PRIVY COUNCIL.*

MUSTI VENKATA JAGANNADHA (DEFENDANT),

1921, April 21.

v.

MUSTI VEERABHADRAYYA, SINCE DECEASED (PLAINTIFF).

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

Inam - Karnam service lands—Enfranchisement - Inam title-deed—Confirmation in last holder—Nature of title.

The karnam of a village in Madras occupies his office not by hereditary or family right but as a personal appointee, although the appointment is primarily made of a suitable person who is a member of a particular family. When karnam service lands have been enfranchised, a quit-rent being imposed in lieu of the service, and an inam title-deed is granted confirming the lands to the holder of the office his representatives and assigns, the lands are his separate property, and are not subject to any claim to partition by other members of the family.

Venkata v. *Rama*, (1885) I.L.R., 8 Mad., 249 (F.B.), approved; *Gunnaiyan* v. *Kamakchi Ayyar*, (1903) I.L.R., 26 Mad., 339 and *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*, (1907) I.L.R., 30 Mad., 434 (F.B.), disapproved.

APPEAL (No. 114 of 1919) from a judgment and decree of the High Court (February 19, 1918) reversing a decree of the Temporary Subordinate Judge of Cocanada.

The respondent, since deceased, sued the appellant to recover possession of a one-half share of lands by partition between them. The lands in question had formed the emoluments attached to the office of karnam of the village of Pandalapaka. In 1902 one Subbarayudu was karnam. He had two sons, by different wives, Venkataramayya (the father of the appellant), and the deceased respondent, Veerabhadrayya. On February 23, 1902, Subbarayudu was removed from the office on the ground of incapacity due to old age, and Venkataramayya was appointed.

Present:—Lord BUCKMASTER, Lord DUNEDIN, Lord SHAW, and Sir JOHN EDGE.

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Subbarayudu and Veerabhadrayya refusing to give up certain of the karnam lands to Venkataramayya, the latter obtained possession under a decree of the Revenue Court, dated November 7, 1902. It appeared from a report by the Deputy Collector that under an arrangement Subbarayudu had allowed the widow of his brother, the plaintiff, and the defendant to enjoy specified parts of the land.

In 1906 the lands were enfranchised from the service, and an inam title-deed in accordance with the Standing Order of the Board of Revenue (No. 52 of 1897) was granted, confirming the lands to the appellant, his representatives and assigns. The terms of the title-deed are set out in the judgment of the Judicial Committee.

Before the enfranchisement took place there had admittedly been a partition between Venkataramayya and Veerabhadrayya. The latter by his plaint alleged that when the partition took place the service lands were left undivided, and that by reason of the enfranchisement he should now receive a one-half share.

The only issue material to this report was :

"Whether the enfranchisement in the name of the defendant's father enured for the benefit of the family or to himself exclusively."

The Temporary Subordinate Judge dismissed the suit. He was of opinion that upon enfranchisement the property devolved upon the enfranchisee and his joint family, but that the parties being divided it enured exclusively for the benefit of the enfranchisee.

The plaintiff appealed to the High Court, which reversed the decision of the Trial Judge. The learned Judges (AYLING and SESHAGIRI AYYAR, JJ.) said :

"Mr. Narayanamurti, for the respondent, did not argue the main question regarding the effect of enfranchisement, having regard to our decision in Appeal No. 79 of 1917. We may, however, point out to the Subordinate Judge that the decision in *Ramayya* v. *Jayannadhan*(1), which he quotes as supporting him in the view of the law he has enunciated, does not in the least help him. On the other hand, that decision is inconsistent with his conclusions."

(1) (1916) I.L.R., 39 Mad., 930.

A decree was made declaring the plaintiff entitled to a one-half share in the properties, and remanding the suit to the Subordinate Judge to divide the properties and pass a final decree, which he has since done.

