

PRIVY COUNCIL.

P.C.*
1905.
May 12, 16,
17.
July 31.

KACHI KALIYANA RENGAPPA KALAKKA THOLA^c
UDAYAR (PLAINTIFF),

v.

KACHI YUVA RENGAPPA KALAKKA THOLA UDAYAR
AND ANOTHER (DEFENDANTS), AND TEN OTHER APPEALS CONSOLIDATED.

[On appeal from the High Court of Judicature
at Madras.]

Hindu law—Mitakshara law—Descent of impartible property—Rule of primogeniture—Evidence—Palayam, nature of—Acceptance by palayagar of sanad under Madras Regulation XXV of 1802, effect of succession to palayam—Zamindari of Udayarpalayam—Maintenance, amount of—Privy Council, practice of.

When impartible property passes by survivorship from one line of descent to another it devolves not on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line.

Narayanti Achammagaru v. Venkatachalapati Nayyanivaru, (I.L.R., 4 Mad., 250), approved.

The question whether an estate is subject to the ordinary law of succession or descends according to the rule of primogeniture must be decided in each case according to the evidence given in it.

Srimantu Raja Yarlagadda Mallikarjuna v. Srimantu Raja Yarlagadda Durga, (L.R., 17 I.A., 134; I.L.R., 13 Mad., 406), followed.

The acceptance of a sanad in common form under Madras Regulation XXV of 1802 does not of itself, and apart from other circumstances avail to alter the succession to an hereditary estate :

Held, in the evidence and circumstances of the case, and in accordance with the above principles that the Zamindari of Udayarpalayam represented the ancient palayam of Udayar which was in its origin and up to the expulsion of the palayagar in 1765 an impartible estate held by one member of the family only and not subject to the ordinary rule of Hindu law; and that notwithstanding the acceptance by the palayagar in 1817 of such a sanad and the fact that it was circumscribed in extent the palayam retained its character of impartibility and descended to the first defendant a grand nephew in the senior line, in preference to the plaintiff a nephew in a junior line of descent, as it was granted and accepted as equivalent in value to the ancient palayam.

The Judicial Committee will not interfere in a question as to the amount of maintenance, which is a matter to be dealt with by the Courts in India.

* Present: Lord MACNAGHTEN, Sir FORD NORTH, Sir ANDREW SCOBLE, and Sir ARTHUR WILSON.

ELEVEN appeals consolidated from a judgment and decree (22nd March 1901) which varied a decree (22nd February 1899) of the District Judge of Trichinopoly.

The suit out of which this appeal arose was brought on the 1st November 1897 by Kaliyana Rengappa against Yuva Rengappa, the first defendant, and Yuvanava Rengappa, the second defendant, and others, for partition and recovery of possession of the plaintiff's share in the Zamindari of Udayarpalayam, or in the alternative in case the zamindari should be found to be impartible, for recovery of possession of it on the ground that the plaintiff was entitled to the whole estate in preference to the first defendant, or if the two first claims failed, then for a decree for maintenance.

The main question for decision was whether the estate was held by the last poligar as an impartible estate descendible by the rules of primogeniture, or as a partible estate in the capacity of manager of a joint undivided Hindu family.

The suit was filed in the Court of the District Judge who held that the estate was partible and gave a decree to the plaintiff and the second defendant for their shares of the estate. On appeal the High Court (SHEPHARD and BENSON, JJ.) held that the zamindari was impartible property, and gave the plaintiff only a decree for maintenance.

The facts, pleadings, arguments and judgments are sufficiently set out in the report of the case in the High Court which will be found in *The Udayarpalayam case*(1).

On this appeal, *W. C. Bonnerjee* and *G. E. A. Ross*, for Kaliyana Rengappa, the plaintiff, and Yuvanava Rengappa, the second defendant, contended that the estate in suit was partible. If impartible it must be shown to be so, and there was nothing in the evidence on the record to show that the palayam as it existed before 1765 was impartible. Even if it was then impartible the confiscation of the estate which took place in 1765 was effective to destroy its impartibility which was never regained. The restoration, even if intended, in 1802 was never carried out; and as evidenced by the documents produced the transactions which led up to the sanad of 23rd December 1817, and the words of the sanad itself showed that what was then created was a new estate and not a restoration of that which had been confiscated in 1765.

(1) I.L.R., 24 Mad., 562.

