

*Judgment of the Lords of the Judicial Committee
on the Appeal of Pranal Annee v. Lakshmi
Annee, legal representative of Varadaraja
Mudali, a Respondent now deceased, Srinivasa
Mudali, and Manikka Mudali; from the
High Court of Judicature at Madras; de-
livered 4th March 1899.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

Ramaswami Mudali, of Kappur, in the Presidency of Madras, a Hindu, subject to the Mitakshara law, died in the year 1872, leaving landed estates, part of which are the subject of the present litigation. He left no male descendant, but was survived by a widow, a daughter, and also by his mother. His widow, his daughter, and his mother, successively took a female estate in the lands which he left; and his mother, who was the last taker, died in December 1883. On her death, the lands were taken possession of on behalf of the present Appellant, then an infant, who is the granddaughter of the deceased, being the only child of his daughter.

On the 28th January 1885, a suit was raised in the Court of the Subordinate Judge of Kumbakonum, against the Appellant, then a child eight years of age, as represented by her testamentary guardians, and also against four

other Defendants, at the instance of Varadaraja Mudali, now deceased, and the present Respondents Srinivasa Mudali, and Manikka Mudali, who alleged that they were the reversionary heirs of Ramaswama. In their plaint, the reversionary heirs concluded for decree against the present Appellant and her guardians, for possession of certain lands which are not the subject of the present controversy; but it expressly excluded certain other lands, which had admittedly been the property of the deceased Ramaswami, and had also been taken possession of on behalf of the Appellant, as part of the deceased's succession. These lands were purposely excluded from the plaint, because the Plaintiffs, the reversionary heirs, had, on the 30th December 1884, conveyed their interest in them to one Vijayaraghava Paha Chariar, for the sum of Rs. 4,000, in order to provide themselves with funds to meet the expenses of litigation.

The suit of 1885 was, in so far as it concerned the interests of the Plaintiffs and of the present Appellant, brought to an amicable conclusion; and the present appeal turns upon the effect of the mutual arrangement or compromise which was then made. That arrangement was embodied in two deeds, which bear the same date, the 16th January 1886, the one being a Razinamah, and the other an agreement, or, as it is entitled, "an agreement of union."

By the deed last mentioned, the agreement of union, between the Plaintiffs on the one hand, who now are or are represented by the present Respondents, and the Appellant who was then, being still a minor, represented by her husband and guardian, Venkatarunga Mudaliar, on the other hand, it was agreed that the second contracting parties should have and retain one half share of the lands which were claimed from the Appellant and her guardians in the suit of

1885, and should also have or retain one half share of the lands which had been excluded from that suit, and had been conveyed to Vijayaraghara Patra Chariar. The deed of agreement was not produced in the suit of 1885, and was not submitted to the Subordinate Judge of Kumbakonum, before whom that litigation depended. It was not registered, in accordance with the provisions of Act ~~VIII.~~ of 1871, although it professes to deal with the title to immoveable property, which is admittedly beyond the value of one hundred rupees.

The second document executed by the same parties, the Razinamah, was not registered in terms of Act ~~VIII.~~ of 1871; but it was produced in the suit of 1885; its terms were considered in a judgment delivered by the Subordinate Judge of Kumbakonum, on the 31st March 1886; and they were made the foundation of an order passed by the learned judge, the parties to the document having concurred in moving "that a decree may be passed in accordance with the Razinamah which they have presented under Section 375 of the Civil Procedure Act, after settling."

The Razinamah had incorporated with it four schedules of lands, marked respectively A, B, C, and D; Schedule D containing a description of the lands which had been expressly excluded from the suit of 1885, and of no others. In the body of the document, the parties, *first*, set forth in detail the lands as to which they were in controversy in the suit of 1885, and concluded by stating that they had agreed, each to take a certain share of these lands, and their produce, "in full satisfaction of all claims within the 15th of Panguni (27th March 1886) next; and that both the parties shall bear their respective costs of this suit." In the *second* place, the document set forth as follows:—"Remarks:—
" Not only have we, on this date, entered into

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“ a union agreement in regard to the land, &c.,
 “ referred to in the plaint in this suit, and
 “ described in Schedule D hereof, and divided
 “ thereunder the said lands into two equal
 “ shares between us, but, a deed of release has
 “ also been taken from the 7th Defendants’
 “ (present Appellant’s) guardian in relinquish-
 “ ment of the right possessed by the 7th
 “ Defendant (present Appellant) to the said
 “ half share of lands.”

In the judgment delivered by him on the 31st March 1886, the Subordinate Judge, having the Razinamah before him, treated the first part of it as the only portion of the contents of the document with which he was desired by the parties to deal. In giving effect to its terms, the learned Judge observed :—“ The 7th Defendant (present Appellant) is her only daughter “ (*i.e.*, of Ramaswami’s grand-daughter) and she “ and the Plaintiff have put in a Razinamah in “ respect to items 1, 3, 5, and 7, and a decree in “ its terms has been passed.” It is admitted that items 1, 3, 5, and 7, specified by the learned Judge, were the lands claimed from the present Appellant in the suit of 1855. The learned Judge, plainly, did not understand that he was asked by the parties, either to consider, or to give effect to the terms of the compromise which the parties narrated, by way of remark, that they had made with respect to the lands contained in Schedule D of the Razinamah, which are the subject of this appeal. Accordingly, the order passed by him did not include, and had no reference to these lands.