Dunne, K. C. and *Narasimham* for the appellant.—The lands in suit attached to the office of karnam were resumable by Government, and upon enfranchisement enured to the exclusive benefit of the appellant under the inam title-deed: *Srinivasa* v. *Lakshmamma*(1), *Buda* v. *Hussu Bhai*(2), *Venkata* v. *Rama*(3), *Venkatarayadu* v. *Venkataramayya*(4), *Dharanipragada Durgamma* v. *Kadambari Virrazu*(5) and *Subbaraya Mudali* v. *Kamu Chetti*(6). The decision of the High Court in *Narayanna* v. *Chengalamma*(7) related to an unsettled palayam, the lands being held on an essentially different tenure from karnam service lands. The decision was erroneously applied to karnam service lands in *Gunnaiyan* v. *Kamakchi Ayyar*(8), which has since been approved by a Full Bench in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(9) and followed in *Ramayya* v. *Jagannadhan*(10) and other cases. It is submitted that the last-named Full Bench decision is in conflict with that of 1884, and opposed to the current of authority in Madras prior to 1902. The inam title-deed was in the form provided by the Standing Order (No. 52 of 1897) in the case of enfranchisment of a service inam as opposed to a personal inam. But even if the Full Bench decision of 1907 was right, the respondent had no interest in the lands, since there was a partition between him and his brother, the appellant, before the enfranchisement took place. It cannot be said that the karnam lands were left for subsequent division, for they were in their nature impartible; there was a complete partition. That being the case, the Madras decisions since 1902 already referred to are not applicable. Whatever permissive interest was allowed by Subbarayudu in the karnam lands to the deceased respondent cannot avail against the appellant, who held the lands as karnam

(1) (1884) I.L.R., 7 Mad., 206.
(2) (1884) I.L.R., 7 Mad., 236.
(3) (1885) I.L.R., 8 Mad., 249 (F.B.).
(4) (1892) I.L.R., 15 Mad., 284.
(5) (1898) I.L.R., 21 Mad., 47.
(6) (1900) I.L.R., 23 Mad., 47.
(7) (1887) I.L.R., 10 Mad., 1.
(8) (1903) I.L.R., 26 Mad., 339.
(9) (1907) I.L.R., 30 Mad., 434 (F.B.).
(10) (1916) I.L.R., 39 Mad., 930.

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from 1902. Further, the appellant has been in adverse possession since the decree of 1902, and the suit is barred by limitation and *res-judicata*. [Reference was also made to Madras Act II of 1894, section 9, section 16, sub-section (2), sections 17, 20 and 28; and Madras Act III of 1895, sections 3, 7, 13 and 21.]

De Gruyther, K.C. and *Dube*, for the deceased respondent's representatives.—The lands were held before enfranchisement for the benefit of the family, subject to the performance of the service. The office was hereditary by custom; see Fifth Report, Volume I, pages 11 to 15 (reprint) and Madras Regulation XXIX of 1802, and Madras Regulation VI of 1831. Under Madras Act II of 1894 the office is taken by virtue of succession and not by virtue of appointment. The enfranchisement did not affect the family rights in the land, but was merely a substitution of a quit-rent for the services. That view accords with the Madras Acts dealing with the enfranchisement of service lands. The decision of the Madras High Court in *Gunnaiyan* v. *Kamakchi Ayyar*(1), is directly in point. That in *Venkata* v. *Rama*(2) does not affect this case. There, a stranger had been appointed and it was found that there was no member of the family having an interest. Immediately the lands in suit were enfranchised the respondent became entitled to his share on partition. The question is whether the family was still joint and whether the lands were still joint property.

The JUDGMENT of their Lordships was delivered by

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Lord SHAW.—This is an appeal from a decree, dated the 19th February 1918, of the High Court of Judicature at Madras which reversed a decree, dated the 14th March 1917, of the Temporary Subordinate Judge of Cocanada. This last-mentioned decree remanded the suit so that partition might be decreed in favour of the plaintiff-respondent.

