JUDGMENT.—The property in litigation is the poliapat or zamindari of Edayakottai in the Madura district. The zamindar Muthu Venkatadri Naik, who died in 1873, left sons by his two wives, of whom the defendant, the eldest son, succeeded to the zamindari. The plaintiff, who is the step-brother of the defendant, sues for partition of the zamindari, claiming a half share in the zamindari, the pannai lands and the moveables in defendant's possession. In the alternative he asks that he may be awarded maintenance at the rate of Rs. 5,000 per annum. He also claims to recover from defendant Rs. 4,000, the sum borrowed by him and expended on his marriage.

The Subordinate Judge of Madura (West) found that the estate was impartible and descended to a single heir by the rule and custom of primogeniture. With reference to the pannai lands he held that they had not been incorporated with the zamindari, but had all along been distinguished as the private property of the zamindar, and therefore decreed to plaintiff a share in items 2 to 7, 10, 11 and 14. He was of opinion that the chinna pannai and other lands in the possession of the plaintiff need not be brought into hotchpot, that plaintiff's claim to a share in ready cash and jewels had not been made out, but awarded him a half share in the cattle on the pannai lands. He awarded plaintiff a sum of Rs. 2,000 for the expenses of his marriage, and was of opinion

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that if plaintiff was not entitled to a share in the pannai lands, he should be allowed a sum of Rs. 60 per mensem as maintenance.

Against this decree the defendant has appealed on the ground that the pannai lands have from ancient times passed as part and parcel of the zamindari to the zamindar for the time being, that on the facts found plaintiff was not entitled to any sum on account of his marriage, and that as plaintiff had been allotted lands for his maintenance, he was not entitled to any allowance in money.

The plaintiff has put in a cross-appeal (memorandum of objections), impeaching the finding of the Subordinate Judge that the estate is impartible.

We will dispose of the cross-appeal first. As remarked by the Privy Council in *Mallikarjuna* v. *Durga*(1), the question whether an estate is subject to the ordinary law of Hindu succession or descends according to the rule of primogeniture must be decided in each case according to the evidence given in it. The question, therefore, we have to decide is one of evidence concerning the custom obtaining in the family.

It is not denied that Edayakottai has existed as a poliem from the middle of the 16th century when Visvanatha Naik, the founder of the Naik dynasty, organised the 72 poliems of Madura as military fiefs or tenures.

The Subordinate Judge rests his decision as to the impartibility of the poliem on (1) the absence of partition, (2) the belief or consciousness in the family as to the usage in favour of impartibility, and (3) the usage obtaining in a large number of similar Kumbla poliems.

The Dindigul province was conquered by the British in 1790. The poliem in question, which had not been sequestered either by the Muhammadan or Hindu Rulers, was, at the time of the British conquest, in the hands of its then owner Kothanda Ramaswami, who died in 1791. He left two sons, and was succeeded by Chinnama Naik, his eldest son, who died without issue in 1799, and was succeeded by his brother Lakshmipathi. Lakshmipathi died in 1842 leaving two sons, and was succeeded by his eldest son Kothanda Ramaswami, on whose death without issue in 1849, Muthu Venkatadri Naik, the father of the plaintiff and defendant,

(1) I.L.R., 13 Mad., 406.

became zamindar. It appears therefore that in 1791 and again in 1842 the elder brother succeeded, no demand being made by the younger brother for partition.

In 1821 when plaintiff's grandfather was the zamindar, Government instituted certain enquiries as to the nature of the estate. Exhibit I contains the replies submitted by the zamindar. He stated that the poliapat was impartible, that females were entitled to maintenance only, and in answer to the question, "Does the eldest son succeed to the pattam as the manager of the joint family," replied, "It is the custom for those that succeed to provide food and clothing for the rest of the family." The question and answer are not very definite, but the zamindar had already stated that if the pattakaran had a son he succeeded, and in default of sons, brothers, and we have no doubt that the zamindar intended it to be understood that the estate was impartible and that it descended to a single heir, the eldest son, if there was one.

On the death of plaintiff's grandfather in 1842 an enquiry was held as to his successor, and from the statements taken from the headmen of the zamindari (exhibit XI), from the neighbouring zamindars (exhibits II, VII, VIII), from the widow (exhibit IV), and from plaintiff's father himself (exhibit IX), only one conclusion can be drawn, viz., that according to custom the eldest son alone was entitled to succeed. Again in 1849 the then poligar stated (exhibit V) that from before the year 1791 the poliapet had been held by only one member of the family at a time.

Muthu Venkatadri, a few months before his death, addressed the Collector requesting that the defendant, as his eldest son and successor in the zamindari, should be allowed to sign for him during his illness (exhibit VI).

In addition to this there is the usage of other Kumbla poliems in the district which is against the plaintiff's contention. See *Collector of Madura* v. *Kullappa Naik*(1) and *Chinnammal* v. *Akkulu Ammal*(2). Moreover there is the presumption in favour of impartibility arising from the property having been held on military tenure from the time of Visvanatha Naik. In the Narganti case (*Naragunty Lutchmeedavamah* v. *Vengama Naidoo*(3))

(1) Appeal No. 65 of 1885 unreported. (2) Appeal No. 103 of 1888 unreported.
(3) 9 M.I.A., 66.

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the Privy Council described a poliem as being in the nature of a raj or principality.

