Privy Council Appeals Nos. 38 & 39 *of* 1940

Raja Velugoti Sarvagna Kumara Krishna Yachendra Bahadur Varu

v.

Raja Rajeswara Rao and another

Raja Rajeswara Rao and another

v.

Raja Velugoti Sarvagna Kumara Krishna Yachendra Bahadur Varu

Consolidated Appeals

FROM

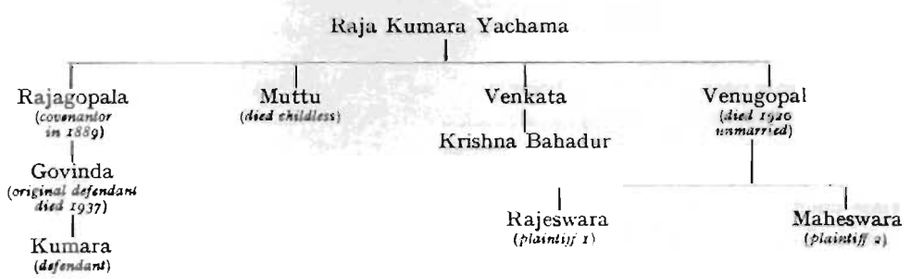
THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH OCTOBER, 1941

Present at the Hearing:

LORD ATKIN
LORD RUSSELL OF KILLOWEN
SIR GEORGE RANKIN

[*Delivered by* SIR GEORGE RANKIN]



The questions in this case arise within a Sudra family of which the defendant, the Raja of Venkatagiri, is the head. He is the present holder of the impartible estate which goes by that name, having succeeded to his father in 1937 while the present suit was pending in appeal before the High Court of Madras. The estate is admittedly joint family property though impartible. The two plaintiffs are the illegitimate sons of one Venugopal, younger brother of Rajagopala, the defendant's grandfather, who was a previous holder of the impartible estate. The plaintiffs' mother, though not married to Venugopal, cohabited with him in a manner exclusive and continuous so as to be a *dasi* within the meaning of the text of the Mitakshara (chapter 1, section 12, verse 2) which confers certain rights of inheritance upon the sons of Sudras if born of such a union. The meaning and effect of this passage in the Mitakshara were much considered by the Board in *Raja Jogendra Bhupati Hurri Chundun Mahapatra* v. *Nityanund Mansingh*, 1890, L.R. 17, I.A. 128, and *Vellaiyappa Chetty* v. *Nataranjan*, 1931, L.R. 58. I.A. 402, but no disputable matter has to

be decided thereunder in the present case. The claim of the plaintiffs is threefold. First, they say that by the terms of a deed dated the 8th April, 1889, they are entitled between them to an allowance of Rs.1,000 per month payable by the defendant as holder of the impartible estate. As their second string, they claim that by custom maintenance is payable to them as junior members of the family. Thirdly, they say that apart from the deed and apart from any custom they have the right to be paid maintenance out of the impartible estate as a matter of Hindu law. They brought their suit on the 4th July, 1932, in the Court of the Subordinate Judge of Nellore who found in their favour as regards their claim under the deed but rejected their other grounds of claim (18th March, 1936). On appeal the High Court of Madras (Leach C.J. and Krishnaswami Ayyangar J.) held against them on the deed and on the custom, but decided that they had a good claim by the Hindu law to maintenance out of the impartible estate and fixed the amount at Rs.250 per month for each plaintiff (10th February, 1939).

The evidence adduced to prove the alleged custom was held by both Courts to be insufficient: even if the question be any longer open before the Board, it was not contended that the evidence is of such strength as to make it reasonable that their Lordships should be invited to disagree with the concurrent findings of the Courts in India. Hence custom as a ground of claim goes out of the case.

The claim under the deed of 1889 depends upon the question whether the plaintiffs are within the words *purusha santhathi* (male descendants) as they occur in a clause which provides that on the death of Venugopal his male descendants shall in perpetuity be paid the amount of the allowance of Rs.1,000 which had by the deed been made payable to him for life.