The suit was for the recovery of the possession of a one-half share of lands specified in the schedule attached to the plaint. It was admitted that the suit properties had formed the emoluments attached to the office of karnam, or village accountant, in the village of Pandalapaka.

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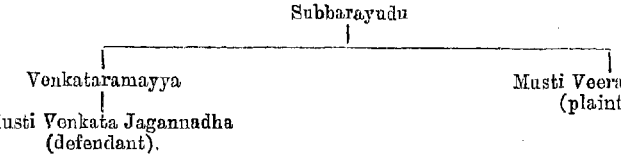
(1) (1903) I.L.R., 26 Mad., 339. (2) (1884) I.L.R., 8 Mad., 249 (F.B.).

These lands were enfranchised, as after-mentioned, in the year 1906, by an inam title-deed granted to Venkataramayya, the appellant's father.

The pedigree is as follows :—



The appellant's grandfather Subbarayudu was removed from his office of karnam for incapacity due to old age, and his eldest son, Venkataramayya, was appointed karnam on 23rd February 1902. Shortly thereafter the former karnam died.

It is a fact in the case, which is admitted, that prior to the enfranchisement and inam grant of 1906 all the family properties which were capable of division were divided into two equal shares between Venkataramayya and Veerabhadrayya. No partition took place of the service inam lands which are in suit in the present case.

The appellant maintains that the respondent had no right to such lands ; that they were not joint family property, and were for that reason not included within the scope of the division made ; and that the enfranchisement of the karnam lands in 1906 and the procedure with regard thereto are consistent with the view that the lands were impartible and were confirmed as separate property to the then holder of the office of karnam ; while upon the other hand the respondent maintains that a division of this particular property, although it is undoubtedly karnam land, must now be decreed and that the enfranchisement of 1906 could not destroy the nature of the property as joint family property and the interest of the respondent therein.

The Subordinate Judge took the former view and the High Court took the latter. The question in the appeal is which of these views is correct.

The point in issue is compendiously put in the respondent's case in these terms :

" Whether the enfranchisement in the name of the defendant's father enured for the benefit of the family or to himself exclusively ? "

It is admitted that the lands in suit formed the emoluments of the karnam or village accountant. A large body of authority

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on the subject of the nature of the title to lands so held was cited to the Board. There can be no question of assailing (whatever be the nature of the title to the property itself) the validity of the enfranchisement under the Inam Rules. The suit proceeds upon that footing and asks for a division of the property on the assumption that it has been duly enfranchised under the Inam Rules of 1859.

It is, however, highly expedient to note the exact terms of the enfranchisement itself. It is dated the 21st March 1906, and is signed by Mr. J. A. Atkinson, Inam Commissioner. It is thus expressed:

"No. 1520.

"Title-deed granted to Musti Venkataramayya.

"By order of the Governor in Council of Madras acting on behalf of the Secretary of State for India in Council, I acknowledge your title to an inam consisting of the right to a portion of the Government revenue on land measuring (forty-five) 45—83 acres of dry (be the same a little more or less) originally granted for service, and situated in the village of Pandalapaka in the Estate of Pithapur, in the taluk of Ramachandrapur, in the district of Gōdāvari.

"2. This inam, being held for karnam service, now otherwise provided for, shall now be deemed freed of such service, but shall henceforth be subject to the payment of an annual quit-rent of Rs. (296-8-0) two hundred and ninety-six and annas eight exclusive of Rs. (24) twenty-four already payable as jodi to the proprietor, which quit-rent is hereby imposed upon the inam in commutation both of the said service and of the reversionary interest possessed by Government in the inam. The inam is now confirmed to you, your representatives and assigns, to hold or dispose of as you or they think proper, subject only to the payment of the above-mentioned quit-rent and jodi (which quit-rent will be liable to revision at the periodical re-settlements of the district), and to the provisions of the next clause.

