ARUMUGAM PILLAI v. ARUNACHALLAM PILLAI.

Defendant appealed.

Sivasami Ayyar for appellant.

Pattabhirama Ayyar for respondent.

JUDGMENT.—The bar of limitation could not avail if the plaint was originally presented in the proper Court, and we consider that it was so presented in that the Munsif had jurisdiction. On this ground, but not on the grounds given by the Judge, we hold that the suit was not time-barred.

With regard to the question whether the alleged minority of the testator was a valid reason for the Registrar refusing registration, we agree in the conclusion arrived at by the Judge. A clear distinction is made in section 41 of the Registration Act between the case of a will presented by the testator himself, and that of a will presented by any other person entitled to do so. In the former case the rules laid down in section 35 are made applicable, but in the latter case special rules are given. In these special rules no provision is made for an enquiry as to the testator's minority or sanity, for which enquiry provision is made in the rules in section 35. It would not be reasonable to hold that the special rules (*a*), (*b*) and (*c*) of section 41 are merely supplemental to the rules in section 35, because at least in one instance the same rule in substance appears in both sections. The second appeal, therefore, fails and is dismissed with costs.

PRIVY COUNCIL.

P.C.* 1897. March 4, 5. April 7.

SRI RAJA VIRAVARA THODHRAMAL RAJYA LAKHSHMI DEVI GARU (DEFENDANT),

AND

SRI RAJA VIRAVARA THODHRAMAL SURYA NARAYANA DHATRAZU BAHADUR GARU (PLAINTIFF).

[On appeal from the High Court at Madras.]

Hindu law—Impartibility not established—Possession of one member of joint family at a time—What constitutes partition.

A zamindari granted by the Government in 1803 to a Hindu descended in his family, possession being held by one member at a time. The estate, however,

* *Present:* Lords WATSON, HOBHOUSE and DAVEY, and Sir RICHARD COUCH.

was not impartible. But whether it was, or was not, impartible was adjudged immaterial to the question raised on this appeal.

The last zamindar having died without issue in 1888, his widow was in possession when this suit was brought by a male collateral descended from a great grandfather common to him and to the last zamindar. The plaintiff claimed to establish his right as member of an undivided family holding joint property against the widow who alleged that her husband had been sole proprietor. In proof of this she relied on certain arrangements as having constituted partition, viz., that in 1816, two brothers, then heirs, agreed that the elder should hold possession, and that the younger should accept a village, appropriated to him for maintenance in satisfaction of his claim to inherit: again, that in 1866, the fourth zamindar compromised a suit brought against him by his sister for her inheritance, on payment of a stipend to her, having already, on the claim of his brother, granted to him two villages of the estate; and, by the compromise, this was made conditional on the sister's claim being settled: again, that in 1871, the fourth zamindar having died pending a suit brought against him to establish the fact of an adoption by him, an arrangement was made for the maintenance of his daughter, and two widows, who survived him, the previous grant for maintenance of his brother holding good, the adoption being admitted, and the suit compromised:

Held, that there was nothing in the above which was inconsistent with the zamindari remaining part of the common family property; and that the course of the inheritance had not been altered:

Held, also, that the claimant was not precluded by the family compromise of 1871, or in any way, from maintaining this suit; and that it was not barred by limitation.

APPEAL from a decree (2nd March 1893) of the High Court, which affirmed a decree (19th December 1890) of the District Judge of Vizagapatam.

The plaintiff, now respondent, was Surya Narayana, great-grandson of the third zamindar of the Belgam Zamindari. The first defendant, now first appellant, Sri Raja Lakhshmi Devi Garu, was widow of the last zamindar, who died in 1888, and who was also great-grandson of the third zamindar. A second defendant, who did not appear on this appeal, was the plaintiff's younger brother Sundara Narayana Dhatrazu. The Collector of Vizagapatam, Agent to the Court of Wards, and guardian of the first defendant, had been made a defendant, by order of 10th September 1889.

