Subramania Ayyar for appellants.

Seshagiri Ayyar for respondents.

JUDGMENT.—We agree with the learned Judge in the construction he has placed on clause 12 of the Letters Patent. No portion of the immovable property is situated in Madras and therefore leave to sue in the High Court could not be granted. The appeal is dismissed with costs.

PRIVY COUNCIL.

MUTTUVADUGANADHA TEVAR, PLAINTIFF,

AND

PERIASAMI TEVAR, DEFENDANT.

P.C.* 1896. June 17, 27.

[On appeal from the High Court at Madras.]

Mitakshara law of inheritance—Impartible zamindari.

Heritage to an impartible zamindari is to be traced according to the ordinary rules of the Hindu law of inheritance, unless some further family custom exists, beyond the custom of impartibility, although the estate will be in the possession of only one heir at a time.

It was contended for the appellant that, in tracing the right heir to the proper stock entitled to the inheritance, a rule was applicable to an impartible estate, different from that applied to a partible one; and that when once the heritage to an impartible estate had become obstructed, on the death of each successive owner the true successor was the heir of the last owner of the originally unobstructed estate, though this did not apply to a partible estate. But for such a distinction no authority was cited, nor any principle suggested; and it was not upheld.

The parties to this suit, first cousins once removed, contested the right to inherit an impartible zamindari, which had been acquired by their common ancestor, who had left two daughters by two different wives. The plaintiff was the son of the younger daughter, the defendant's father was the son of the elder. The younger half-sister survived the elder, and in 1863 was judicially declared to have inherited alone the impartible zamindari. On her death the elder daughter's son, in litigation ending in 1881, made good his title to the impartible zamindari, being the descendant in the elder line:

Held, that this son of the elder daughter became, as the last male owner, the stock from which descent had now to be traced, and that the ancestor was no longer that stock. And *held*, that the son of this last male owner had a title to

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

MUTTUVADUGANADHA TEVAR v. PERIASAMI TEVAR.

the zemindari on his father's death in consequence of the full and complete ownership of the latter, who had himself become a fresh root of title.

This decision disposed of the only question that was argued on this appeal. But the decision of the Courts below that the plaintiff could not claim the inheritance in virtue of survivorship was also affirmed. The judgment below, on this part of the case, was based on this that no family co-parcenary had existed to give rise to survivorship, as the sons of daughters could not form a family co-parcenary, which could only consist of the descendants of a paternal ancestor.

APPEAL from a decree (25th April 1892) of the High Court(1), affirming a decree (11th April 1890) of the District Judge of Madura.

This suit was commenced on the 19th August 1889 for the possession by right of inheritance of the impartible zamindari of Shivaganga in the Madura district, the plaintiff claiming the succession after the late zamindar, Dorai Singha Tevar, who died on the 19th July 1883, and whose son held the zemindari after him. The undisputed facts, and the issues framed in the Court of first instance, appear in the report of the appeal in this suit(1) to the High Court. The judgments concurring in the dismissal of the claim were given by the late Muttusami Ayyar, J., C.I.E., and by Best, J. The latter of these Judges stated the material facts, which also fully appear in the judgment on this appeal.

Since the death of the istemrari zamindar, or grantee of the estate from the Government, the line of the descent of the zamindari had twice been rectified by decisions of the Courts and settled by their Lordships. Once in 1863, when in *Kattama Natchiar* v. *The Zamindar of Shivaganga*(2), the younger daughter of the istemrari zamindar was declared, by the order of Her Majesty in council, the true heiress. And again in 1881 when Dorai Singha Tevar, son of Vela, the elder sister of Kattama, on the death of the latter in 1887, was declared, by order from the same authority, in *Muthuvaduganadha Tevar* v. *Dorai Singha Tevar*(3) to be heir.

The principal questions raised on the present appeal were whether under the Mitakshara in force in the Carnatic the heritage, to Shivaganga, was to be traced from the last male owner who was father of the defendant, or from the istemrari zamindar, the ancestor common to the parties; but to whom, the appellant his grandson, tracing to him as maternal grandfather, was one step

(1) I.L.R., 16 Mad., 11. (2) 9 Moore, I.A., 643.
(3) L.R., 8 I.A., 99; I.L.R., 3 Mad., 290.

nearer than was the respondent, who was his great-grandson. The appellant was son of the younger of the ancestor's daughters, and the respondent was grandson of the elder daughter. A question, not argued upon this appeal, but decided below against the present appellant, was whether upon the death of Kattama Natchiar the zamindari had devolved upon Dorai Singha Tevar and the appellant, as joint family property, though held only by the former, so that on his death survivorship would have given the zamindari to the appellant. The decision by the Courts in India negativing the possibility of there being co-parcenary between Dorai Singha Tevar and the appellant, on which alone the latter's right of survivorship could be founded, was affirmed in the judgment of their Lordships on this appeal.