"3. The right of Government to all minerals, if any, in the land referred to in Clause 1 above is hereby expressly reserved to Government, and the revenue referred to in such clause represents only the right of Government to a share in the surface products of such land.

"*Dated 21st March* 1906. J. A. ATKINSON,

"MADRAS. *Inam Commissioner.*"

There can be no question as to the absolute nature of this grant in favour of the appellant's father. The inam is confirmed "to you, your representatives and assigns, to hold or dispose of as you or they think proper" subject only to the payment of quit-rent, etc., and to the reservation of minerals.

It is worthy of note, first, that this enfranchisement happens also to be in entire accord with the Standing Order of the Board of Revenue of Madras as to Inams, No. 52 of 1897, and, second, that that Standing Order makes the distinction between grants which are personal or subsistence grants, and those which are service inams. It is to the latter category that the enfranchisement in the present case properly belongs. By the Standing Order alluded to it is provided by section 29, that

"XXIX. Inams thus enfranchised, either by the payment of an annual quit-rent, or of a single fixed sum equal to twenty years' purchase of the quit-rent, will, like every other description of property, be subject to the jurisdiction of the ordinary Courts of Justice in all questions of disputed right, succession, etc., and they may be mortgaged, sold and transferred in any manner, at the will and discretion of the inamdar, subject to the payment of quit-rent, if such is not redeemed."

The Board has carefully considered the long series of authorities quoted in argument, and it is of opinion as follows:

(1) The lands comprising the emoluments of a karnam were attached to the office held by him as such;

(2) When the karnam for the time being was removed from office, he lost all right and title to the lands;

(3) Although in point of fact there might be even a long continuance of the office in a particular family, the right of the Government and the decision of the Revenue authorities to remove a karnam from office and to appoint another, were not open to question in Courts of Law; and

(4) If this right of selection were exercised in favour of a stranger, there being, for example, within the range of the family (which had been accustomed to have one of its members holding the office of village accountant) no person who in the opinion of the Revenue officer was suitable for the position, then the appointment went to the stranger selected and the lands with it as emoluments without any claim thereon as a family right by relatives of former holders of the office.

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These propositions seem to their Lordships to have been part of the law of Madras long prior to the Acts of 1894 and 1895, which are now to be referred to; but it is to be observed with regard both to Madras Act II of 1894, section 10, and Madras Act III of 1895, section 10, that eligibility, whether for nomination to the office of Karnam by the proprietor of the village under the former Act or by the Collector under the latter, is a matter personal to the nominee, clearly taking into account such things not only as sex and age, but also the physical and mental capacity to discharge the office, and even the educational qualifications of the person selected.

It is accordingly clear that since that time in Madras the Karnam of the village occupies his office not by hereditary or family right, but as personal appointee, though in certain cases that appointment is primarily exercised in favour of a suitable person who is a member of a particular family. It would accordingly appear, apart from the authorities, that lands held as appurtenant to the office so enjoyed should continue to go with that office and should accordingly be impartible.

It may be, however, that the course of authority leads to a different result from that to which principle and administrative convenience would seem to point. Their Lordships will therefore examine the authorities, which, as will be seen hereafter, are conflicting.

In *Srinivasa* v. *Lakshmamma*(1), it was held that where a hereditary village officer who had been dismissed sued to recover land which had formerly been the emoluments of the office and which had been enfranchised and granted to another person holding the office at the time of the enfranchisement, such a suit could not lie. Their Lordships quote the judgment of TURNER, C.J., as containing a compact statement of law upon the point:

"The lands were attached to the office of karnam as its emolument; when the appellant was removed from the office, he lost his right to the land.