The zamindari had been granted by the Government on the 21st October 1803, by a *sanad i milkeut istimrar*, or deed of permanent property, following Regulation XXV of 1802.

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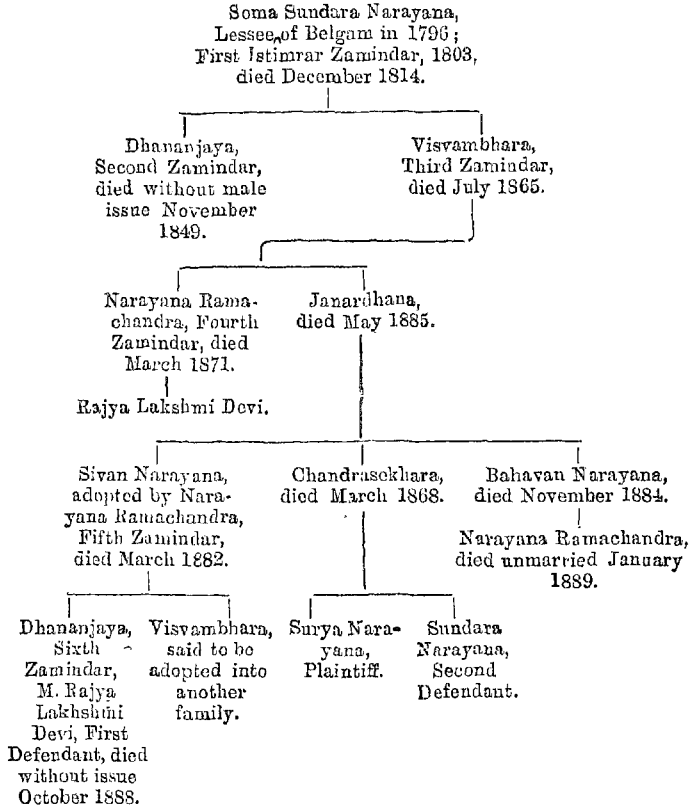
The following table shows the succession to the zamindari :—



The main question on this appeal was whether the zamindari was the joint family property in the hands of the sixth zamindari the widow's husband; or had ceased to be joint family property by reason of certain acts, which were alleged by the defence to have had the effect of partition, and to have altered the course of descent, so that the zamindari had become the separate property of her husband, the last owner. If that was the result of those acts, the widow would have become entitled to her widow's estate in the zamindari. The facts appear in their Lordship's judgment. The following were the principal transactions alleged to have had the effect of partition :—

In February 1816, Visvambhara, second son of the first zamindar, executed two deeds of receipt and acquittance (Pharikati) (the particulars of which are set forth in the judgment on this appeal) on receiving a grant of a village, part of the Belgam Zamindari from his elder brother Dhananjaya. In 1866,

Ramachandra, the fourth zamindar, granted to his only brother, Janardhana, two villages of the zamindari as Taoji, or gift for maintenance. Against this Ramachandra, a suit was brought by Sivan Narayana, alleging himself to have been adopted by Ramachandra, who did not admit the adoption, and who died in 1871, while the suit was pending. Janardhana, the natural father of Sivan Narayana, and Ramachandra's two widows with his daughter, who survived him, were made parties to the suit, which was then compromised by razinamas, dated the 6th September 1871. In those documents reference was made to the previous grant of Taoji to Janardhana, and a family agreement was made that Sivan Narayana should succeed as adopted son of Ramachandra, Janardhana, continuing to hold his two villages; and provision being made for the women of the senior branch.

The plaint (25th April 1889) alleged that the zamindari, recently granted, was partible among the heirs of the grantee, and that the plaintiff and his brother Sundara Narayan were entitled to the estate in equal shares, the defendant widow being only entitled to maintenance. The prayer was that one-half might be allotted to the plaintiff in severalty, excluding the villages granted in 1866, with one-half of the movables, and with mesne profits.

The Court of Wards filed the widow's written statement; in effect raising questions, the subject of the issues, whether the zamindari was partible or impartible, whether there had been partition, whether the estate had been acquired by the last owner himself, whether the plaintiff was estopped, by the acts of those through whom he claimed, from maintaining this suit, and whether it was barred by limitation.

