

*Judgment of the Lords of the Judicial
Committee of the Privy Council on the
Appeal of Ramamani Ammal v. Kulanthai
Nauchear, from the High Court of Judi-
cature at Madras ; delivered 20th November,
1871.*

Present :

SIR JAMES W. COLVILE.
LORD JUSTICE JAMES.
LORD JUSTICE MELLISH.

SIR LAWRENCE PEEL.

THIS is an Appeal from a decision of the High Court at Madras, which reversed a Decree of the Civil Judge of the Zillah of Madura in favour of the Appellant. The suit was brought by the Appellant, as mother and guardian of her infant son, to establish his right as the legitimate and sole son and heir of Sivaswami Taver of Ramnad, to inherit the property, moveable and immoveable, of his father, valued in the Plaint at 94,795 rupees. The Plaintiff claimed as a widow, stating herself to have been the second wife of the deceased, and made title to the sub-division zemindary of Ramnad on behalf of her son. The first Defendant was the childless widow of the late zemindar, according to the Appellant's representation, the senior, and to her own, his sole widow. The other Defendant, who was joined as a Defendant on a ground not established, viz., his having possessed himself of part of the estate of the deceased after his death, was a first cousin of the late zemindar. Both Defendants disputed the marriage of the Plaintiff and the legitimacy of her son.

The statement of both Defendants was that the Plaintiff was a dancing-girl, and treating that status

or caste as continuing, they both insisted that she could not be the wife of her alleged husband, that her son could not, since she was a prostitute, be the son of the late zemindar, and could not have any title to inherit, even had a marriage between the zemindar and the child's mother been celebrated in fact. They denied that any marriage had taken place. It is unnecessary to repeat the very language of these statements, which, as translated, is coarse and unbecoming. It is plain that the case insisted on was that the Plaintiff herself was a dancing-girl, not merely the child of one, at the time when her connection with the zemindar commenced, which the Defendants represented as a connection with a dancing-girl, a prostitute by profession, attached to the Temple Service.

Their statement contains no intimation of her having abandoned that calling prior to the birth of these children, or at all. The language used plainly imports a continuing status; that the Judge so understood the statements appears from the issues which he framed.

The term dancing-girl was not used in the Answers. A fouler name was there used, and it seems to their Lordships to have been designedly employed to mark a distinction between an intercourse with a concubine and one with a common prostitute, which might influence the decision of a question of filiation and legitimacy.

The issues were, first, whether the Plaintiff was a Vellala woman or a dancing-girl.

Secondly, whether the Plaintiff was legally married to the zemindar.

The third issue was one of law as to the validity of the marriage, should it be proved.

The fourth issue was one of fact as to the second Defendant's possession of the property which he was alleged to have appropriated. This issue was found for the Defendants. The finding is not appealed against; and this part of the case, except as the charge affects the honesty of the Plaintiff's claim, need not be considered.

The Plaintiff claimed to be by birth a legitimate child of one Shunmuga Pillai, a Soodra man, of the Vellala, one of the subdivisions of the Soodra caste. As such she would be a Vellala woman. The Defendants insisted that she was a mere dancing-

girl connected with the service of the Hindu idol, at a pagoda situate at Tiruchuly, the place of her birth and of her father's residence, who was the headsmen of the village. The Judge uses, in the issue which he framed, the term dancing-girl, as distinct from the Vellala class, to denote a particular class of women, described in treatises on Hindu Law as incapable of contracting marriage.

The parties went to trial on the issues before stated. The proofs and conduct of the case of the Defendants were applied to and influenced by them.

That her alleged son really was the Plaintiff's son was made out by such unquestionable evidence that it was strongly pressed on their Lordships that the Defendants had in fact never intended to represent her as not having the status of a concubine, or the children as not having the status of illegitimate children; but had only denied that she was the wife, and that the children were legitimate. Their Lordships are unable so to read the case made by the pleadings with the light thrown upon it by the evidence of her exposing herself openly on the balcony with all the outward marks and costume of a professional dancing-girl, and such evidence as the following: "As Tanga Natchiar is the daughter of a dancing-girl, I did not hear who her father was. As she is a dancing-girl's daughter, who can be called her father? I know Muttu Doraiswami second Plaintiff, his mother is Ramamani Ammal. I have not heard who his father is." The case originally made and attempted to be established was that of professional prostitution and of promiscuous intercourse, so that in Hindoo law and opinion, as well as in English, it would be impossible to predicate any paternity of the offspring.