"The circumstance that money may have been expended on the improvements of the land, in the expectation that the office with its emolument would be continued to the family, would not give the

(1) (1884) I.L.R., 7 Mad, 206.

appellant any title to recover the land in the events that have occurred. When he was removed for misconduct, the office and emoluments were conferred on a stranger, and with the decision of the revenue authority on that question we can not interfere. While the office was held by a stranger, the Government resolved to sever the lands from the office and to offer them to the then office-holder for enfranchisement; the holder accepted the offer and became the owner."

The decision, it will be observed, non-suited the former holder of the office from recovering the land. But the same result followed in the subsequent case of *Bada* v. *Hussu Bhai*(1) in which a member of the family of an office-holder who had never held the office sued to recover a share of the lands, and the same learned Judge put the point thus:

"The land was appurtenant to the office, and the Government determined to sever it from the office and to allow the office-holder or office-holders for the time being to enfranchise it. The appellant, who was never the holder of the office, could not have a claim on its emoluments."

That this was the law of Madras was stated by the Full Court in the year 1884, in *Venkata* v. *Rama*(2). The judgment of HUTCHINS, J., in referring to the Full Court thus states the point:

"To ensure the office being held by a qualified person, the Executive was compelled to reserve to itself the determination of all claims."

Following the line of his dissent, however, he added:

"But subject to this one condition the absolute right of hereditary succession has been repeatedly recognized."

He dissented, as has been said, on this point from the judgment of the Full Bench. But in the opinion of their Lordships the judgment then pronounced (and it is observed that TURNER, C.J., and MUTTUSWAMI AYYAR, J., were members of the Court), was clear and sound. The Madras Regulations of 1802, 1806 and 1831 are most carefully considered, and the general result is stated in the following sentences of the judgment of TURNER, C.J.:

"When the emoluments consisted of land, the land did not become the family property of the person appointed to the office,

(1) (1884) I.L.R., 7 Mad., 236. (2) (1885) I.L.R., 8 Mad., 249 (F.B.).

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whether in virtue of an hereditary claim to the office or otherwise. It was an appanage of the office inalienable by the office-holder and designed to be the emolument of the officer into whose hands soever the office might pass. If the revenue authorities thought fit to disregard the claim of a person who asserted an hereditary right to the office and conferred it on a stranger, the person appointed to the office at once became entitled to the lands which constituted its emolument."

Even on the footing that the respondent in the present case had established that the office was one in which he as a member of the family had a species of expectation or hereditary right, the decision would equally apply to the present case. The judgment of MUTTUSWAMI AYYAR, J., upon this point was clear:

"According to the law, therefore, as it stood prior to the enfranchisement of the inam, a right to the land could only be legally acquired through the right to the possession of the office, and neither the respondent's father nor the respondent had then any vested interest in the office to sustain an action in the nature of an ejectment."

The same reasoning would have applied to any attempt to partition the lands.

In the opinion of the Board the law of Madras was thus soundly stated and that judgment should not have been disturbed.

It was followed in the case of *Venkatarayadu* v. *Venkataramayya*(1), and as the judgment of Sir ARTHUR COLLINS seems strictly to apply to the present litigation these sentences from it are quoted and are adopted:

"We think that the decision of the Subordinate Judge is opposed to the principles laid down in the Full Bench decision in *Venkata* v. *Rama*(2). The land which formed the emolument of the office of karnam did not become the family property of the person appointed to the office, although he may have had an hereditary claim to the office. The land was designed to be the emolument of the person into whose hand the office of the karnam might pass and was inalienable by him. The effect of enfranchisement was to free the lands from their inalienable character and to empower the Government to deal with them as they pleased."

(1) (1892) I.L.R., 15 Mad., 284. (2) (1885) I.L.R., 8 Mad., 249 (F.B.).

The same result was reached in *Dharanipragada Durgamma* v. *Kadambari Virrazu*(1), in which the principle of the Full Bench case was again followed.

