*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Muttu Vaduganadha Tevar and others* v. *Dorasinga Tevar from the High Court of Judicature at Madras; delivered* 14*th May* 1881.

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Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

This appeal relates to the zemindary of Shivagunga, an estate situate in the Polygar countries of the Carnatic, which for 50 years has been the subject of almost incessant litigation in India and before this Committee. The judgments delivered here will be found in 3 Moore, Ind. App., p. 278; 9 Moo., Ind. App., p. 539; 11 Moo., Ind. App., p. 50, and L.R. 2, Ind. App., p. 169. The only one which directly bears on the present questions is that which was delivered in the month of November 1863, and is reported in 9 Moore.

The zemindary appears to have been created in or about the year 1730. At that time, Kurta Tevar, Raja of Ramnad, having received valuable services from one of his family, Sasivarna Tevar, granted to him two fifths of the Ramnad estate, calling the granted portion a distinct zemindary of Shivagunga. Sasivarna's position as zemindar must have been recognized by his sovereign the Nabob, who is stated to have established his widow in the zemindary after some disturbance

of her possession. Sasivarna's lineal descendants became extinct in or shortly before the year 1801. It was in that year that the East India Company assumed the actual and direct sovereignty of the Carnatic, though for some years before they had undertaken to protect it, and had on that account received peishcush or tribute, and powers of management in case of war. On the failure of Sasivarna's line, certain Ministers, who it seems had for some time before had the management and control of the zemindary, maintained their position there by force, and broke out into open rebellion. Upon this the Madras Government issued a proclamation, dated the 6th of July 1801, by which they appointed one of the Tevar family, a collateral relative of Sasivarna, to be zemindar. On the 22nd of April 1803, a sunnud was issued by the same Government, fixing the assessment of the zemindary in accordance with the permanent settlement effected by Madras Regulation XXV. of 1802. It will be necessary hereafter to refer more closely to the tenor of these documents. Their immediate effect was, that the grantee of the Government, who may conveniently be called the Istimrar zemindar, was installed into the zemindary, which he appears to have held peaceably during his life.

In the year 1829 the Istimrar zemindar died, and the succession to the zemindary was disputed between his immediate family and his collateral relations. He had no son, but left widows and daughters surviving him. His elder brother however, one Oiya Tevar, who held another family zemindary, called Padamatoor, and who died in the year 1815, had sons who survived the Istimrar zemindar. The eldest of these, representing the Padamatoor or elder branch, alleged that the family was undivided, and that he as the eldest nephew of the Istimrar zemindar,

was the heir to Shivagunga. The widows and daughters alleged that the family was divided, and that the heir was the senior surviving wife.

From this dispute sprung up a perfect jungle of lawsuits, into which it would not now be profitable to enter. The way out of it was found by the decision of this Committee in the year 1863.* They held that the family was still undivided, but that the zemindary was to be taken as self-acquired property in the hands of the Istimrar zemindar, and that the widows being at that time dead, and also all the daughters except one named Kathama, the zemindary devolved upon her. After this decision the elder branch made one attempt to reopen the question, which was finally defeated by this Committee in the year 1866.† From that time the younger branch of the Tevar family have remained in possession of the zemindary, without disturbance by the Padamatoor or elder branch.

* 9 Moo., Ind. App., p. 50.

† 11 Moo., Ind. App., p. 50.

In the year 1877 Kathama died, and then disputes among the members of the younger branch came to a head. The state of the family with respect to the succession at that time was as follows:—Dorasinga Tevar, the Respondent, was the eldest surviving grandson of the Istimrar zemindar, by his daughter Vella, who was the daughter of his second wife Rakoo. Moothoovadooga, the Appellant, was the grandson of the Istimrar zemindar by his daughter Kathama, who was the daughter of his third wife Vailoo. The three other Appellants are the sisters of Moothoovadooga. These were all the grandchildren of the Istimrar zemindar who were living at the time of Kathama's death. And with his great-grandchildren we need not now concern ourselves.