The District Judge decreed in favour of the plaintiff that he was entitled to one-half of the property left by the late zamindar including the Zamindari of Belgam. In his judgment the zamindari was partible. The family was not ancient: the grant in 1796 was merely of a life estate. The grant in 1803 was not made in any manner which carried with it an implication that it was to be impartible. The duration of the family was not sufficient to give rise to a custom over-riding the ordinary law; and the mode in which the parties had dealt with each other was consistent with the estate being that of an ordinary undivided family under Mitakshara law, even though that family might have entertained the mistaken belief that the estate descended to a single heir.

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The District Judge held that the property was not the 'self-acquisition' of any one who came after the common ancestor, Visvambhara. It had always gone in the direct line of primogeniture, and there never had been any loss of the estate which could be followed by the acquirement of any one of the successive zamindars.

Also, he found that there had never been any partition. There had not been in the transactions of different years, which had been alleged on behalf of the widow to amount to partition, any intention whatever to affect the undivided status of the family. He held, moreover, that there was no estoppel, in consequence of the execution of the razinamas of September 1871, to bar the plaintiff's maintaining this suit. The agreement of that year recognized the adoption of Sivan Narayana, and his right to take the place of his adoptive father, while provisions for the maintenance of the females of the senior branch, and the males of the junior branch, were, at the same time, settled. Nothing was arranged as to the order of succession on the extinction of the senior branch, if it should occur, nor was any arrangement made for that succession in a manner contrary to the ordinary rules of inheritance of the Hindu law. This latter would have been invalid, and would not have been binding on the plaintiff, nor would it have affected his right to claim, as a member of a joint family, his share of the undivided estate.

As to limitation, the District Judge held that no question could arise under article 127 of Act XV of 1877. The plaintiff's branch, though existing, had not been shown to have had any right of possession until the property vested in 1888 on the death of the late zamindar in his collateral relations as his heirs. Till then, there was no exclusion of the plaintiff's branch, and not till then was there any possession held by another adversely to his branch.

The above necessarily cut away the ground that the widow could hold the zamindari against the plaintiff and his brother. The case put by the defendant's counsel was that the zamindari itself had not been divided, being impartible, but that the members of the family having become divided as to living and as to property and having agreed to a decree of separation in 1871, their status had become that of divided members of the family, and that this status must govern the right of succession to the zamindari, even if the latter was undivided.

This argument the Judge considered to fail, even if the facts were as alleged, on the ground that property, which was designedly excluded from a partition, remained joint, and was governed by the rule of succession which excluded a widow while undivided males were in existence.

Against this decision the Collector, as guardian of the widow, defendant, appealed to the High Court, which dismissed the appeal.

The High Court (PARKER and SHEPHARD, JJ.) considered, as to the alleged impartibility, that there had been no indication of an intention to impress that character on the estate granted in 1803. On the contrary there was clear indication of an intention the other way. The grant was to an individual not connected with the family of the original zamindar, and was not made as a restoration of an original estate. It was true that, as often as there had been a devolution of the estate, the eldest son, or in absence of a son, the brother, of the last holder, had assumed the position of zamindar. The estate had, no doubt, been treated by the family as if it had been impartible, and as if all that the junior branch could claim was a right of suitable maintenance. This state of things had continued for about seventy years. In the opinion of the Judges, in the case of a family of comparatively modern origin, evidence of conduct extending over such a short period was wholly inadequate to prove a special custom. The alleged usage would not be from ancient times. They referred to *Amrithnath Chowdhry* v. *Goureenath Chowdhry*(1) and *Ramalakshmi Ammal* v. *Sivanantha Perumal Sethurayar*(2). They considered it a matter beyond dispute that the zamindari was not impartible and that there was no such special custom, though the members of the family had agreed in treating it as impartible.

