PRIVY COUNCIL.

RAJA VELLANKI VENKATA RAMA RAU (PLAINTIFF),

v.

RAJA PAPAMMA RAU (DEFENDANT).

P.C.*
1898.
February 17.
March 8.

[On appeal from the High Court at Madras.]

Construction—Title under a will followed by a family arrangement adding to the property devised.

The will of a proprietor, who died in 1864, disposed of a zamindari, and of one village within it, as two distinct properties, giving the zamindari to the testator's two widows, and, on the other hand, giving the village in equal shares, in perpetuity, to the two brothers of his junior wife. Neither of the two brothers took possession of their respective moieties on the testator's death, and the whole village was treated for some time as part of the zamindari, the profits of it being received by, or on behalf of, the widows. In 1869, one of the brothers having died, leaving a son, who succeeded to his rights in the village, a family arrangement was made that the entirety of it should be made over to the surviving brother, the present claimant, the son of the other receiving from the widows satisfaction in lieu of his moiety.

The junior widow having died, the senior got possession of the village, alleging that the surviving brother had merely been appointed to act as manager of it, on behalf of herself and her co-widow:

Held, that under the will the claimant had been originally entitled to one-half of the village including its rents, from the testator's death; and that to this half had been added the other, with title, in 1869, in pursuance of the transaction in regard to it. An order, given by the widows in that year making over the village, was not a revocable one; and the interest in the additional half, conferred upon the claimant, was commensurate with what was already his own. No writing was then necessary to vest the other half in him. Such a transaction was good and valid as a family arrangement; and he had made out his title to the whole village.

APPEAL from a decree (15th March 1892) of the High Court, reversing a decree (29th June 1889) of the Subordinate Judge of Ellore.

This suit was brought on the 7th February 1888 by Raja Vellanki Jagannatha Rau, who died in that year, and was succeeded on the record by his son, Raja Vellanki Venkata Rama Rau, to obtain possession of a village, Vundrazavaram, as entitled to the proprietary right. This village formed part of a zamindari belonging to Raja Narayya Appa Rau, who died on the 7th December

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* *Present:* Lords HOBHOUSE, MACNAGHTEN, and MORRIS, and Sir R. COUCH.

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1864, having by his will bequeathed half of the village to the plaintiff, Jagannatha Rau, and the other half to Sura Rau, both being brothers of the testator's junior wife. The zamindari, Nidudavolu, by the same will was separately given to the late Raja's two widows, Papamma, the senior, and Chinnamma. The younger widow died before 1883, in which year Jagannatha, who had received possession, of which the character was now disputed, was dispossessed of the village by Papamma, against whom he brought this suit to recover it.

The principal question raised by this appeal was whether the plaintiff had obtained a title to the village, as the First Court had decided, or had as manager only on behalf of the widows obtained a possession to which the surviving widow had lawfully put an end. The High Court had taken the latter view, and had held that any claim by the plaintiff under the will of 1864 was barred by time. The question was mainly as to the character and capacity in which the plaintiff had held the village while in possession from 1869 down to 1883 when he was dispossessed. The answer to this turned on the proper conclusion to be drawn from the facts stated in their Lordships' judgment.

The late Raja's bequest to the brothers was in these terms:— "To my brothers-in-law, Jagannatha Rau and Sura Rau, the "village of Vundrazavaram. It is settled that they should be "paying every year as by kistbund (instalments) the peshcush, "and be enjoying the profits from their sons to grandsons, and "so on in succession."

The will gave the widows a power to adopt which was exercised in the adoption of Venkata Ramayya, who dying left a son Narayyan. The latter was made a defendant, and was a party to this appeal, but he died in 1895. Papamma under an order, dated 7th January 1897, represented him as his guardian. On his death she was the sole respondent.

No steps were taken to carry the Raja's bequest of the village into effect until 1869. At that time Sura Rau had died leaving a son, Venkata Krishna Rau; and in that year it was arranged that a separate provision should be made for the latter.