The dispute arises in this way. The Respondent says that Kathama's interest in the zemindary endured no longer than her life, and

hat on her death it devolved on the heirs of the Istimrar zemindar; that it is an impartible property, which can only be enjoyed by one person at a time; and that he, being the eldest surviving grandson, is that person. The children of Kathama say that she took the zemindary as stridhan, and as a heritage transmissible to her own heirs, and then, waiving any question between themselves, they agree that her son shall be preferred. If however that question is decided against them, then they say that the zemindary is not an impartible property, and that at the least Moothoovadooga is co-heir with his cousin Dorasinga.

Even in Kathama's lifetime the nature of her interest in the zemindary did not escape dispute, for a suit was instituted in the year 1869 by Dorasinga to obtain a declaratory decree affirming the same title which he asserts now. The Courts in Madras were unanimous in granting the decree, but on appeal this Committee reversed their action, not pronouncing any opinion on the title, but thinking that the case was not a proper one for a declaratory decree.

Upon Kathama's death Dorasinga instituted the present suit, and obtained a decree in his favour from the District Judge of Madura on the 3rd December 1877. The Appellants, being Defendants in that suit, appealed to the High Court of Madras, who on the 31st of January 1879 affirmed the decree of the District Judge. From the decree of the High Court this appeal is brought.

Other issues were raised in the Courts below and in this appeal, but at the bar the Appellants' Counsel practically abandoned all except those which raise the questions above stated. There is another Defendant to the suit, but he is no party to this appeal.

The first question then is whether Kathama, the daughter of the Istimrar zemindar, took the zemindary as her stridhan, and for an interest transmissible to her heirs. At the date of her father's death she was a maiden. She was afterwards married twice, and in the year 1850, when the surviving widow died, she had male issue. These circumstances were relied on as constituting her title to be her father's heir in the year 1863, and it is contended by the Appellants that the same circumstances constitute her a new stock, from whom, and not from her father, the title is now to be deduced.

They rely mainly on the much discussed passage in the Mitakshara (Cap. II., Sec. XI., verse 2), where its author, Vijnaneswara, adds to the text of Yajnavalkya by declaring that the character of stridhan attaches not only to the acquisitions by a woman which the text specifies as such, but also to property which she acquires by inheritance, or in fact by any other mode. It is not necessary now to state in any detail how impossible it is, whether with regard to the authority of other commentators or to other parts of the Mitakshara itself, to construe this passage as conferring upon a woman taking by inheritance from a male a stridhan estate transmissible to her own heirs. The point is now completely covered by authority. In the case of Mussamat Thakoor Deyhee *v.* Rai Baluk Ram (11 Moo. Ind. App., p. 139), such an interest was claimed on behalf of a widow in her husband's immoveable property. In the case of Bhugwandee Doobey *v.* Myna Beebee (11 Moo. Ind. App., p. 487), such an interest was claimed on behalf of a widow in her husband's moveable property. In the case of Chotai Lall *v.* Chunnoo Lall (L. R., 6 Ind. App., p. 15) such an interest was claimed on behalf of a daughter in her father's property. All these cases were governed

by the Mitakshara law. And in all it was held that the woman took only a restricted interest, and that on her death the property devolved on the line of the last male owner.

No attempt has been made to distinguish this case from that of Chotai Lall, except the suggestion that decisions upon the Mitakshara as applicable to Benares, are not decisions upon the Mitakshara as applicable to the Carnatic. But if there be any ground for taking such a distinction it would be favourable to the restriction of Kathama's interest in her father's property. For there are two commentaries which are received as authority in the Carnatic, the Smriti Chandrika and the Daya-vibhaga by Madhavaya, neither of which follow the cited passage of the Mitakshara in assigning to a woman as her stridhan property inherited by her. Their Lordships think then that the Judges of the Courts below were quite right in holding that Kathama's interest ceased with her life, and that on her death the root of title is to be sought not in herself but in her father.

That leads to the question whether the zemindary is a partible or an impartible estate. If impartible, the Respondent Dorasinga is entitled as sole heir of the Istimrar zemindar. If partible, he and his cousin Moothoovadooga are joint heirs.