That being so, only two defences were raised, viz., renunciation under the compromise of 1871 and limitation. As to the first, the Judges held that no question beyond that of the present enjoyment of the zamindari had been raised by the parties, and that Janardhana had had shown no intention to separate himself and his descendants from the right of succeeding to the zamindari. As

(1) 13 M.I.A., 542. (2) 14 M.I.A., 570.

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to the second point, the bar by limitation, the Court considered that there never had been, till 1888, any holding possession adversely to the right which was claimed in this suit, that right being to succeed in default of direct male heirs of Ramchandra. Thus no question of limitation could arise.

The defendant widow having appealed from the High Court's decree, affirming the decree of the first Court.

Mr. *A. Cohen*, Q.C., and Mr. *J. H. A. Branson* for the appellant argued that the judgments in the Courts below had not given due weight to the transactions of 1816, of 1865–66, and of 1871–72. The result of those family arrangements had been a partition, effective to render Dhananjaya, the sixth zamindar, the inheritor of a separate zamindari; and in this his widow had obtained her widow's estate for life. Whilst the family had acted in the belief that the family estate was impartible and must remain in the hands of the zamindar for the time being, their arrangements had been such that the senior branch, on the one side, had given, and the junior branch, on the other side, had accepted, satisfaction for the separate possession of the zamindari being permanently made over to the senior branch. This had constituted partition. The evidence had shown that Ramachandra and Janardhana having lived separate had separated from each other in estate at the time of Sivan Narayana's suit of 1870–71. The plaintiff was estopped by the acquittance and discharge given. The compromise should be regarded. Moreover, this claim had originally been based, as shown by the plaint, on the case that the Zamindari of Belgam was an ordinary partible estate. But both the Courts below had found that, although it was not impartible, it had been dealt with by the family as if had been impartible. The compromise had been made on this footing. There had been a renunciation by the junior branch, and an acquisition by Ramachandra which might be considered to give the property the character of acquired estate. Reference was made, as to what constituted partition, to *Appovier* v. *Rama Subba Aiyan*(1), *Sri Raja Jaganadha* v. *Sri Raja Pedda Pukir*(2), *Rai Raghunathi Bali* v. *Rai Maharaj Bali*(3), *Periasami* v. *Periasami*(4), *Malikarjuna Prasada*

(1) 11 M.I.A., 75. (2) I.L.R., 4 Mad., 371.
(3) L.R., 12 I.A., 112; I.L.R., 11 Calc., 777.
(4) L.R., 5 I.A., 61; *Sivagnana Tevar* v. *Periasami*, I.L.R., 1 Mad., 312.

Naidu v. *Durga Prasada Naidu*(1), *Thakur Darriao Singh* v. *Thakur Darri Singh*(2), *Bhaiya Ardawan Singh* v. *Udey Pratab Singh*(3). Reliance was placed on limitation. It was argued that article 127, schedule II of the Limitation Act XV of 1877, applied on the alleged exclusion of those through whom the plaintiff claimed for more than twelve years before his demand. Reference was made to *Ramachandra Narayan Singh* v. *Narayan Mahader*(4).

Mr. *J. D. Mayne* for the respondent contended that there had been no evidence given of partition of the zamindari. As regarded the present claim of a coparcener in a joint family estate against the widow of the last possessor, it was not essential to have determined whether the estate was partible or impartible. The evidence had, however, shown it to be partible. The estate had never been partitioned, and the right of the present claimant had never been extinguished. There had been no renunciation of right, precluding the claim now made, nor any break in the undivided rights of the family coparceners. Thus there was no reason for considering the estate to be the separate estate of the last possessor, nor any reason for considering it to have been his 'self-acquired' property. Neither by estoppel nor by limitation was this suit barred. He referred to the judgment in *Appovier* v. *Rama Subbu Aiyan*(5), *Sri Raja Jaganadha* v. *Sri Raja Pedda Pakir*(6), and *Bhaiya Ardawan Singh* v. *Udey Pratab Singh*(3).

Mr. *J. H. A. Branson* replied.