The statement that she was a dancing-girl was designed to affect her case in two ways, first as to the factum, and then as to the legality of the alleged marriage.

The evidence that she was not a dancing-girl was adduced by the Plaintiff, in support of her case by anticipation to rebut that of the Defendants, which their Counsel stated to have been principally directed to prove this her original condition of life. If a marriage *de facto* were proved by the Plaintiff's witnesses, it lay on the Defendants to show conclu-

sively that such *de facto* marriage could not legitimate the children of it, and thus, in that event, the failure to substantiate this issue would be fatal to the defence, on the question of legitimacy.

The Plaintiff called many witnesses, twenty-four in number, thirteen of whom deposed to the marriage; amongst these not fewer than five witnesses of the Zemindar family, nearly allied to him, *prima facie* at least, unimpeached and credible witnesses, such as a Court would ordinarily desire to hear on a question of this kind in issue before it, and would be most disposed to trust, proved their actual presence at the marriage. Her father, her whole brother, and her half brother proved the Plaintiff to be of the Vellala caste, and a member of their common family.

The Civil Court of Madura, of which Mr. Pochin was then the Judge, believing these witnesses, necessarily decided that the marriage was proved, and also that the Plaintiff was never a dancing-girl. On appeal to the High Court, that decision was reversed upon the first point. On the second point, the High Court did not come to a positive conclusion that the Plaintiff had been a dancing-girl, but stated that they inclined to that opinion, an expression indicating distrust of the Defendant's witnesses to the fact that several of them had actually seen her officiating in that character.

The Zemindar was not of the Vellala caste. His caste, also an inferior Soodra caste, was that of the Malavars. The union in marriage of persons of these two sub-grades of Soodras seems to have been uncommon, and the legality of such marriage was doubted at the time when the Zemindar is said to have married the Appellant. The marriage between such a man and a mere dancing-girl has been described as "impossible." The Judges of the High Court express much doubt whether a marriage between the Zemindar and a Vellala woman would be legal, but they do not directly affirm its illegality. On the argument of this appeal this objection was not insisted on; it was conceded on both sides that recent decisions had declared the legality of a marriage between persons of these two sub-classes of the Soodra caste. This uncertainty, which undoubtedly prevailed at one time as to the legal rights flowing from such matrimonial connections,

has an important bearing on the proof of a part of this case, and will subsequently be considered.

The case before their Lordships is one of conflicting evidence and of conflicting decisions. The opinion of Mr. Pochin, the Judge who tried the case, is opposed to that of two judges of the High Court. They differ as to the habits of natives in their domestic relations, as to the credibility of witnesses, the weight of evidence, and the proper inferences to be drawn from conduct. The decision of the case by their Lordships must necessarily involve a somewhat close examination of part of the evidence, and of the grounds of the opinions of the Judges of the respective courts.

It was urged on behalf of the Appellant that Mr. Pochin, who saw and heard the witnesses, could better judge of their respective claims to belief than the Appellate Tribunal. On the other hand, it is stated that, as he was an European, his advantage in that respect over the Appellate Court was less than that of an intelligent native Judge.

It is due to Mr. Pochin to observe that he appears to have been extremely diligent and laborious in the conduct of his investigation. In a case of great uncertainty and difficulty, where no evidence is exempt from suspicion, if in all parts of the case his conclusions have not the concurrence of their Lordships' opinion, such difference of opinion should not weaken his just claims to respect. The decisions of both Courts will receive the most anxious and respectful attention.