It was much debated at the bar whether or no the Appellants had formally bound themselves in this suit by agreeing to admit the impartible character of the estate. What they did agree to was "that all statements and admissions made in original suit No. 2 of 1869 "are to be taken as made in this suit also," unless a certain notice to the contrary was given. The statements and admissions made in suit No. 2 of 1869 are to be found in pp. 215 and 216 of the Record. They embrace a number of family

events, such as births, deaths, and marriages, and an agreement "that the judgment in the "Shivagunga case, as reported in 9 Moo. I. A., "should be admitted as to the facts set forth "in that judgment." The impartible nature of this zemindary was admitted by the parties to the litigation closed by the judgment of this Committee in 1863, and it is so stated in the judgment, though nothing then actually turned on the admission. But their Lordships do not think it necessary for the present purpose to criticise closely the language used in the judgment of 1863. For they think that the question of partibility is a mixed question of law and fact, and therefore does not fall within the terms of the agreement for admissions. Moreover the agreement in this suit was made simultaneously with the settlement of issues, and one of those issues, which oddly enough was proposed by the Respondent who now seeks to exclude it, and was objected to by the Appellant who now insists upon it, was "this, whether the Plaintiff is entitled to re- "cover the whole or *any part* of the property in "dispute."

But though the question must be decided upon its merits, it is impossible to disregard what has passed, whether in this suit or in others. For half a century this zemindary has been under the harrow of litigation; for many years between the elder and younger branch of the Padamatoor Tevar family, and again for many years between separate scions of the younger branch. During this long period of discussion and examination, up to the settlement of issues in this suit, everybody has concurred, whether by statement, admission, or assumption, in ascribing to the zemindary an impartible character. Even in the pleadings in this suit partibility is not alleged, and, as already stated, an issue implying partibility was granted against the wish of the

Appellants. Against all this family belief is only to be set an extremely ambiguous and evasive answer given by the Istimrar zemindar in the year 1822 to some questions put to him by the Collector of the District. Being asked whether it is customary for the zemindar to divide the estate between his children, what would be his motives, and what his authority for a division, he does not answer the first or third questions at all, and merely says that, "from motives of "regard to the children, the zemindar divides "the estate between them." Nothing can be built on such an answer as this. It is at the utmost a contention that the estate is alienable by the zemindar, and that he has a discretion to divide it; not that it is partible if not divided by him. Since the litigation began it would seem that no definite idea of contending that the zemindary was partible occurred to any one's mind till the parties found themselves face to face before the District Judge in this suit.

That the actual enjoyment of the property has been in accordance with the stream of family tradition is not disputed. It is explained away by reference to the state of the family, which is said to have presented no occasion for partition; but that is not the case with the elder branch, who were in possession for 32 years, during which time three descents occurred. There were co-parceners in that branch who would have taken shares if the zemindary had been considered as partible; but in fact it was always taken entire by the eldest male representative. It is true that the elder branch were ultimately held to be in wrongful possession, and are now called usurpers. All the same, their dealing with the estate while they had it is evidence of the family traditions and of their practical operation.

Moreover it is certain that other zemindaries closely allied to this are impartible properties.

Such is the case generally with the Polyams in the Polygar countries, as was laid down in the Naragunty case, reported in 9 Moore's Ind. App., p. 66. It is agreed that the zemindary of Ramnad, from which Shivagunga is derived, is impartible, and it has been held* that the zemindary of Padamatoor, which is derived by grant from Shivagunga, is also impartible.

* L. R. 5 Ind., App. 61.

It was not proved that the grant of Padamatoor was made by the Istimrar zemindar himself, as he on one occasion alleged, and there is reason to suppose that the grant was of earlier date; but, taking it to be so, the evidence that we have of the nature of the Shivagunga zemindary is this: that it belongs to a class of possessions which are in the nature of chieftainships, and impartible; that the great zemindary of Rammad out of which it was taken is impartible; that the small zemindary of Padamatoor which was taken out of it is impartible; that, according to family tradition and belief it is impartible; and that from its first creation until now it has passed from hand to hand as if it were impartible.

This evidence is irresistible, unless it can be avoided by showing some dealing with the zemindary which has transmuted its ancient qualities. The Appellant endeavours to find such a dealing in the transactions of 1801 and 1803 which have been above referred to; and he relies upon the case of the Nuzvid zemindary,† in which this Committee, differing from the Courts below, held that a zemindary created by sunnud in accordance with Regulation XXV. of 1802 was a partible property.