In 1869 possession of the whole village was given to Jagannatha alone, an order, dated 22nd January 1869, signed by the two widows, having been given by them to an amildar of the zamindari in the following terms:—"Sanction having been given that out of

"Rs. 6,400, the annual rent fixed on the village of Vundrazavaram, "included in the Parganna of Nidudavolu, Rs. 3,200 should be "paid annually to the Sircar, and the balance of Rs. 3,200 enjoyed "by Vellanki Jagannatha Rau Garu as vasati, and that he should "be managing the affairs of that village, the management of "that village should be delivered to the man sent by him, and "arrangements made so that he may get business managed on his "behalf. If the collections already made for the present year are "in excess of Rs. 3,200, payable to the Sircar, such excess should "be made over to him, and a receipt taken. But if they fall "short of Rs. 3,200, the deficit should be recovered from him, "and further the sum of Rs. 3,200 should be collected from the "ensuing year according to the kists of the Parganna. Moreover, "the water-cess and the road-cess charged according to the rules "for that village, in proportion to its extent, should every year "be collected through Jagannatha Rau Garu himself, and arrange-"ments made for that sum being remitted to the Tana. Therefore "the money relating to the said items, as may be found due every "year according to the accounts, should be collected from him "according to the kists. We have arranged to collect through "him alone also the past arrears outstanding on that village up to "date, and this matter too is, therefore, made known to you."

The plaint, alleging title under the will of the Raja, stated that possession was held by the plaintiff from the 29th January 1869 till 1883 when the raiyats, at the instigation of Papamma, began to withhold their rents; and that he was finally deprived of possession in 1886. The defendant Papamma asserted in her written statement that the plaintiff had not obtained possession under the Raja's will, but by her permission and that of her deceased co-widow, on condition that he should pay an annual rent of Rs. 3,200; the understanding being that his possession should continue only so long as he did their behests, to which he had not attended. That her co-widow, who died on the 15th April 1881, had in 1878 joined with her in requiring possession of the village. The statement filed on behalf of the other defendant Narayyan was to the same effect, with a further allegation that the Raja could not alienate property that was ancestral in his line.

The issues raised the above questions.

The Subordinate Judge was of opinion that the plaintiff's representative had made out a title to the village. The widows

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had granted possession of it, with the consent of the son of Sura Rau, the co-legatee, to Jagannatha, who entered into occupation of it. He considered that the widows did so, being inclined to act according to the will of their late husband, whose directions they were bound to carry out. Their making over possession was not a mere act of grace on their part; but they, being under an obligation to carry out the will of their late husband, had delivered over the property bequeathed by him to Jagannatha; in so doing adding the share which the co-legatee's son consented to abandon. The Judge referred to Lord Chancellor Talbot's expression in *Lechmere* v. *Earl of Carlisle*(1) that when a man lies under an obligation to do a thing it is more natural to ascribe his act, in so doing, to the obligation under which he lies, rather than to a voluntary grace independent of the obligation. He cited also Snell's Equity, 10th edition, page 264. He accordingly awarded possession of the village to the claimant.

The High Court reversed this decree, being of opinion that the claimant had not obtained possession of the village under the will, but by the act of the widows, who had put him in occupation as a manager only, and had lawfully put an end to the management. The Judges (COLLINS, C.J., and PARKER, J.), besides adverting to other evidence to that effect, referred to letters addressed by Jagannatha to his sister the Rani Chinnamma, and considered that they contained "an unequivocal admission that the writer could "only hold the village for the short remainder of his life, and was "liable to be called upon to surrender it at any time at the will of "the Rani." This they regarded as in accordance with the terms under which possession was given under the order of the 22nd January 1869, signed by the widows. The alleged title rested upon the will, and, so founded, was barred by time.

On an appeal by the plaintiff, Mr. *J. D. Mayne*, for the appellant, argued that the High Court had not drawn the right conclusion from facts as to which the evidence, taken altogether, left no doubt. The proprietary right to the village in dispute was given by the will of the last male owner to Jagannatha and Sura. The rights of those two had not been given up by them, and the delay in enforcing their rights carried no presumption that they, or either of them, had ever ceded rights to the widows. According

(1) 3 P. Wms., 211; Cases *temp.* Talbot, 80.