In *Subbaraya Mudali* v. *Kamu Chetti*(2),

"lands which had been held by a deceased as maniyam service inam were enfranchised after his death and sold by his widow. On a claim being preferred by the reversioners for a declaration that the sale was inoperative as against them after the expiration of the widow's life estate it was held that the right of the widow under the grant was not limited to that of a widow's estate."

The case was expressly decided as following the Full Bench decision. Subsequently, with one exception about to be noted, the law of Madras up to the year 1899 followed the consistent line which has just been stated.

The difficulty, however, which appeared in the later decisions sprang from the case of *Narayana* v. *Chengalamma*(3). It must, however, be observed that that was not a karnam case; it was the case of a palayam, and in their Lordships' opinion the error which has appeared has been in the treatment of these two separate cases as governed by analogical principles. Running through the decisions of the Madras Courts the same difficulty more than once appears: it arises from the same cause, namely, that the law of the palayam is treated as the same as the law of the karnam. This is carried to the point that in 1902 in the case of *Gunnaiyan* v. *Kamakchi Ayyar*(4), the Full Court reversed the law that had been laid down by a Madras Full Bench in 1884 in the case of *Venkata* v. *Rama*(5). This procedure has been, of course, full of perplexity and that perplexity must now, if possible, be brought to an end.

The judgment of this Board dealing so fully with the case of a palayam tenure, and delivered by Sir JOHN EDGE, in the case of *Appayasami Naicker* v. *Midnapore Zamindary Company, Ltd*(6), on the 16th March 1921, makes it unnecessary to enter again at length on that topic. The palayagars were originally

"petty chieftains occupying usually tracts of hills or forest country subject to pay tribute and service to the paramount State, but seldom paying either, and more or less independent."

(1) (1898) I.L.R., 21 Mad., 47.
(2) (1900) I.L.R., 23 Mad., 47.
(3) (1887) I.L.R., 10 Mad., 1.
(4) (1903) I.L.R., 26 Mad., 339.
(5) (1885) I.L.R., 8 Mad., 249 (F.B.).
(6) (1921) I.L.R., 44 Mad., 575 (P.C.).

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The State policy with regard to palayagars was definitely announced by the proclamation of Lord Clive in 1801. To all intents and purposes the palayagars were relieved of military duties; they had to give up possession of firearms and weapons of offence and become zamindars; a certain number of pikemen whose names were to be registered were allowed to these chieftains in deference to their personal feelings and "for the purpose of maintaining the pomp and state heretofore attached to the persons of the said palayagars." The meaning of the proclamation is that their estates were subjected to assessment "upon the principles of zamindar tenures." Palayagars so treated were dealt with as zamindars with hereditary estates, their ancestors' possessions being secured to them.

It is accordingly not to be wondered at that when a case of this nature was brought before the Courts, as in *Narayana* v. *Chengalamma*(1) already referred to, it should have been held that the inam title-deed which had been granted to the palayagar in that case did not confer any new title and that the enfranchisement had no "larger operation than as a release granted by the Crown in respect of its reversionary interest and of the obligation of rendering service." The decision forms no authority for the same principle being extended to the case of a Karnam. It was so interpreted, however, in *Gunnaiyan* v. *Kamakchi Ayyar*(2), and BHASHYAM AYYANGAR, J., applied the law laid down as to palayams as "law bearing upon the enfranchisement of Inams whether they be personal inams or service inams." "The only difference," said the learned Judge, "between that case and the present one is that in the former the office itself was abolished as unnecessary, whereas in the present case the office was retained, a fixed salary being attached thereto in lieu of the inam. This, of course, can make no distinction in principle."