† L. R. 7 Ind. App., p. 38.

The estate constituting the Nuzvid zemindary was formerly part of an old military jagheer in the nature of a raj, and impartible. In the year 1783 the jagheer was confiscated for rebellion, and the next year it was restored on its old footing to

the eldest son of the rebel zemindar. In the year 1793 it was resumed by Government for default in payment of revenue; and in that state was it when the permanent settlement of 1802 was enacted. It was never again granted out entire or on its old tenure as a jagheer, but in the year 1803 two new zemindaries were made out of it. The larger of these new zemindaries, called Nidadavolu, was granted to the eldest son of the rebel zemindar, and Nuzvid, the smaller, was granted to his younger brother. Under these circumstances, it was held that the Nuzvid zemindary could not be identified with any estate or title existing prior to the sunnud of 1802, which put it on the same footing with ordinary estates.

But in this case the Istimrar zemindar was put in his place by the proclamation of 1801, and it is to the terms of that document that we must look in order to find the quality of his estate. The Madras Government were no doubt in a position to grant out the estate on other than the old terms. The question is whether they did so.

The proclamation sets out by stating the creation of the zemindary and the failure of Sasivarna's line. It asserts that the zemindary "has positively escheated to the State from which "it derives its protection." It asserts that Sasivarna was appointed by the Nabob, and advanced by him "to the rank of a feudal lord;" that he owed allegiance to the Nabob; and that the East India Company had then become the lawful sovereign of the Polygar countries. It then goes on to describe the disturbed state of the district, imputing it to the misconduct of the ministers of a female zemindar, which it thus describes:—"On the "return of that Princess they became her prin-"cipal ministers in the administration of the "affairs of Sivagunga, and availing themselves

" of the disqualifications attendant on a female " Government, established in their own hands an " entire despotism and tyranny, as well over the " Princess's lineal descendants of the house of " Nalkudi, as over the collateral branches of that " family, and over the inhabitants of Siva- " gunga." Nalkudi appears to be a Polyam appertaining from ancient times to Sasivarna's branch of the Tevar family.

The fifth paragraph of the proclamation runs as follows :—

" Wherefore, the Right Honourable Edward Lord Clive, Governor in Council of Fort Saint George and all its dependencies, having judged it expedient at this time to exercise the legitimate powers acquired to the Honourable Company in settling the affairs of the zemindari of Sivaganga upon a permanent foundation, has been pleased to nominate, to appoint, and constitute Padamattur Udaya Tevar, collaterally descended from the progenitors of Sasivarna Tevar the first zemindar of Sivaganga, to be the present zemindar of Sivaganga ; and the said Governor in Council hereby requires and commands all the inhabitants of Sivaganga to respect the rights and authority of the said Padamattur Udaya Tevar as the true and lawful zemindar of Sivaganga."

The next paragraph weighs the claims of another collateral relation of Sasivarna, whom it alleges to be in rebellion against the Company, and of whom it " publicly and formally proclaims " the disqualification now and in all times to " come to the possession of the zemindary of " Sivaganga."

The rest of the proclamation is addressed to the inhabitants of Shivagunga, whom it warns of the approach of a large army under Colonel Agnew, and exhorts " while the time yet allows " them, to retract their error," and " to ac- " knowledge their allegiance to the lawful " zemindar of Shivagunga."

The accuracy of some of the remarks in this proclamation is open to question ; but the object of examining it is to get at the intention of the Madras Government, which depends upon the impressions they had, and not upon the accuracy

of those impressions. It is impossible to doubt what that intention was. From the beginning to the end the zemindary is referred to, not in its proprietary and private, but in its political and public aspect. Sasivarna is a feudal lord. He owes allegiance to the State. The troubles are due to the weakness of a female government. The late zemindarni is a Princess. Her agents are Ministers. The Governor in Council intends to settle the affairs of the zemindary on a permanent foundation. For that purpose he nominates one to the post of zemindar, another is rejected for all time to come. The inhabitants are called on to respect the rights and authority of the appointed zemindar, and to acknowledge their allegiance to him.