to the terms of the will the widows had no right to the village at all. Resting as the title originally did in Jagannatha and Sura, it was not disputed that Sura's son consented to the delivery of the entire village to the former. To this the son consented upon an arrangement that was satisfactory to him and to the parties interested, whereby he was provided for; and Jagannatha obtained the whole village. The terms of the order of the 22nd January 1869, signed by the widows, and directed to the amildar, to deliver possession to Jagannatha, were perfectly consistent with an intention on their part to carry out the will of their late husband; and there was no evidence of any other intention. Limitation had been referred to in the judgment of the High Court, but this could only apply on the supposition that this was a suit brought to enforce the will, which it was not. The plaintiff's case was that the will had been acted on, as a basis for the subsequent arrangement, in pursuance whereof possession followed. The defence consisted of an attempt to establish a supposed agreement, between the plaintiff and the widows, that he should become manager only, on their behalf. Of this last state of things there was no sufficient evidence, and there had been nothing to show that it was supported by any consideration. In connection with the alienation of part of an ancestral zamindari, such as Nidudavolu, and Regulation XXV of 1802, section 8, *Syed Ali Saib* v. *The Zamindar of Salur*(1) was referred to.

Mr. *J. H. A. Branson* and Mr. *R. Harrington*, for the respondent, argued that the judgment of the High Court had rightly dismissed the suit. So far as it was based upon the will it was barred by limitation, and apart from the will the appellant had made out no title. His possession as manager could be terminated by the widow, and his capacity in that respect was one that he had himself accepted. There was nothing in the order of the 22nd January 1869, showing that the widows intended to act upon the will only, but rather to carry out a new arrangement in which the appellant had acquiesced. The management conferred upon him was in substitution for a claim of title on his part to one half of the village. The evidence had not shown, and no presumption had arisen, that the widows intended to enlarge his interest therein, to the extent of conferring upon him an absolute title to the whole.

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(1) 3 M.H.C.R., 5.

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The High Court had rightly construed the order of the 22nd January 1869 as revocable. It must have been so, as it contained no words showing that it accompanied the grant of an absolute interest, and as there were no circumstances indicating that there had been such a grant of the whole village. Reference was made to *Baboo Lekhraj Roy* v. *Kunhya Singh*(1).

Mr. *J. D. Mayne* was not heard in reply.

Afterwards, on the 8th March, their Lordships' judgment was delivered by Lord MACNAGHTEN.

JUDGMENT.—This suit was brought to recover possession of the village of Vundrazavaram lying within the zamindari of Nidudavolu, which was formerly the property of the zamindar Narayya Appa Rau. Narayya died without issue on the 7th of December 1864, leaving a will which dealt with the zamindari and the village separately.

The suit was commenced in February 1888. The original plaintiff was Jagannatha, the appellant's father. He died at an early stage of the proceedings, and the appellant was substituted as plaintiff in his stead. The defendants were Papamma, the surviving widow of Narayya, and an infant also called Narayya Appa Rau, whose late father Ramayya had been adopted by Papamma some time after the completion of the transaction, the effect of which is now in question. The infant Narayya died in the course of the litigation and on his death his interest became vested in the respondent Papamma.

It is common ground that Jagannatha was in possession of the village in dispute from 1869 to 1879 and that during this period his possession was undisturbed. From 1879 to 1883 he was continually in trouble and litigation with the raiyats who withheld their rents and refused to accept pattas at the instigation, it is said, of Narayya's widows or their manager Venkatadri. In 1883 Papamma having survived the younger widow Chinnamma, who was Jagannatha's sister, came forward openly and dispossessed Jagannatha.

The sole question at issue is this.—In what character or in what capacity did Jagannatha hold the village while he was in possession? Was he absolute owner, as the appellant contends, or was he, as the respondent has variously asserted, tenant for life or

(1) L.R., 4 I.A., 223; S.C., I.L.R., 3 Calc., 210.

tenant at will, or grantee upon certain conditions for the breach of which he was liable to be dispossessed, or lastly was he, as the High Court has held, merely manager under a revocable appointment?

By his will, which was dated the 6th of December 1864, the day before his death, Narayya gave his zamindari and all his other property to his two wives—Papamma and Chinnamma. To Jagannatha and Sura, who were brothers of his junior wife, he gave the village of Vundrazavaram in perpetuity. The testator gave three other villages to Sura's son Venkata Krishna. He enjoined his wives to live in harmony with Venkatadri, whom he described as his younger brother, but whose exact relationship to the testator does not appear. And he gave his wives authority to adopt a relative.