The first in order and weightiest of the objections made to Mr. Pochin's conclusions by the Judges of the High Court, as well as by the counsel for the Respondent in their very able argument before their Lordships, is that he had failed to observe the total improbability of the story told by Shumunga Pillay, the father of the Appellant, as to her introduction into the family by the deceased zemindar, and to draw the inferences which should rationally and justly have been drawn from that strange story. Their Lordships, on this part of the case, agree with the Judgment of the High Court, which pronounces the story of the treaty for marriage and introduction of the bride incredible as it is told. They think that the story as told

does not give a true history of the circumstances under which this lady first came to enter and reside in the zemindar's house; and they also think that the statement of the father of the Appellant as to the origin of his connection with her mother warrants an inference not much at variance with the observations of the High Court upon it. There may have been family matters which a husband and father would be studious to conceal. The existence of such matters would afford an explanation of the conduct of the parties in the celebration of the alleged marriage, more satisfactory than that suggested by Mr. Pochin, viz., that the inferiority of the fortune and social position of the father of the Appellant to that of the Zemindar might account for an introduction and reception of a bride not usual in native families, an explanation which certainly is not satisfactory to their Lordships.

The story of the marriage must be viewed as full of suspicion in its very outset, and therefore requiring a more than ordinary degree of jealous scrutiny, a jealousy which must extend itself to the testimony of the witnesses of the marriage.

Their Lordships are led by the Judgment under review, and by some portion of the argument that has been addressed to them, to state, as has often been stated before by this Committee, that the ordinary legal and reasonable presumptions of facts must not be lost sight of in the trial of Indian cases, however untrustworthy much of the evidence submitted to these Courts may commonly be; that its due weight must be given to evidence there as elsewhere, and that evidence in a particular case must not be rejected from a general distrust of native testimony, nor perjury widely imputed without some grave grounds to support the imputation. Such a rejection, if sanctioned, would virtually submit the decision of the rights of others to the suspicions and not to the deliberate judgment of their appointed Judges. Nor must an entire history be thrown aside because the evidence, or some of the evidence, of some of the witnesses is incredible or untrustworthy.

On the subject of the marriage, in fact, of the Zemindar to this lady, the Plaintiff, their Lordships think that the Judgment of Mr. Pochin is fully supported by the evidence; and that so very strong

a *prima facie* case is made in favour of the marriage as to require the most conclusive evidence for its overthrow. It must be borne in mind that, whilst the evidence of the marriage given by many apparently credible witnesses having presumably no motive to misrepresent the fact or to deceive the Court, and incapable of being themselves deceived about it, is direct and positive, that by which it is met is, for the greater part, indirect and inferential, turning on the improbability and inefficacy of the marriage of a dancing-girl. The evidence in support of the marriage is that of numerous witnesses of respectable position and character, members of the family, the very witnesses whose evidence in like cases is looked for by a Court, and the absence of which weakens every case where such absence is found; confirmed, moreover, by the treatment by the Zemindar of his children as legitimate, which, in the opinion of their Lordships, the marriage of his daughter, Thanga Natchiar, sufficiently proves. This treatment alone, unless answered, would, after the death of the parents, suffice to establish a claim to a direct lineal succession against a reversioner, and must receive its due weight here.

Upon the question of recognition of his children as legitimate, their Lordships are compelled to express their dissent from the conclusions of the High Court. The marriage of the daughter of the Rajah, as legitimate, is a fact sufficiently proved. The husband and his father have both been examined. The evidence of the husband leads directly to the conclusion that he married his wife as legitimate, concluding her to be so. He says that he would not have married her had she been the daughter of a dancing-girl. This statement is such as might be expected from him. The father confirms him, and presumption from experience confirms both. The witness himself is unimpeached; on what ground, then, should his statement be set aside? The Judges of the High Court say, in effect, that as he was marrying the daughter of a powerful man his scruples might therefore give way; but what is this but opposing a conjecture of the Court itself to positive testimony against its truth; the conjecture itself seems to derive no support from the wealth or power of the Zemindar, for relatively to the husband and his family, the

Zemindar was not a man high above them in fortune or rank, nor does the alliance seem to have been above the degree, or the reasonable expectations of one of the husband's family.