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After 1817 the sanad then granted was the root of title ; the grant was made as an ordinary zamindari grant and as such the property granted was partible. There was no evidence to justify the finding of the High Court that the estate conveyed by the sanad was an impartible estate. Reference was made to the fifth report of the Select Committee on the affairs of the East India Company, Volume II, of the Madras edition of 1883, pages 117, 609, 610, Madras Regulation XXV of 1802. (*Rajah Venkata Narasimha Appa Row v. The Court of Wards*(1), *Katchi Kaliyana Rungappa Kalakka Tola Oodiar v. Kachivijaya Rungappa Kalakka Tola Oodiar*(2), *Zamindar of Merangi v. Sri Rajah Satrucharlu Ramabhadra Razu*(3), and *Sri Raja Viravara Thodhramal Rajya Lakshmi Devi Garu v. Sri Raja Viravara Thodhramal Surya Narayana Dhattrazu Bahadur Garu*(4).) The cases contrary to these were all distinguishable on the ground that in all of them the grantee was in possession, and the sanad granted did not affect the nature of the estate which continued with the incidents it formerly possessed. In the present case the sanad was given to one who was not in possession of an impartible estate at the time of the grant, and the sanad created an ordinary estate partible according to Hindu law. In that view the plaintiff would be the preferable heir. Even assuming the estate to be impartible the plaintiff was, on the death of the holder of the estate in 1835 when the first defendant took possession of it, entitled to succeed as being the elder of two nephews of the deceased holder in preference to the first defendant who was only a grand nephew. The plaintiff and the second defendant belonged to the nearest class of kindred in which the single heir was to be found ; the first defendant belonged to a remoter class. It was also contended that property in suit other than the zamindari was partible and of that the plaintiff and second defendant were entitled to shares ; and that in any case the plaintiff was entitled to maintenance out of the estate, and that, if so, a sufficient amount had not been allowed by the High Court.

Cohen, K.C., and *D. E. Gruyther* for Yuva Rengappa, the first defendant, and for other respondents, contended that the estate was, previous to 1765, impartible. Reference was made to Aitchison's

(1) L.R., 7 I.A., 38 ; I.L.R., 2 Mad., 128.

(2) 12 M.I.A., 495 ; 2 B.L.R., P.C., 72.

(3) L.R., 18 I.A., 45 at p. 54 ; I.L.R., 14 Mad., 237 at p. 245.

(4) L.R., 24 I.A., 118 at p. 121 ; I.L.R., 20 Mad., 256 at p. 263.

Treaties, 8th Ed., pp. 23, 30, 38 and 40, and the documentary evidence was referred to to show that the estate was a palayam, that the expulsion of the holder in 1765 was not a confiscation, and that he was after that date in possession as a palayagar and was recognized as such by the East India Company. As to what kind of tenure a "palayam" was, *Naragunty Lutchmeedavamah v. Vengama Naidoo*(1) was referred to, and it was submitted that the palayam in suit was originally an impartible estate, and that if there was no confiscation it remained so. Even if there was confiscation, there was restoration in 1817, and on the restoration the estate retained its former character of impartibility, notwithstanding the grant might have been an act of grace on the part of the Government. Reference was made to *Rani Kattama Natchiar v. Dorasinga Tevar*(2), *Baboo Beer Pertab Sahee v. Maharajah Rajender Pertab Sahee*(3), *The Collector of Trichinopoly v. Lekkamani*(4), *Srimantu Raja Yarlagadda Mallikarjuna v. Srimantu Raja Yarlagadda Durga*(5), *Ram Nundun Singh v. Maharani Janki Koer*(6), *The Ramnad case*(7), *Narayana v. Chengalamma*(8), and *Zamindar of Merangi v. Sri Rajah Satrucharlu Ramabhadra Razu*(9), and Madras Regulation XXV of 1802. In the present case there was no condition in the sanad expressly stating that the grant was of a different character; and even assuming that the sanad of 1817 was the root of title, the estate granted could be identified with the old palayam. The words of the grant were plain and unambiguous, and where that is so the fact that parties had interpreted them differently could not affect the true construction: see *North-Eastern Railway Company v. Lord Hastings*(10). Since 1817 the estate had been treated as impartible, and successions to it had taken place in accordance with the rule of primogeniture. As to the right to succeed the High Court had rightly held that the first defendant was the preferable heir. As to maintenance it was contended that the amount allowed by the High Court was excessive.

(1) 9 M.I.A., 66 at p. 85.

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

(3) 12 M.I.A., 1 at pp. 29, 34.

(4) L.R., 1 I.A., 282 at p. 283; 14 B.L.R., 115; (S.C.) of M.F.C.R., 208.