Against the foregoing evidence on the subject of impartibility, the respondent refers us to no specific evidence regarding the custom of the family. It is urged by his pleader that since 1791 there were but two cases of succession, in which the elder brother excluded the younger, and that on both these occasions the elder brother had no son; it was the interest of the younger brother to prefer the right of survivorship to the whole zamindari to that of partition by which he would have only got a part. This argument rests on mere conjecture. There is nothing on the record to show that when he succeeded to the raj, the elder brother had no prospect of male issue. Neither does this explanation account for the evidence of the consciousness in the family, and among those likely to be acquainted therewith, of the custom of impartibility.

The finding of the Subordinate Judge that the estate is impartible must be upheld and the memorandum of objections dismissed with costs.

With reference to the pannai lands it is argued that the Subordinate Judge has stated the law correctly, but has arrived at an erroneous decision on the evidence. The question which has to be decided with reference to these lands is whether they were handed down from zamindar to zamindar as an appurtenant of the zamindari, in other words, whether they have been treated as the zamindar's private property or as an increment to the zamindari. The lands in question admittedly are situated within the limits of the zamindari. They have not been acquired recently, but have been handed down from zamindar to zamindar, the existence of certain of them in 1831 being evidenced by exhibit A series. The plaintiff attempted to prove that the pannai lands had been enjoyed in equal moieties by his father and uncle during the time his uncle was zamindar, but the evidence was discredited by the Subordinate Judge and is not relied on by plaintiff's pleader here. The fact that the defendant has employed separate superintendents to manage these pannai lands is not sufficient to show that the pannai lands were not considered as an appurtenant of the zamindari. The extent or nature of the lands may have rendered the entertainment of a separate superintendent necessary or advisable for more efficient management.

The non-production of the accounts by the defendant is no doubt unaccounted for, but it is not enough to rebut the evidence which shows that the lands belong to the zamindar *qua* zamindar and not as a private individual. The series of documents marked A in no way indicates that the lands had not then been incorporated with the zamindari. It appears that from 1831 to 1833 the zamindari was under the management of the Collector, but that the pannai lands had been left with the zamindar. This was but natural. It was not the policy of the Government to oust the actual cultivator. The zamindar, therefore, was left in possession of the zamindar's "own pannai lands," but was required to pay to Government the assessment on the lands actually cultivated.

The assignment of a portion of the pannai lands as some provision for the support of the junior members of the family, which lands are known as chinna pannai, also supports the contention that the pannai lands are an appurtenant of the zamindari. These lands as well as other pannai lands (Kathakarumbu), which were purchased by plaintiff's father and made over to plaintiff's brother for his maintenance, are in the possession of the plaintiff. One of the widows of Kothanda Ramaswami has been allowed by the zamindar to enjoy one of the pannai lands for her maintenance. This supports the contention that the pannai lands are part and parcel of the zamindari. Item No. 7 was waste land which was brought under cultivation by plaintiff's father. We think, therefore, it was rightly held not to be *an acquisition* by plaintiff's father, but to form part of the pannai lands.

For the above reasons we are of opinion that the Subordinate Judge was in error in holding that the pannai lands Nos. 2 to 7, 10, 11 and 14 were the private property of the zamindar. They have all along been recognised and dealt with as part and parcel of the zamindari and are not partible. It follows that the cattle used for cultivating these lands and the other moveable property awarded by the decree to plaintiff are also not partible and that the decree for a moiety thereof cannot be upheld.

We are unable to uphold the decision of the Subordinate Judge as to the expenses of plaintiff's marriage. Plaintiff asserted that he had borrowed and expended Rs. 4,000 on his marriage. He adduced no evidence in support of his statement. The defendant examined the Karbar of the Kadavur zamindar, whose sister the plaintiff married. He stated that the zamindar of

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Kadavur defrayed the expenses of the marriage. The Subordinate Judge rejected his evidence without assigning any reason for so doing. It is the only evidence on the record. The defendant disapproved of his step-brother's marriage, and the income of the lands in plaintiff's possession being small, it is not improbable that the expenses of the marriage were defrayed by the bride's brother. If the plaintiff had incurred debts on account of his marriage, the defendant would no doubt be liable, but in the absence of any proof, we are unable to support the Subordinate Judge's award of Rs. 2,000 on account of the expenses of plaintiff's marriage.

We are not prepared to say that the sum of Rs. 60 per mensem, which the Subordinate Judge thinks plaintiff should get as his maintenance, is unreasonable. The lands allotted for his maintenance yield an annual income of about Rs. 500. The defendant gets an income of Rs. 15,000 or 16,000. Out of this he has to pay the peishcush and the expenses of management, &c., but can well afford to pay his step-brother Rs. 60 per mensem.

We set aside so much of the decree of the Subordinate Judge as awarded plaintiff a share in the immoveables, items Nos. 2, 3, 4, 5, 6, 7, 10, 11 and 14, and in the moveables specified in schedule B, as well as the house in Edayakottai, which was not sued for, and Rs. 2,000 for marriage expenses and decree that plaintiff is entitled to recover from defendant maintenance at the rate of Rs. 60 per mensem for 3 years prior to the plaint and future maintenance at Rs. 60 per mensem from the date of the plaint. In other respects the decree of the Subordinate Judge is confirmed. Plaintiff must pay defendant's costs in this appeal and in the Lower Court.