Again, the High Court observes that the marriage was not like that of a legitimate daughter, as it was not celebrated with the ceremony of the Homam, which, however, the husband says did accompany it. He is contradicted, indeed, on this point; but though this conflict of testimony might induce doubt in the minds of the Judges, still they were not justified, in this balanced state of the evidence, in reasoning concerning the status of the bride, her mother, and brother, on the basis of the absence of this ceremony. Other circumstances, which ordinarily attend the marriage of a legitimate daughter, as the existence of an alliance equal and honourable, the presence of near relatives and friends on both sides were proved, and nothing, even had the ceremony of the Homam been omitted, would have indicated a marriage between unequals in degree.

The other circumstances which have been argued on the side of the Appellants as proofs of recognition, by the father of his children as legitimate, viz., the Benamee transactions, afford no certain indication of the sense in which the terms son and daughter were used by the father. Their Lordships cannot, however, agree with the Judges of the High Court in thinking that these documents support an inference of illegitimacy. They are obviously Benamee transactions, so common as to require no explanation why, in a particular instance, they were adopted. In an acknowledged case of legitimate birth they would have excited no attention. They afford no sort of evidence that the Zemindar designed them at all to be a provision for children. As these children, even if illegitimate and incapable of inheriting, would have been entitled to maintenance and provision in his lifetime, gifts not exceeding such an allowance of maintenance as would have been fair and usual, would have been no material advancement of their interests. It is unnecessary to enter upon any examination in detail of the family co-membership, position, and respectability of those witnesses, members of the family, who depose to their presence at the marriage. The judgment of the High Court gives them due weight abstractedly

of the particular ground on which it justifies its rejection of their evidence. The propriety of this rejection of a whole body of evidence otherwise unimpeached must now be considered.

The Advocate-General, who was Counsel for the Plaintiff, had admitted that the Agent of the Superior Rajah of Ramnad supplied the necessary funds for carrying on her suit. It was obviously an admission made in a spirit of rectitude, involving, as made, no acknowledgment or sense of any violation of any law or duty whatever. Such an act may be viewed in very different lights; it might bear the character of a generous support, on the part of a powerful head of a house compassionating the helpless state of a child contending for a just inheritance, and acknowledged by its father in his lifetime as a legitimate son. It might on the other hand be capable of being viewed as a spiteful and vindictive act, an unprincipled maintenance of a wrongful suit. What presumption was there in this case to lead the mind to entertain either view? The manager of the Rajah was not a party to the suit. His conduct was in no other respect before the Court. No ground existed for supposing him capable of what would have been a very criminal conspiracy, liable to severe punishment. His name was inserted in a list of the Plaintiff's witnesses, which fact seems to conflict with the statement of the pleadings, that his enmity produced the claim.

The witnesses themselves, whom the hypothesis supposes to be all perjured, the Court below had believed, seeing them, and observing no signs of falsehood in them. The hypothesis of the High Court is, that the Rajah's agents had got up the cause from enmity. One witness for the Defendants, it seems, had opposed the Rajah's adoption. This was held evidence enough; and it is assumed that this agent had influence enough to make all these *primd facie* respectable men come forward to support in Court a notoriously false case by deliberate perjury, for their guilt admitted of no concealment on the hypothesis of mere well-known concubinage and illegitimacy. Let it be conceded that the father of the present Plaintiff had wilfully given an untrue account of the first introduction of his daughter into the Zemindar's family, yet other grounds might be supposed, if mere supposition could in any case be made for

concealment and untruth on the subject of his family connections, which would not be inconsistent with the marriage of his daughter to the Zemindar.

But it may be said a marriage with a dancing-girl was incredible. The High Court has not found the fact that she was a dancing-girl, and this foundation is wanting to their rejection of this evidence: they should first have been convinced of that. A marriage *de facto* then being established and supported by recognition by the deceased Zemindar of these children as legitimate, the very strongest evidence would be required to show that the law denied to these children their presumable legal status, on the ground of their mother's incapacity to contract a marriage. The first point taken in this part of the case was that the incapacity to inherit had been virtually admitted by the acknowledgment of the first Defendant's title as heiress.

