Judgement of the Lords of the Judicial Committee on the Appeal of Sivaraman Chetti and others v. *Muthia Chetti and others, from the High Court of Judicature at Madras; delivered 12th December* 1888.

Present:

LORD HOBHOUSE.
SIR RICHARD COUCH.
MR. STEPHEN WOULFE FLANAGAN.

[*Delivered by Lord Hobhouse.*]

The Plaintiffs and Defendants are all inhabitants of the village of Karakkudi, and the subject of dispute is a tank belonging to that village. The Plaintiffs claimed in their plaint to be hereditary hukdars, which the High Court interpret to mean rightful owners, of the tank, and they prayed for a declaration that they have the sole right to repair it at their own exclusive cost, and for other relief flowing from that right and from the Defendants' interference with it. The Subordinate Judge gave the Plaintiffs a decree establishing their sole right to repair the tank at their own exclusive cost. Upon appeal the High Court dismissed the suit. Their Lordships are now asked to say the High Court was wrong.

The Plaintiffs do not now assert that they are owners of the tank in any full or proper sense of the word; they admit that the villagers at large have full right to the enjoyment of it; but they contend that the function of cleaning, repairing, and generally managing and protecting the tank is an hereditary possession of their family, which they have a right to retain so long as they bear

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the cost of it. It may be that for generosity and public spirit their attitude deserves all that has been said of it by their Counsel. But the Defendants object to it; and the only question for a Court of Justice is on which side the lawful right is to be found.

Though the various classes and divisions of villagers are called by local and unexplained names, this much is clear; that the tank in dispute is on the site of an old village tank; that about the beginning of the century it was improved at the cost of the Plaintiffs' family upon the request of at least some leading villagers, and with the general acquiescence of the village; that since the year 1842, when there was a quarrel and a settlement, the Plaintiffs' family have executed the general repairs and cleansing, and have on one occasion interfered to protect the tank from encroachment; and that some of the Defendants have constructed and kept in repair flights of steps leading down into it. These matters, to which the greater part of the oral evidence relates, are not conclusive either way. But the proceedings of 1842 are of great importance and require to be carefully looked at, not because they resulted in any decree or contract binding the present parties, but because they furnish the best evidence of the the true relations and legal position of the disputants.

On the 1st of April 1842 Chidambaram, who was the head of, or in some way represented, the Plaintiffs' family, presented a petition to the Collector of Madura, in which he alleged that when his predecessor improved the tank, it was agreed that his family should have charge of all the affairs appertaining thereto, and maintain it for ever. Then, after stating that their opponents in the village had prevented them from cleansing the tank, he prayed, "That an "order may be passed allowing us to remove the

" mire and maintain the said Uruni Charity for " ever as we have been usually doing, prohibiting " interference on the part of the persons who are " endeavouring wrongfully to trouble us, and " enabling the continuance of the Charity in " perpetuity."

The Collector referred the matter to the local Ameen, who took evidence and made a report; and on the 9th May 1842 the Collector declared that the opponents were not justified in interfering, and gave directions to the Ameen to issue orders for the complainants to carry on the work according to custom. It is noticeable that neither in the evidence adduced to the Ameen, nor in his report, nor in the judgement of the Collector, does there appear anything to support Chidambaram's allegation of an agreement that his family should have charge of all the affairs of the tank and maintain it for ever.

The order of May 1842 was no sooner issued than the opposite party, represented by one Lakshmanan Chetti, began to petition against it. They insisted that the tank was a common charity, and denied both the right of the Plaintiffs' family to maintain it solely and the fact that they had done so. And they prayed a direction "that the " charity which has, according to custom, been " maintained by our Nagarattar community in " common shall continue to be maintained in " common henceforth." The immediate result of this petition was that the Collector directed that action on his previous order should be suspended till he himself came to the spot. The ulterior result was a compromise of the dispute, which for the time put an end to it.

The Kararnama which embodies the compromise is the most important document in the case. It was entered into before the Collector himself very formally. It was prepared by the

head Sheristadar of the district. It was signed by Chidambaran and Lakshmanan the principal disputants, and by two others, apparently a partisan of each side. And it was attested by the signatures of the Collector and the Assistant Collector. It runs as follows:—

"On Chidambaram Chettiar commencing repairs to the Kalkattu Amman Uruni, Lakshmanan Chettiar and others said that they also would give money for digging that Uruni. Chidambaram Chetti objected that it ought not to be so received; and both parties resorted to the authorities. Chidambaram Chettiar contended that, as (his) father originally built the Kalkattu Uruni, he was the owner. The authorities (said) that Urunis dug for charitable purposes are common property; and Chidambaram Chettiar urged that other Urunis in the village should be likewise common, which statement the authorities accepted as just; and Lakshmanan Chettiar and others also admitted it as right. Therefore, both the parties having agreed that all the tanks and Urunis of the Nagarattars of Karakkudi are common property, we have, with our mutual consent, agreed in the presence of the authorities, that in future, on occasions of removing mud from the Uruni and doing other repairs, all the Nagarattars should collect the money in common, hand over the said money to the person who may be in management as the original proprietor of the Uruni, have the work done, and adjust the accounts in common, and that there shall be no dispute whatever about this in future. Therefore we have executed this to be held as a deed of Kararnama for the same. We will henceforward abide by this alone."

The inferences to be drawn from this document are clear enough. The tank is the property, not of Chidambaram, but of the villagers, and the repairs are to be effected by common collections through the person in management, who is to account for his receipts and expenses. The only obscurity is in speaking of the person in management as the original proprietor of "the Uruni." Whatever may be the meaning of that expression, it cannot detract from the clear statement that all the tanks and Urunis are common property. The terms of the Kararnama are fatal to the claim of the Plaintiffs that they are entitled to repair at their sole expense. Their Lordships do not find anything in the

previous evidence to show that these terms are erroneous; nor anything in the subsequent evidence to show that the position of the parties has been altered. The circumstances that the Plaintiffs' family have in fact executed subsequent repairs without dispute, and that they have stood forward to protect the tank when threatened with injury, are quite insufficient for that purpose.

Moreover, it is very difficult to understand how such a right as this can be claimed without a corresponding obligation; and the Plaintiffs' Counsel are unable to show in what way any obligation is imposed on their family. There is no endowment to support the tank, and no right of taking tolls or fees. It is confessedly at the option of the Plaintiffs' family whether they will execute the repairs or not. In their Lordships' opinion, it is equally at the option of the other villagers to permit the repair to be executed by the Plaintiffs, or to insist on the work being done at the common cost.

It seems a great pity that there should be litigation on such a ground. Disputes for the purpose of avoiding a charge are much more common than disputes for the purpose of bearing one. But, as we have a dispute of the latter kind, it must be settled, like any other, by law. And that compels their Lordships to hold that the tank remains the common possession of the village, and that no class of the villagers has any right to exclude the rest from contributing to the repair. The appeal fails, and must be dismissed, with costs. Their Lordships will humbly advise Her Majesty to this effect.