The testator's wives signed the will in token of their consent to abide by its terms, and on the 9th of December 1864 they sent a copy of the will to the Collector and notified their intention of acting in accordance with its provisions.

It appears that neither Jagannatha nor Sura took any steps to obtain possession of Vundrazavaram on the testator's death. There was no opposition on the part of the Ranis, nor was there so far as appears any unwillingness on their part to carry out the testator's wishes. But Jagannatha considered that he had not been fairly treated by the testator who had made a more liberal provision for the family of his younger brother, and so he refrained from accepting the bequest in his favour in the hope that the Ranis would increase it. In the meantime, the village remained part of the zamindari and the rents were received by, or on behalf of, the Ranis and went into their treasury.

In 1869 Sura being then dead and his son Venkata Krishna who had married Venkatadri's daughter having succeeded to his rights, the family differences were composed. It was arranged that the entirety of the village of Vundrazavaram should be made over to Jagannatha as from the commencement of the current year with the consent of Venkata Krishna, who was to receive satisfaction for his moiety from the Ranis. The meeting at which the arrangement was completed took place on the 22nd of January 1869. There were present among others Venkatadri Jagannatha, the appellant, and Venkata Krishna and one Prakasa, the Raja of Vutukuru, a near relative, who is now dead. The Ranis were there too, though of course in their own apartments, and communications

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took place with them from time to time through Prakasa, the appellant and Venkata Krishna. Before Venkata Krishna consented to place his moiety at the disposal of the Ranis for the purpose of the arrangement, he was assured by them that he should either have the moiety bequeathed to him by the testator or receive other villages instead. When he was satisfied Venkatadri dictated to his clerk an order addressed to the amildar directing him to make over the management of the village to the person sent by Jagannatha on behalf of his master. The order was then given to Venkatadri. He handed it to Prakasa and then to Jagannatha. They both read it. Jagannatha read it aloud and expressed his approval. It was then taken to the Ranis. They read it and signed it in the presence of Prakasa, the appellant, and Venkata Krishna, and again repeated their assurances to Venkata Krishna. In conformity with this order, Jagannatha was put into possession of the village. Nothing further is to be found in the record about Venkata Krishna. It must be taken that he received adequate compensation in accordance with the assurances that he had been given him.

That is in substance the whole of the evidence about the transaction which resulted in Jagannatha being put into possession of the village of Vundrazavaram. The only witness at the trial who appeared before the Ranis was the appellant himself. The Subordinate Judge, who observed his demeanour, was satisfied that he was a truthful witness. Neither the respondent nor Venkatadri came forward to contradict him. They were both cited as witnesses for the appellant. But "the former," as the Subordinate Judge states, "threw so many difficulties to her examination on commis- "sion that plaintiff was obliged to abandon her as his witness, and "the latter was reported to be too seriously ill to subject himself "to any examination."

The transaction seems to be a very simple and a very intelligible arrangement, if the position of the parties at the time is considered. Jagannatha was entitled to one moiety of the village and one moiety of the rents from the testator's death. His grievance was that the testator had not given him as much as he thought he was fairly entitled to. With the consent of the person entitled to the other moiety the Ranis made over to him the whole of the village as from the commencement of the current year. In the absence of any evidence it is impossible to suppose that it

could have been intended that his interest in the one moiety should be less than or different from his interest in the other. It was not suggested that he should surrender his absolute interest in his own moiety. Sura's moiety was made over to him as an addition to his own. The natural inference and indeed the only reasonable inference that can be drawn from the surrounding circumstances is that he was to hold the entire village in the same way as he was entitled to hold his own moiety, and that his interest in the two moieties should be commensurate. Such a transaction would be perfectly good as a family arrangement. Jagannatha was put in possession of the whole, and as the law then stood no writing was necessary to vest Sura's moiety in him.

Jagannatha's complaint was that one moiety of the village was not enough for the maintenance of himself and his large family. It is difficult to conceive that he would have surrendered his absolute interest in one moiety for a life interest in the whole which would have left his family unprovided for at his death. It is equally inconceivable that he would have accepted any interest less than a life interest. The suggestion that the village was granted to him on condition of personal attendance on the Ranis or on any terms involving a right of resumption is not supported by any evidence.