This point was relied on by the Judges of the High Court, and was strongly urged on the argument of this appeal. The certificate of heirship granted to the elder widow under the circumstances and unopposed was declared to be a tacit admission of absence of title in the claimant in this suit. Considerable weight is due, *prima facie*, to such a submission to an adverse title as the objection supposes, but the weight depends on the just belief that the parties whose interests are affected by acquiescence possess knowledge of their right, means to enforce it, and counsels how to set about resisting a step injurious to it, which are ordinarily in the possession or reach of either of two rival claimants. One of the Plaintiffs in his case is an infant; the other is a Hindu female. Against neither is it the practice of the Courts in India to press a presumption by acquiescence in a rival claim, from the mere non-contestation for a limited time of an adverse title, and especially not of such a title as this certificate evidences. The contrary doctrine has been constantly affirmed and acted on, both in Indian Courts and before this Tribunal. In addition to this it must be observed that, if a supposed acquiescence in one place be contemporaneous nearly with a claim not abandoned, it amounts to little or nothing.

This case affords ground for the conclusion that the germ of this litigation existed in the palace at the time of the Zemindar's death, and was never

afterwards abandoned. The hypothesis that the claim sprung up, first, from the spite of the Rajah's agent, is inconsistent with the occurrences in the family at the time of the Rajah's death. The brother of the first Plaintiff was before and at the time of the death in the palace. He sent for his father, who came, and was present at the funeral ceremony. This summons and presence leads to the conclusion that in some mode the lady's own family were acting on a supposed right to be included amongst the family connections. It is most improbable that the daughter's husband would admit her illegitimacy, and his assertion of his wife's legitimacy would be, virtually, that of her infant brother, whose maternal grandfather and uncle were present. The performance of the obsequies, by delegation, by the son-in-law of the deceased Zemindar, whilst the second Defendant was at hand, who was the elder widow's nephew, and her manager subsequently, leads to the same inference of a then existing claim by the child's friends. And if this claim were then being urged, though not acquiesced in, the hypothesis of its after origin is inadmissible. There is no evidence that it was ever intentionally abandoned; for temporary helplessness and want of funds may very easily be supposed to have been the causes of inaction and delay for a time. The excuses made for the choice of the son-in-law are feeble and unconvincing. One relative might be unpunctual, but why should all be behind their time?

Can this marriage *de facto* be supposed an idle and, in a Hindoo point of view, profane ceremony? Such, it is conceded on all sides, it would have been if the marriage was with a dancing-girl, in the sense of the statements and issue.

Their Lordships entirely concur with the opinion of the Judge who tried the cause that the evidence on the part of the Defendants to prove the Plaintiff a dancing-girl at any time of her life fails. He has given his reasons for thinking her not a dancing-girl, which it is unnecessary to repeat; they are corroborated by others of considerable weight, which at least balance the inference drawn from her name, age, and puberty. The whole brother was a witness. His caste is that of his father. It is not to be presumed that his father, the head of his village, would violate the ordinary feelings of people of his caste, and make

a distinction between children of the same womb, leaving the daughter to lead a licentious life, from which, according to the hypothesis, he had withdrawn her mother. The children of this man's acknowledged and admitted marriage prove that the children of both connections were brought up together as one family. This theory, therefore, of her original status as a dancing-girl of the temple has formidable presumption opposed to it at its outset. The Judge has remarked on the conflicting character of the evidence given in support of it; on the non-production of the alleged mother of the Plaintiff. Mr. Benjamin strengthened very materially the inference which the Judge drew therefrom, by referring to the abstract of the Defendants' evidence and the unexplained omissions to produce evidence from the Temple. Their Lordships feel strongly that if a few years only before the suit she had been an avowed public dancing-girl attached to the Temple, clear and abundance evidence of that fact might have been given.