Afterwards on 7th April, their Lordships' judgment was delivered by Lord DAVEY:—

This is an appeal against a decree of the High Court of Madras affirming a previous decree of the District Court of Vizagapatam. The appellant, who was defendant in the action, is the widow of the late Zamindar of Belgam who died on the 29th October 1888 without leaving any issue and intestate. She claims to be entitled to a widow's estate in the entire zamindari. The respondent (plaintiff in the action) claims to be entitled in possession to one moiety of the zamindari on the ground that the zamindari was part of the joint property of his and the late zamindar's family and

(1) I.L.R., 17 Mad., 362.
(2) L.R., 1 I.A., 1.
(3) L.R., 23 I.A., 64; I.L.R., 23 Calc., 838.
(4) I.L.R., 11 Bom., 216.
(5) 11 M.I.A., 75.
(6) I.L.R., 4 Mad., 371.

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he alleges that the zamindari being partible in title his brother Surandara Narayana (who was made a defendant in the action, but is not a party to this appeal) is entitled to possession of the other moiety. On the other hand the widow and appellant contends that the zamindari was impartible in title and that owing to certain family arrangements, it had become the separate property of her late husband.

The Zamindari of Belgam was originally created by a sunnud, dated 21st October 1803, granted by the Government to Somasundara Narayana (the first zamindar). The sunnud itself has been lost, but the contents of it sufficiently appear from the kabuliat or counterpart executed by the zamindar and dated 28th April 1804 which was put in evidence. It appears from this document to have been in a form which is stated to have been usual in grants by the Madras Government of that period. It conferred on the zamindar liberty to transfer by sale gift or otherwise his proprietary right in the whole or any part of the zamindari and granted the estate to him his heirs, successors and assigns at the permanent assessment therein named. It would seem from the arrangements made in the family that the zamindari was regarded as impartible. But whether that be so or not it has been now decided in the case of *Venkata* v. *Narayya*(1) on the construction of a sunnud of similar form and granted about the same date that the zamindari thereby created was not impartible or descendible otherwise than according to the ordinary Hindu law. It must be taken therefore that the Zamindari of Belgam was not impartible whatever the parties may have thought and the misapprehension of the parties could not make it so or alter the legal course of descent. It will however be found that as between the appellant and the respondent the question whether the zamindari is partible or not is of no importance. Even if impartible it may still be part of the common family property and descendible as such in which case the widow's estate of the appellant would be excluded. The real question therefore is whether it has ceased to be part of the joint property of the family of the first zamindar or (in other words) whether there has been an effectual partition so as to alter the course of descent.

Somasundara Narayana, the grantee and first zamindar, died in the year 1814, leaving two sons Dhananjaya No. 1 and Visvam-

(1) L.R., 7 I.A., 38.

bhara No. 1. Dhananjaya was allowed by his brother to succeed to the estate and became second zamindar. Two documents, dated the 16th and the 18th February 1816, were executed on this occasion and were the first transaction relied on by the appellant in proof of the separation of estate or partition which she alleged had taken place. The first document was a 'pharikat sunnud' given by Visvambhara in the following terms:—

"As we have both equally divided and taken all the cash, "jewels and other (property) in the palace to which both of us are "entitled, I bind myself not to claim (anything) from you at any "time. I shall reside in the village of Addapusila which you were "pleased to give me for my maintenance and act according to "your wishes."

By the second document (also called a 'pharikat sunnud') Visvambhara stated:—

"I or my heirs shall not at any time make any claims against "you or your heirs in respect of property movable or immovable, "or in respect of (any) transaction. As our father put you in "possession of the Belgam Zamindari, I or my heirs shall not "make any claim against you or your heirs in respect of the said "zamindari."

Their Lordships do not find any sufficient evidence in the arrangement made by these documents of an intention to take the estate out of the category of joint or common family property so as to make it descendible otherwise than according to the rules of law applicable to such property. The arrangement was quite consistent with the continuance of that legal character of the property. The elder brother was to enjoy the possession of the family estate, and the younger brother accepted the appropriated village for maintenance in satisfaction of such rights as he conceived he was entitled to. In the opinion of their Lordships it was nothing more in substance than an arrangement for the mode of enjoyment of the family property which did not alter the course of descent.