(5) L.R., 17 I.A., 134 at p. 144; I.L.R., 13 Mad., 406.

(6) L.R., 29 I.A., 178; I.L.R., 29 Calc., 828.

(7) I.L.R., 24 Mad., 613, note (631).

(8) I.L.R., 10 Mad., 1 at p. 7.

(9) L.R., 18 I.A., 45; I.L.R., 14 Mad., 237.

(10) L.R., (1900), A.C., 260.

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Ross replied referring to *Sri Raja Rao Venkata Surya Mahipati Rama Krishna Rao Bahadur v. The Court of Wards*(1).

The judgment--of their Lordships was delivered by

Lord MACNAGHTEN.—These consolidated appeals have been brought from a judgment and decree of the High Court of Judicature of Madras which varied a judgment and decree of the District Court of Trichinopoly. The litigation relates to the title to a zamindari known as the Zamindari of Udayarpalayam. The principal question is whether the zamindari is a partible estate, as was held by the Court of First Instance, or an impartible estate descendible according to the rules of primogeniture, as the High Court has determined. There were two other questions raised on the appeals which may be mentioned for the purpose of putting them aside. It was objected by the appellant in the first five appeals that, assuming the estate to be impartible, still he was entitled as the preferable heir. Further, it was asserted that if he was to be held entitled only to maintenance, the maintenance allowed was insufficient in amount. On the other hand, the principal respondent, the appellant in the eleventh appeal, alleged that the allowance was extravagant and appealed on that ground. The first of these two questions is concluded by authority. It is settled in accordance with a ruling of this Board that when impartible property passes by survivorship from one line to another, it devolves not on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line—a position held by the principal respondent (*Naraganti Achammagaru v. Venkatachalepati Nayaniwaru*(2)). As regards the second of these two questions, it is sufficient to say that it is not the practice of this Board to interfere in a question as to the amount of maintenance. That is a matter with which the Courts in India are better qualified to deal.

The history of the palayams, or polliams, of Southern India is set out in the Fifth Report of the Select Committee on the affairs of the East India Company. It is there stated that the Carnatic Poligars “were originally no more than officers of police to whom was committed the protection of a given portion of country; headmen of villages, or public servants of other

(1) L.R., 26 I.A., 83 at p. 95; I.L.R., 22 Mad., 383 at p. 396.

(2) I.L.R., 4 Mad., 250.

descriptions, whose actual condition had become changed to that of military rulers during those revolutions of power in the Deccan which had everywhere contributed to the usurpation of authority and in no part more than in the southern division of the Peninsula." In this connection it may be convenient to refer to the judgment in the case of *Naragunty Lutchmeedaramah v. Vengama Naidoo*(1) where the following passage occurs:—

"A polliam is explained in Wilson's Glossary to be 'a tract of country subject to a petty chieftain.' In speaking of poligars he describes them as having been originally petty chieftains, occupying usually tracts of hill or forest, subject to pay tribute and service to the paramount State, but seldom paying either, and more or less independent, but as having at present, since the subjugation of the country by the East India Company, subsided into peaceable landholders. This corresponds with the account read at the Bar from the Report of the Select Committee on the Affairs of India in 1812. A polliam is in the nature of a Raj; it may belong to an undivided family, but it is not the subject of partition, it can be held by only one member of the family at a time, who is styled the poligar, the other members of the family being entitled to a maintenance or allowance out of the estate."

It is not disputed that the estate which is the subject of the present litigation was in its origin impartible. The High Court confirming the finding of the District Judge expressed the opinion that there could be "no doubt that the palayam was, up to 1765, held by one member of the family only not being subject to the ordinary rule of Hindu law."

Between the year 1765 and the establishment of British rule in 1801, the fortunes of the family were of a very varied character. Throughout these troublous times, in turmoil or warfare, sometimes successful rebels, sometimes outcasts or exiles, the poligars of Udayarpalayam maintained or asserted their claim to the possession of their ancestral estate.

The first act of the British Government after the cession of the Carnatic was to issue a proclamation addressed to the zamindars, jageerdars, poligars, and inhabitants of the Carnatic, inviting them "to a ready and cheerful obedience to the authority of the Company in a confident assurance of enjoying under the protection of public and defined laws every just and ascertained

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civil right, with a free exercise of the religious institutions and domestic usages of their ancestors.”