Considerable reliance was placed in the argument before their Lordships on the evidence of Abdool Khadur, which will, therefore, be considered more particularly than that of the other witnesses, who depose to the Plaintiff having been a dancing-girl. This witness was represented correctly as a Government official, as one who *prima facie* was entitled to credit as an independent and respectable person. He deposed to the Plaintiff having actually appeared and danced before him at Tiruchuly in the years 1847, 1848, and 1849. His story when subjected to a careful examination appears to their Lordships to bear a strong resemblance to those admissions which the wants of a case often produce. Being an official his only connection with Tiruchuly was that he went on circuit there with his master. Nothing is shown to induce the belief that the dancing-girls would more engage his attention or thoughts than would be the case with ordinary official persons before whom such appearances took place to do them honour. It is not represented by the witness that any special cause for distinguishing this particular dancing-girl from the rest existed, that she was eminent above the others in beauty or grace, or that her after fortunes fixed in his memory what

otherwise might have been a fleeting impression. Yet after the long interval of eighteen or nineteen years he is deposing to the name, parentage, and appearance of one individual dancing-girl. This is unexplained. It may be that, if his evidence had been obtained in the careful manner in which evidence is ordinarily brought out in an English Court of Justice, these improbabilities might disappear, and his evidence prove to be supportable for the reasons urged to support it before their Lordships; but their Lordships have no assurance that the evidence is capable of being supported by these considerations, that her after fortunes led to the remembrance of her, or that she otherwise possessed any superiority over her comrades. The witness proceeds to give another account of the matter, for he represents that he heard from Shunmuga Pillai that she was his daughter. "He said he kept her mother, and also gave me his daughter's name." No explanation has been given, and none suggests itself to their Lordships' minds to account for a communication so utterly improbable. It is shown that Shunmuga had, from his first intercourse with her, withdrawn the mother from her former life, whatever it was, and had placed her in his house. Such a communication by her Hindu Headsman to a stranger and a Mussulman is opposed to all experience of native habits: when and how did it occur, what produced it? The witness does not state that Shunmuga was present and pointed her out: or otherwise account for that supposed fulness of description which would identify the particular dancing-girl. He deposes further to another conversation equally improbable and at variance with native usage; and, lastly, represents himself as casually producing this most important evidence, which, if true, would fix on the Plaintiff the status of a common dancing-girl, in an interview with the vakeel which had reference to another cause, one of his own, with nothing whatever to lead to a discovery of evidence so important to the vakeel, and so little likely to have been then casually disclosed. Such testimony is very common, it is possible in a given case that it may be true, but it is of so dangerous a nature, and presents so few claims to be believed, that evidence of the kind is little regarded even though the witness deposing to

it be in no other way discredited than as one deposing to evidence on which a Court cannot rely.

The presumption against her imputed status, which the marriage of the daughter affords and the whole evidence leads their Lordships to affirm on this point the conclusion of the Judge below that the Plaintiff herself was not a dancing-girl, and was not one incapacitated to contract marriage.

The observations of Mr. Pochin concerning the habits of native families from which the Judges of the High Court dissent, seem not to have been applied by him to the case of a concubine treated with respect and attention little inferior to that of a wife. He was dealing with a case presented to him of a dancing-girl, and was applying his mind to the statements, issue, and evidence before him. Both tribunals may be correct enough with respect to that which each was considering. The High Court, however, is inconsistent with itself in some respects, for whilst it entertained the gravest doubts whether a marriage, if celebrated, would have had any validity, it regards the acts of the Plaintiff and her advisers as unaffected by the like uncertainty. The Judges suppose the Plaintiff must have known that if a marriage had taken place, her son would be legitimate, a matter which certainly was involved in considerable uncertainty, which their Judgment shows them to have shared.

The legal presumption in favour of a child born in his father's house of a mother lodged, and apparently treated, as a wife, treated as a legitimate child by his father, and whose legitimacy is disputed after the father's death, is one safe and proper to be made; and the opposing case should be put to strict proof. The legal presumption as to the status of mother and son accords with the actual finding of the Court below, which had before it very strong proof indeed of recognition and actual marriage. This decision was reversed on grounds which impute to many witnesses *prima facie*, not likely to have committed it, a very serious criminal conspiracy, subjecting all the parties to it to severe punishment. This imputation was one unwarranted by any proofs in the cause, and militated against the ordinary rule that crime is not to be presumed.

Their Lordships will humbly advise Her Majesty that the decision of the High Court be reversed,

and that in lieu thereof, an order be made dismissing the Appeal to that Court from the Decree of the Zillah Judge with costs, and that the Appellant have the costs of this Appeal.