The second zamindar died in 1849, leaving two widows and one daughter Ratna Mani Amma but no son. At this time the estate was in the hands of a mortgagee and remained so during Visvambhara's life. He died in 1865, leaving two sons Ramachandra and Janardhana. A suit was commenced by Ratna Mani Amma (her father's widow being then dead) to recover the zamindari from Ramachandra. This suit ended in a compromise by

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which the plaintiff withdrew her claim to the estate on condition of Ramachandra paying her Rs. 500 a year. Ramachandra had, already by a kararnama, dated 13th October 1866, on the application of his brother Janardhana and with a view to enable him and his family to live decently, granted to him as *towji* the villages of Addapusila and Vuddavolu conditional on Ratna Mani's suit being settled in the manner mentioned. Ramachandra seems to have recovered possession of the estate from the mortgagees and succeeded as fourth zamindar. This transaction does not tend to support the case of the present appellant.

Ramachandra having no male issue adopted Sivan Narayana, the eldest son of Janardhana, but afterwards attempted to repudiate the adoption. In 1870 a suit was commenced by Sivan Narayana against Ramachandra to establish the adoption and praying for a decree establishing his title to the zamindari after the defendant's death. During the pendency of the suit Ramachandra died without male issue, but leaving one daughter and thereupon the suit was revived against Janardhana and Ramachandra's two widows and his daughter. Their Lordships observe that these persons were the only persons then interested in contesting the adoption of Sivan Narayana and they must assume that they were made defendants to the suit for the purpose of establishing the adoption against them. The suit was compromised as regards Janardhana and one of the widows (named as second defendant) on the terms contained in a razinama, dated 6th September 1871, and as regards the other widow on behalf of herself and her infant daughter in another razinama of the 16th September 1871. These are the documents which are chiefly relied on by the present appellant in support of her case.

By this compromise Janardhana agreed that the plaintiff was the adopted son of his elder brother, that the right to the zamindari should pass to the plaintiff and that Janardhana should be enjoying or continue to enjoy (for the words are translated both ways) the villages of Vuddavolu and Addapusila attached to the zamindari which had been in his possession and enjoyment in accordance with the khararnama executed in his favour by his late elder brother, and he also agreed to the provision to be made for Ramachandra's widows and daughter. The other defendants agreed to the plaintiff being the adopted son of the second defendant and her late husband and to the right of the zamindari being the plaintiff's

Provisions were made for the two widows during their lives out of lands attached to the zamindari. It was arranged that Ramachandra's daughter should be married to Sivan Narayana's son, or in default provision should be made for her out of lands of the zamindari—and there were other provisions for the benefit of the widows.

The terms of the compromise seem to have been carried out and Sivan Narayana as adopted son of Ramachandra succeeded to the zamindari. He died in March 1882 and was succeeded by his son Dhananjaya (2) who died on the 29th October 1888 intestate, leaving the appellant his only widow and no issue.

The respondent is one of the two sons of Chandrasekhara (deceased), the second son of Janardhana, and he and his brother are his only two surviving grandsons. It is alleged and seems to have been admitted in the case that Visvambhara (2), a brother of the late Zamindar Dhananjaya (2), had been adopted into another family and was excluded from any share in the property of his natural father's family, and the proceedings in the suit were conducted on that assumption. Their Lordships will only point out that if any mistake has been made with respect to this fact, nothing that is decided in this suit will affect his interest (if any) in the zamindari. Visvambhara applied to be made a party to the suit, but his petition was refused on other grounds, and no evidence was gone into as to his adoption into another family.