Everything then points to the installation of the Istimrar zemindar not merely as proprietor but as Ruler of the district. The policy of the Government clearly was to appoint a Ruler whom the rebellious inhabitants would obey. And we are told by Mr. Hughes, who was attached to Colonel Agnew's force, that the appointment completely answered its purpose.

The Istimrar zemindar, Mr. Hughes says, was installed in state in Colonel Agnew's camp, when a hundred head inhabitants, including his elder brother Oiya Tevar, held up their hands in homage to him. And he adds that it had the effect of restoring peace and order almost immediately. The whole population turned to the zemindar, and entirely abandoned the rebellious ministers, so a most arduous service was quickly brought to a conclusion. This installation was effected in August 1801, the month after the proclamation.

Now the Istimrar zemindar having thus been placed in the old position of dignity and authority which his predecessors occupied, it is difficult to see how the Madras Government could, by any executive act, alter that position. Whether

they had exercised an act of paramount power on the footing of reconquest after rebellion, or whether they were merely supplying a vacancy caused by escheat, they had in July, or at latest in August, 1801 perfected the act of appointment, and they could not undo it. And whether they could or not, there is no evidence that they ever wished to undo it.

It is suggested indeed that as early as the year 1795 the Directors of the East India Company commended to the Madras Government the principles of land settlement introduced into Bengal by Lord Cornwallis, and that one ingredient in that policy was the partibility of estates, as is shown by Regulation XI. of 1793. The answer is, that the policy of the permanent settlement was applied to Shivagunga as well as to other estates; but that if there were any general intention of introducing the principle of partibility, it was certainly not followed in the present instance. Here the policy of the Government required the appointment of a Ruler with authority in his hands, and that was accordingly done.

Moreover though the quality of the estate might doubtless be altered by a law, it was not within the scope of Regulation XXV. of 1802 to effect any such alteration. It was framed with a view to the land revenue, and not otherwise to infringe on or limit the rights of anybody. And in Regulation IV. of 1822 there is a declaration to this effect.

Again it is said that we must take the proclamation of 1801, the Regulation of 1802, and the sunnud of 1803, as together constituting one transaction. Reading then the whole together, the proclamation only designates the individual zemindar, while the Regulation and the sunnud indicate the policy of the Government and the quality of his estate.

If this question was untouched by authority it would be sufficient to answer this argument by reference to what has already been said on the intention and effect of the proclamation. But on this part of the case there is an authority very closely in point.* The Hunsapore zemindary, situate in Behar, was an ancient impartible estate in the nature of a Raj. In the year 1767 it was confiscated upon the rebellion of its owner. From that time till the year 1790 it was let out to farm by the Government. In the year 1790, when the decennial settlement was in contemplation, or in course of being made, Lord Cornwallis granted the property to a younger branch of the family which had been dispossessed 23 years previously. It seems that no sunnud was issued, and though the decennial settlement, shortly afterwards effected under the Regulations of 1793, proceeds on the footing of certain rights and obligations subsisting between the zemindar and dependent talookdars and ryots, he does not appear to have been appointed a ruler or chieftain, as was the case in Shivagunga. He did not receive the title of Raja till the year 1837, when the title of Maharaja was conferred upon him. Under those circumstances this Committee held that as there was nothing to show that the quality of the estate was altered by the grant of 1790, it must be taken to possess its old quality of impartibility, and that the Regulations of 1793 could not be imported so as to control the grant of 1790, or to indicate the intentions of Government in making that grant.

* 12 Moo., Ind. App., p. 1.

The Hunsapore case is also an authority for holding that a mode of acquisition which constitutes a property as self-acquired in the hands of a member of an undivided family, and thereby subjects it to rules of devolution or disposition different from those applicable to ancestral pro-

perty, does not thereby destroy its character of impartibility.

The result is that their Lordships agree in the views taken by the Civil Court of Madura and by the High Court; that the appeal fails, and should be dismissed; and that their Lordships will humbly report to Her Majesty accordingly. The Appellants must pay the costs of the Appeal.