The plaintiff, who had been defendant in the suit which ended in 1881 in favour of his cousin Dorai Singha Tevar, based his claim principally on this,—that he, the plaintiff, being the only surviving grandson of the istemrari zamindar, Gourivallabha Tevar, through the younger daughter Kattama Natchiar (who died in 1877 after having been declared entitled to the zamindari by order in Council in 1863(1)) was nearer to the common ancestor than was Periasamy, son of Dorai Singha Tevar, and only a great-grandson of that ancestor. The defendant's written statement was that by the decision in 1881 his father had been declared full owner of the zamindari and that the heir was to be traced to no one but that owner.

On an issue whether, on the death of Dorai Singha Tevar, succession should be traced from the maternal grandfather, as alleged by the plaintiff, or from Dorai Singha himself, as contended by the defendant, the Subordinate Judge decided that, as a daughter's son inherited the full proprietary right, on his death his heir succeeded to the estate, so that the defendant was entitled. On another issue, the Subordinate Judge decided that Dorai Singha Tevar and the present plaintiff could not be considered to have been members of any joint family, possessing the estate in co-parcenary, with a right to possession successively. As the sons of different fathers, they were not members of a joint family. Therefore, there was no right by survivorship that could be claimed by the plaintiff.

(1) L.R., 8 I.A., 99; I.L.R., 3 Mad., 290

MUTTUVADU-GANADHA TEVAR v. PERIASAMI TEVAR.

A divisional bench of the High Court, composed of the Judges above named, dismissed an appeal from the Subordinate Judge's decision dismissing the suit. The judgments are reported at length in the I.L.R., 16 Mad., 11.

The plaintiff now appealed.

Mr. *H. H. Cozens Hardy,* Q.C., and Mr. *J. H. A. Branson* appeared for the appellant.

Mr. *J. D. Mayne* for the respondent.

The following is an outline of the argument for the appellant:—In the circumstances of this impartible estate, and of this family, it ought to have been held that Dorai Singha Tevar did not constitute the true stock of descent. On his death the appellant became entitled as the nearest heir to the istemrari zamindar, and as belonging to the same class as those claiming under Gourivallabha Tevar, who remained the root of title. Under the Mitakshara, the estate which a daughter took in property inherited by her from her father was only a qualified estate, and on her death the property descended to the heirs of her father, not to her heirs. *Chotay Lal* v. *Chunnoo Lal*(1).

There were grounds for the contention that, when the succession to an impartible estate had once become obstructed by the interposition of a female in the line of heirs, the impartible inheritance remained obstructed, so that on the deaths of successive owners the heir of the obstructed impartible inheritance was to be found by tracing him from the last male owner of the unobstructed inheritance. It was not the argument that this applied to ordinary partible family estates. But it was submitted that, in the case of the impartible inheritance after the succession of a daughter's son, the heritage had to be traced back to the last male owner. Again, daughter's sons taking as a class, it should have been held by the Courts below that all the members, to the last survivor of that class, should be exhausted, before resort could be had to another line. It was not insisted for the appellant on the argument derived from the law of survivorship which had been disposed of below; the strength of the appellant's case being the necessity of tracing back to the istemrari zamindar, as still the stock of descent.

(1) 14 Beng., L.R., 235; L.R., 6 I.A., 15.

Reference was made to the Mitakshara, chapter II, section I, verse 1; and to chapter II, section II, verse 6, as to the estates taken by daughters, and daughters' sons; and to chapter II, section III, citing Menu 9,187, to the effect that to the nearest sapinda the inheritance next belongs.

Mr. J. D. Mayne's argument for the respondent was, in effect, as follows:—A daughter's son took exactly the same estate as if he were the son of the last male owner; and on the death of that daughter's son, the heir was ascertained by tracing to him. The defendant as the son of Dorai Singha Tevar was therefore entitled. As to the matter of the obstructed inheritance, every one taking after a widow or a daughter took an inheritance to which his right was said to have been obstructed, getting, as he did, no title from her. As one of their Lordships said, his title was neither from, nor through, but after her. The inheritance proceeded from the last male owner, and was to be traced to the limits of his progeny. Heirship under the Mitakshara depended upon corporeal affinity; a female inheriting for only a limited purpose to discharge certain duties to the estate. That text which said that no woman took an inheritance was still true in a certain sense, though she represented it for the time being, but a daughter's son took absolutely an estate of inheritance as an heir of the preceding male owner. Reference was made to Colebr. Dig., 494, and 502, Book V, Chapter IX.