The present suit was commenced by the respondent on the 25th April 1889 against the appellant, the respondent's brother, and the Court of Wards as guardian of the appellant. The plaint ignores the adoption of Sivan Narayana and proceeds on the assumption that he succeeded to the estate with the permission of his natural father Janardhana and his natural brothers and managed the estate on behalf of himself and the other members of the family. It alleges that the estate is partible and is owned and enjoyed by the family of the plaintiff. The prayer is that, excluding the villages of Vuddavolu and Addapusila, the zamindari be divided so as to give the respondent his half share, and the same recovered from the appellant. The defence was in substance (1) that the zamindari is impartible, (2) that the respondent was estopped by the family compromise of 1871 from maintaining the suit, and (3) that the suit is barred by the Law of Limitations. The validity of the adoption of Sivan Narayana is not now in dispute.

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On the first point their Lordships have already expressed their opinion and have pointed out that as between the appellant and respondent the question is immaterial. It only arises as between the respondent and his brother who is not a party to this appeal. The District Court decreed the respondent possession of half of that part of the zamindari which is within the local jurisdiction of the Court, and that was all that the plaint asked for.

On the second point their Lordships agree with the Courts below that the course of descent of the zamindari was not altered by the compromise of 1871, and that the widow is not entitled to succeed to a widow's estate as heir of the late zamindar. The only question raised in the litigation of 1870 was as to the fact of Sivan Narayana's adoption by Ramachandra, and it does not appear that any other contention was raised by Janardhana when he was made a party to the suit or was in the contemplation of the parties. They may (as has been suggested) have been under the erroneous impression that the zamindari was impartible, but there was nothing in the compromise inconsistent with the zamindari (even if impartible) remaining part of the common family property. The two villages were originally granted by Ramachandra to Janardhana as *touji* only and in order to provide a decent maintenance for him and his family, and in 1871 it was agreed that Janardhana should continue to enjoy the villages in accordance with Ramachandra's grant. It is said that Janardhana and his family have dealt with these villages in a manner inconsistent with their holding them for their maintenance only. Their Lordships express no opinion on the point, but even if they have exceeded their rights that will not alter the effect of what was done by the agreement of 1871. It is impossible to treat that agreement as a deed of partition by which the zamindari was converted into the separate or acquired property of Sivan Narayana.

Their Lordships also agree with the Courts below that the suit is not barred by the Law of Limitations. As between the appellant and the respondent the suit is not one for partition. The claim of the latter is not to hold jointly with the appellant, but to succeed adversely to her as one of the right heirs on the death of the last zamindar. There has been no denial of the title of Janardhana and his family or exclusion of them from the estate. On the contrary the possession has been under and in accordance with the agreement of 1871 by which a provision was made for the junior branch.

Their Lordships will therefore humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay to the respondent his costs of the appeal.

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APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

MAHADEVI AND ANOTHER (DEFENDANTS NOS. 1 AND 2), APPELLANTS,

1896 November 19.

v.

NEELAMANI (PLAINTIFF), RESPONDENT.*

Hindu Law—Po-Brahman—Alienation by widow for religious purposes—'Res judicata'—Decision on title in proceedings under Land Acquisition Act, 1870.

When a Po-Brahman receives a salary for the performance of his duties, a gift to him by the widow of the person whose exequial rites he has been appointed to perform to reward him for having performed any of those exequial rites is not a gift binding on the reversioners.

In proceedings under the Land Acquisition Act, 1870, to apportion the compensation payable, a decision by the Judge on a question of title does not operate as *res judicata* between the parties to those proceedings.

APPEAL against the decree of J. P. Fiddian, District Judge of Ganjam, in Original Suit No. 9 of 1894.

The plaintiff brought this suit to recover possession of a village with mesne profits. The village in question had formed part of the estate of the late zamindar of half of Tekkali taluk and had been given to the plaintiff by the late zamindar's widow. The first and second defendants were the daughters of the zamindar and, having, on the death of his widow, succeeded to his estate, had obtained possession of the village in question, which till then had been in possession of the plaintiff. The other defendants were the ryots of the village.

The circumstances under which the gift had been made were as follows:—In accordance with a custom prevailing among the Oriya zamindars, the late zamindar had appointed the plaintiff Po-Brahman (son Brahman) to perform his exequial rites. After

* Appeal No. 148 of 1895.