Their Lordships differ from this view. When a palayam was abolished, in so far as the duty of rendering military service was concerned, the estate was continued with all its hereditary incidents to the Palayagar in the same manner as if possessed

(1) (1887) I.L.R., 10 Mad., 1. (2) (1903) I.L.R., 26 Mad., 339.

by a zamindar. It is different with regard to the case of a karnam. A hereditary right in a karnam or his family can only, at the utmost, be said to constitute a certain *spes* among persons within the area of selection of those eligible for the office. But it is not, as has already been observed, even so limited. The power of selection rests with the administrative officials, who alone are judges of the eligibility of the karnam for the time being, and it is the settled law of Madras that the emoluments in the shape of lands follow the office, *ex necessitate*. Otherwise, the holder of the lands might be some person other than the holder of the office as already pointed out. The analogy fails.

It was, however, decided in the opposite sense by a Full Bench in *Pingala Lakshmipathi* v. *Bommireddipalli Chalamayya*(1). In a brief opinion, it is said that "it is difficult to gather any definite principle common to the majority" in *Venkata* v. *Rama*(2). The case of *Gunnaiyan* v. *Kamakchi Ayyar*(3) was approved. Their Lordships are of opinion that the Full Bench was in error: that the case of a karnam stands on its own footing and that the principles applicable thereto were properly decided in *Venkata* v. *Rama*(2), by the Full Court. The reasons for their Lordships' views have already been sufficiently stated.

To quote and to adopt the judgment of the 25th August, 1902, of Mr. GALLETTI, Acting Sub-Collector, in this case:

"This is a suit for the recovery of the Karnam service inam lands of Pandalapaka. Plaintiff is admittedly Karnam. The land is admitted to be Karnam's inam. Judgment for plaintiff with costs."

A warrant of execution, dated the 24th October 1902, authorizing the removal of "any person bound by the decree who may refuse to vacate the same," was also right. It is unnecessary, however, to enter upon questions either of limitation or of *res-judicata*, which were referred to in the argument, because the case has been disposed of on the merits.

When accordingly, on the 21st March 1906, the title-deed already quoted was granted by way of an inam to the appellant's

(1) (1907) I.L.R., 30 Mad., 434 (F.B.). (2) (1885) I.L.R., 8 Mad., 249 (F.B.).
(3) (1903) I.L.R., 26 Mad., 339.

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father and was in express words confirmed "to him, his representatives and assigns, to hold or dispose of as he or they think proper," the Board is of opinion that that enfranchisement must be given full effect to, and that it is not subject to be eviscerated or altered by the claim for partition or division put forward in the present suit.

Their Lordships will humbly advise His Majesty that the appeal should be allowed, that the decree of the Temporary Subordinate Judge of Cocanada, dated the 14th March 1917, be affirmed and that the appellant be found entitled to costs in the Courts below from the said date, and of the costs of this appeal.

Solicitor for appellant: *Douglas Grant.*

Solicitors for respondent: *Barrow Rogers* and *Nevill.*

A.M.T.

PRIVY COUNCIL.*

1921, May 5.

ARUMILLI PERRAZU AND OTHERS (DEFENDANTS),

v.

ARUMILLI SUBBARAYADU AND OTHERS (PLAINTIFFS) (AND CONNECTED APPEAL).

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

Hindu Law—Adoption—Sudras—Partition—Respective shares of adopted and after-born aurasa son—Dattaka Chandrika—Joint family property—Accountability of managing member.

In the case of Sudras in the Madras Presidency an adopted son on partition of the family property shares equally with a son or sons of the adoptive father born after the adoption.

So held on the grounds that the rule stated in the Dattaka Chandrika (section 5, paragraphs 29, 32) as to the share of an adopted son among Sudras had been accepted and acted on for more than a century in that Presidency, until disturbed by the decision of the Madras High Court in *Gopalam* v. *Venkataraghavulu*, (1917) I.L.R., 40 Mad., 632, and the rule, although not supported by the Smritis, or by the Mitakshara, is not inconsistent with them.

Semble that the same rule applies among Sudras in Bengal.

Judgment of the High Court reversed and the above-mentioned decision disapproved.

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* *Present*:—Lord BUCKMASTER, Lord DUNEDIN, Lord SHAW and Sir JOHN EDGE.