In a Government Order of the 17th of July 1802, after referring to a report of the Collector of Trichinopoly on the poligars of that Province, it is stated that, having regard to the acts of sovereign authority which had been exercised by the late Nabob in the frequent resumption of the lands of the poligars, no claim could be established by them, supported either by long possession or prescriptive right; and that, while admitting the injustice of the Nabob's acts, it resulted that the expectations that might have been formed by the poligars must have been raised on the foundation of the lenity and moderation of the British Government. At the same time they expressed their intention of adhering to the principles set forth in the Proclamation of December 1801.

Then followed a long period during which the Government were apparently collecting information and considering the best mode of settling the Province consistently with their declared intentions. During this period of suspense the poligars, including the poligar of Udayarpalayam, received an allowance of 10 per cent. on the net revenue of their respective palayams, calculated from the day the Carnatic was ceded to the Company. The poligars themselves were taken into counsel by the Government, or at any rate directions were given that their views on the proposed arrangements should be ascertained.

It appears from an extract from the proceedings of the Board of Revenue of the 12th of May 1814 that the poligars had been given to understand that it was intended to restore them to the management of their palayams under a new arrangement of the conditions by which they formerly held them. The Board, however, observed that on further reflection they were induced to consider that the restoration of the poligars to the management of their palayams would be impolitic for many reasons, the principal of which were the known incapacity of the poligars to manage such extensive tracts of country, and the confusion, ruin, and distress in which their failure would involve, not only the poligars themselves, but inhabitants and ryots of the palayams. With the view therefore of effecting a more judicious arrangement without departing from the intention communicated to them as above mentioned, in as far as immediate interests of the poligars were

connected with that intention, the Board intimated that they would be inclined to recommend the Government to grant to each poligar such a number of villages as on an average would be equivalent to the benefit expected to be derived under the zamindari tenure.

It was ultimately determined that the villages to be granted to the poligars should be made over on zamindari tenure, bearing a small jumma in preference to that of jagheer, as contemplated by the Government in 1814, in order that the character and rights of the poligars might be better defined by a sannud-i-milkoat istimrar.

Accordingly, on the 23rd December 1867, a sannud in common form was granted to Rengappa, the poligar of Udayarpalayam, conferring upon him the rights of a zamindar under Regulation XXV of 1802, in 65 villages named in the sannud. The sannud was expressed to be granted in lieu of all former privileges. It declared that the grantee continuing to perform the specified stipulations, and to perform the duties of allegiance to the British Government, its laws and regulations, was thereby authorised and empowered to hold in perpetuity to his heirs, successors, and assigns at the permanent assessment therein named the Zamindari of Udayarpalayam.

It only remains to notice that, from the date of the grant of the sannud to the present time, the zamindari has uniformly been enjoyed as an impartible estate.

In these circumstances the Court of Appeal has held, and their Lordships think rightly, that the estate is impartible, and descendible according to the rules of primogeniture.

There are two propositions which appear to their Lordships to be well established and to be decisive on the point.

In the first place it is clear, as observed by Sir Richard Conch, in the case of *Srimantu Raja Yarlagadda Mallikarjuna v. Srimantu Raja Yarlagadda Durga*(1) that "the question whether an estate is subject to the ordinary Hindu law of succession, or descends according to the rule of primogeniture must be decided in each case according to the evidence given in it." And, secondly, it must be taken to be settled that the acceptance of a sannud in common form under Regulation XXV of 1802 does not of itself and apart from other circumstances avail to alter the succession to an hereditary estate.

(1) L.R., 17 I.A., 134 at p. 144.

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The Zamindari of Udayarpalayam represents the ancient palayam of Udayar, and although for political reasons the estate has been circumscribed in extent, it is clear that it was granted and accepted as equivalent in value to the ancient palayam. On the cession of the Carnatic the British Government assured the poligars, of whom the poligar of Udayar was one, that they would enjoy every just and ascertained civil right, with a free exercise of the religious institutions and domestic usages of their ancestors. To this assurance the Government over and over again expressed a determination to adhere, although they deliberated long, and reconsidered their views more than once, as to the precise arrangements to be made for the settlement of the country and the restoration of the poligars.

Their Lordships will humbly advise His Majesty that these appeals ought to be dismissed.

The appellants in the first ten appeals will pay the costs of those appeals. The costs of the last appeal will be borne by the appellant therein and those costs will be set off against the costs of the other appeals.

Appeals dismissed.

Solicitor for *Kachi Kalyana Rengappa Kalakka Thola Udayar* and *Kachi Yuwanava Rengappa Kalakka Thola Udayar* : Mr. R. T. Tasker.

Solicitors for *Kachi Yuva Rengappa Kalakka Thola Udayar* and others : Messrs. *Lawford, Waterhouse & Lawford*.