An early case referring to this was reported in Sir Edward Hyde East's notes of cases, *Ramjoy* v. *Tarrachund*(1) decided in 1816. Another decision under the Mitakshara in the North-West Provinces was in *Sibta* v. *Badri Prasad*(2).

Mr. H. H. Cozens Hardy, Q.C., replied only that he relied on the arguments already adduced for the appellant.

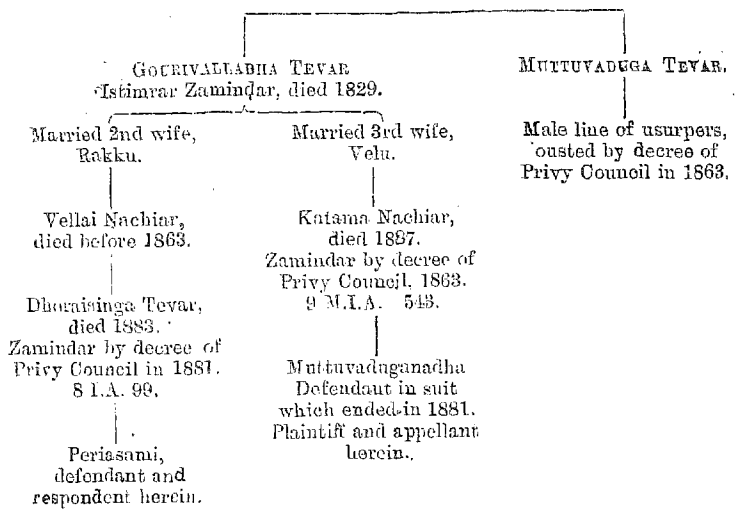
Their Lordships' Judgment was delivered on the 27th June by Lord Hobhouse.

Her Majesty in Council is called upon to decide yet another dispute arising out of the succession to the zamindari of Shivaganga. The nature of the dispute is best stated by reference to the pedigree set out in the case of the respondent, who was the defendant below:—

(1) 2 Morley's Digest, 79. (2) I.L.R., 3 All., 234.

MUTTUVADU-GANADHA TEVAR v. PERIASAMI TEVAR.

Pedigree.



The effect of the litigation which ended in the year 1863 was to establish that the zamindari was the self-acquired property of the istimrar zomindar, and that it devolved upon his younger and only surviving daughter Kattama in preference to collateral heirs.

Kattama died in 1877, when her son the present appellant, who was plaintiff below, claimed to be entitled in preference to Dhoraisinga, the son of Kattama's sister, who was eldest daughter of the istimrar zamindar. In that litigation, which ended in the year 1881, it was established that though the zamindari was impartible, Kattama took it for the ordinary Hindu woman's estate, and that upon her death it devolved not on her heir but on the heir of her father.

Dhoraisinga being dead, the plaintiff has preferred a fresh claim to the zamindari. He maintains that the istimrar zamindar is still the root of title, and that he, being a grandson, is entitled to succeed in preference to the defendant who is a great-grandson. The defendant maintains that Dhoraisinga acquired full and complete ownership, and became a fresh root of title, so that the property descended to his son.

Both Courts below have decided that the defendant's contention is right. The plaintiff's claim is founded on the idea that the present question is the same as that which arose on Kattama's death. Then the istimrar zamindar was the root of title, whose heir was to be sought, therefore it is argued he is so now. That

argument loses sight of the difference between the imperfect or obstructed heritage of a female, and the full heritage of a male successor. It is not disputed by the appellant's counsel that, if the property were partible, Dhoraisinga would have taken an absolute ownership constituting him a new stock. But it is contended that a different rule is applicable to an impartible estate, and that if the inheritance of such an estate once becomes obstructed, it is always obstructed, so that on the death of each owner the true successor is the heir of the last unobstructed owner They have not produced any authority, nor suggested any principle for such a distinction. When an estate is impartible it is enjoyed in a different mode from that prescribed by the ordinary Hindu law; but the inheritance is to be traced by the same mode, unless some further family custom exists beyond the custom of impartibility.

Their Lordships do not discuss the question of survivorship, because Mr. Cozens Hardy distinctly stated that he rests his claim not on survivorship between the plaintiffs and Dhoraisinga, but on the plaintiff's greater proximity to the true root of title. But on both points they express their agreement with the learned Hindu lawyer who presided at the hearing of this case in the High Court, and whose services have recently been lost to that Court.

Their Lordships will humbly advise Her Majesty to dismiss the appeal. The appellant must pay the costs.

Appeal dismissed.

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

Solicitor for the respondent: Messrs. *Lawford, Waterhouse, & Lawford.*