The fact has not been disputed, that at, or shortly after the execution of the two deeds of the 16th January 1886, the parties acted upon the whole of the mutual agreement contained in or narrated by those deeds ; that they each took one-half share, not only of the lands in controversy between them in the suit of 1885, but of the lands excepted from

that suit, as to which they are in controversy in the present case. The Appellant was permitted to enter into possession of her half-share of all those lands; and whilst the Respondents, the reversionary heirs of Ramaswami, do not challenge her title to one-half of the lands for which they sued her in the action of 1885, they claim, in this action, to have right to the half which she possessed of the lands excluded from that action, and described in Schedule D of the Razinamah. The only defence which their Lordships are asked to sustain, on behalf of the Appellant, is mainly, if not wholly, founded upon the terms of the two deeds of 16th January 1886, and of the proceedings which followed upon them.

There are two suits, subsequent to these proceedings for compromise, which it is necessary to notice, although they do not materially affect the question which their Lordships have to decide. In both these suits, it was the interest of the parties to this appeal to defeat the claims of the Plaintiffs, because these, if successful, would have carried off the whole or part of the lands which the present parties had chosen to treat as belonging to one or other, or both of them.

In 1886, a suit was brought against the parties to this appeal, by Kappachi Anni, the elder sister of Ramaswami, who claimed his estates as his reversionary heir, and pleaded that the proceedings of the Defendants with a view to compromise had been fraudulent. The suit was dismissed with costs by the Subordinate Judge of Kunbakonum, on the 7th May 1887, and his decree was allowed to become final.

In the year 1888, Vijayaraghava Patra Chariar sued the parties to this appeal, for the enforcement of the sale deed which he had obtained, in December 1884, from the reversionary heirs, of their interest in the lands which are the subject of this Appeal. The parties whom he called as Defendants, joined in defence to the action, and

set up the division of the property between them under the compromise of January 1886. The Subordinate Judge, on the 6th November 1889, held that the transaction which the Plaintiff sought to enforce, was one not of sale but of loan, and gave him decree for Rs. 1,300. On appeal to the High Court, the decree was varied by increasing the sum awarded to Rs. 4,000.

Although the mere statement of the facts of this appeal has necessarily occupied some time, yet the questions to which these give rise lie within a very narrow compass. The Respondents rest their claim to possession of the lands in dispute upon their title as the reversionary heirs of the deceased Ramaswami; and the Appellant does not, in this Appeal, defend her possession, except upon the ground that she, as in a question with the Respondents, derived a valid title from the compromise embodied in the Razinamah and agreement of union, and to the effect which was given to the Razinamah, by the Subordinate Judge of Kumbakonum, in the suit of 1885.

It is sufficiently obvious that, in maintaining that defence, the Appellant can derive no aid from the terms of the Agreement of Union. The document has not been registered under the provisions of Act VIII. of 1871; and, therefore, its stipulations are ineffectual in law, to create, in favour of the Appellant, any right, title, or interest to or in the lands in dispute.

The Razinamah was not registered in accordance with the Act of 1871; but the objection, founded upon its non-registration does not, in their Lordships' opinion, apply to its stipulations and provisions, in so far as these were incorporated with, and given effect to by, the order made upon it by the Subordinate Judge, in the suit of 1885. The Razinamah, in so far as it was submitted to, and was acted upon judicially by the learned Judge, was in itself a step of judicial procedure not requiring registration; and any order, pro-

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nounced in terms of it constituted *res judicata*, binding upon both the parties to this appeal, who gave their consent to it.

If the parties, after agreeing to settle the suit of 1885, on the footing that they were each to take a half share of the lands involved in that suit, and also a half share of the lands now in dispute, had informed the learned Judge that these were the terms of the compromise, and had invited him, by reason of such compromise, to dispose of the conclusions of the suit of 1885, their Lordships see no reason to doubt that the order of the learned Judge, if it had referred to or narrated these terms of compromise, would have been judicial evidence, available to the Appellant, that the Respondents had agreed to transfer to her the moiety of land now in dispute. But their Lordships are unable to find that any such course was taken, either in the Razinamah, or in the judicial order which gave effect to it. The Razinamah merely referred, by way of remark, to the lands now in dispute; and the Judge was only asked to give effect to a compromise which related to the lands then in dispute before him. This order, accordingly, merely concerns the latter, and has no reference whatever to the lands described in Schedule D of the Razinamah. So far as regarded these lands, the compromise was not submitted to the learned Judge, but was deliberately left by the parties to stand upon their unregistered Agreement of Union.

For these reasons, which are substantially the same with those assigned by both Courts below, their Lordships will humbly advise Her Majesty to affirm the judgment appealed from. The Appellant must pay the costs of the second and third Respondents who defended this appeal.