Of course, if there were anything in the order of the 22nd of January 1869 inconsistent with an absolute interest in Jagannatha, it would be a different matter. It would be impossible for the appellant to rely on possession obtained under a document which would have contradicted his present claim. But the order so far as it goes is consistent with an absolute interest in the person in whose favour it was issued. It directs the amildar to deliver up the management of the village to the messenger of Jagannatha, "so that he may get business managed on his behalf." It states no doubt that the profits over and above the fixed rent required to cover the proportionate part of the Government revenue of the whole zamindari were to be enjoyed by Jagannatha as "vasati," that is, for support or maintenance. But it must be remembered that it was just because he complained that the profits of half the village were not enough for the maintenance of himself and his family that he was put in possession of the whole. There is not a word in the order cutting down Jagannatha's interest to a life

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interest or to a tenancy at will or imposing any terms as the condition of his continuing to hold the village.

The whole difficulty seems to have arisen from the singular way in which the appellant insisted in presenting his case to the Court. He would have it that his interest was derived solely and directly from the testator and that Jagannatha was put in possession in conformity with the testator's will as indeed the Subordinate Judge held, whereas it is perfectly plain that Jagannatha took Sura's moiety from the Ranis who purchased it from Venkata Krishna by giving him some equivalent. The respondent, on the other hand, insisted that all parties ignored the will and treated the bequest of Vundrazavaram as a nullity. And so the learned Judges of the High Court have held. They say that "for 24 "years the will has been ignored and the estate has not been given "to the first plaintiff," that is Jagannatha, "in accordance with "its terms. On the contrary he himself was a party to ignoring "it." That seems to their Lordships to be going too far in the other direction. The fact is that the will was plainly the foundation of the whole transaction, though Sura's moiety was derived immediately by gift from the Ranis.

Their Lordships are, therefore, unable to agree with the opinion of the learned Judges of the High Court, who seem to have thought that Jagannatha's title to the possession of the village depended simply and solely upon the terms of the order of January 1869, which they construed as a revocable order committing the management of the village to Jagannatha during the pleasure of the Ranis.

One matter on which the learned Judges of the High Court very much relied as confirming their view ought, perhaps, to be noticed. Some letters were produced which the Subordinate Judge held to have been written by Jagannatha, though there was a dispute about it. They are undated, but they seem to belong to the period when Jagannatha was in difficulties with his raiyats. The letter on which most reliance was placed purports to be addressed to his sister Chinnamma. It is abject and servile in tone and incoherent in its language. In it the writer says:—"if you and "Pâpamma should now write to say 'you should give up that "'village' I will do so without entertaining any contrary inten- "tion . . . . the longest I should live would be two or "three years more; it (the village) will then be added only to your

"possessions irrespective of any one else. You must take a little "trouble and show an affectionate regard by thinking 'these persons "'belong to a high family, and we will treat them with so much "'fairness'; if you do not think in that manner I only lose my "livelihood. I did not wish in the beginning for any right." Then there is a letter to the manager in which the writer says:—"I "have prepared and sent an account of some sort. You will, after "perusing the same, write to me how I shall act in the matter of "recovering the moneys payable by the raiyats. Hitherto I have "acted wisely so as to avoid disputes. As it is not possible to do "anything without your permission in Vundrazavaram, I have "expressed my opinion in detail and shall remain at Kadiyam till "a reply is received and shall manage in such manner as you tell "me to manage." The learned Judges say that "the words "amount to an unequivocal admission that the writer can only "hold the village for the short remainder of his life and is liable "to be called upon to surrender it at any time at the will of the "Rani." The Subordinate Judge thought that such letters written at such a time were not worthy of serious consideration. Their Lordships are disposed to think so too. The letters were apparently written at a time when the Ranis by their manager were covertly interfering with Jagannatha's possession, and he was maintaining his title by legal proceedings against the raiyats. He may well have thought that his sister would not openly declare herself his antagonist or proceed to extremities against him, and that peace might be obtained at any rate in his time by abasing himself before the Ranis and their manager.

Their Lordships are of opinion that the judgment of the High Court must be reversed and that the appeal from the District Judge ought to have been dismissed with cost, and they will humbly advise Her Majesty accordingly.

The respondent will pay the cost of this appeal.

Appeal allowed.

Solicitors for the appellant: Messrs. *Burton, Yeates & Hart.*

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