It is unnecessary to set out the deed at length or to describe in detail the circumstances in which it came to be entered into; just as it is unnecessary that their Lordships should endeavour to set forth the various considerations which may bear more or less effectively upon the problem whether—apart from any cases of adoption—words meaning " son ", " family ", " descendants " and so forth are to be taken as restricted to persons of legitimate birth. At the time of the deed Raja Kumara Yachama was alive and Venugopal was a minor. It appears that the Raja had in 1878 made over the estate and much other property to his eldest son, Rajagopala; but that in 1889 the younger sons, Muttu and Venkata, had been minded to claim that the estate was partible, and had been persuaded by their father to recognise the impartibility of the estate on being given certain money and jewellery and on a proper allowance being provided in perpetuity for each of the three junior branches. The Raja of Bobbili having acted as mediator and fixed the amount of the allowance to each branch at Rs.1,000 per month, the deed of 8th April, 1889, gives the sum of Rs.1,000 per month to each of the three younger brothers for life and then sets forth in detail the persons who are to become entitled to the allowances thereafter. The operative clause so far as regards Venugopal's branch, when stripped of certain verbiage and of a clause with reference to widows, is as follows:—

> " After the life of the said Sri Venugopala Krishna Yachendrulu, his *purusha santhathi*, shall, in perpetuity, be paid the same allowance amount, that is, at the rate of Rupees One thousand (Rs.1,000) per month, in the aforesaid manner. But, if, at any time, in any one of the branches of the said Sri Muttukrishna Yachendrulu, Sri Venkatakrishna Yachendrulu and Sri Venugopala Krishna Yachendrulu, there be more than one male member, such males, and their *purusha santhathi* shall take the said allowance amount of Rupees One thousand in proportion to their respective shares, in the same manner as they would respectively take their other properties separately by way of inheritance according to the Hindu Law. Moreover, if in any of the aforesaid three branches of our family . . . any male should die without *purusha santhathi*, either by way of *aurasa* or by way of adoption, the allowance amount that was being received by the person who so died without *purusha santhathi* shall go to the *gnatis* (agnates) who are nearest to him in his own branch according to Hindu Law. . . . Further, should any of the said three branches of our family become extinct by the total absence of *purusha santhathi* either by way of *aurasa* or by way of adoption, the allowance being paid to that branch shall be stopped. . . "

Both of the learned judges of the High Court have held that if the clause to which the plaintiffs make their appeal is considered in the light of its immediate context it becomes clear that as words are used in this deed a man is said to die " without *purusha santhathi* " if he die leaving neither a legitimate nor an adopted son. Their Lordships are in agreement with this view which makes an end of the plaintiffs' claim upon the deed. That an illegitimate son is not an *aurasa* son as that word is used in Hindu law seems to their Lordships to be elementary. The learned judges of the High Court both say that this was not disputed before them, and their Lordships do not find that the learned trial Judge had been of any different opinion. The Court translator appended to his version of the deed a glossary of terms which is to the same effect. No weight can be attributed to any suggestion that in a Telugu deed of 1889 regulating the legal rights of a Hindu family in respect of an impartible raj in Madras the word *aurasa* includes natural sons because the etymology of the Sanskrit word *aurasa* shows its original root meaning as " produced from the breast." *Aurasa* has always been used to import the highest class of son—the son begotten by the man himself on his lawful wife: of lower kinds once recognised several were not sons in any physical sense, e.g., the *putrika putra* or son of an appointed daughter [Mayne: Hindu Law and Usage, 6th ed., 1900, ss. 67-8, pp. 79, 80]. Their Lordships think that the deed of 1889 provides its own guide to the meaning of the words *purusha santhathi* and that in the language of the deed Venugopal's branch became extinct on his death.

The interesting question which remains is whether the plaintiffs are entitled to maintenance from the impartible estate on the ground that it is the *primâ facie* right at law of all junior male members of the family to be maintained out of impartible estate which is family and not separate property. The answer made by the defendant to this claim is that junior male members have no such right save by custom and that, apart altogether from any question of legitimacy, the plaintiffs not being sons or brothers of any holder of the impartible estate can succeed only by proving a special custom, which they have failed to do. For this view of the law the defendant relies upon a line of decisions of the Board—the second *Pittapur* case, 1918, L.R. 45, I.A. 148; the *Jeypore* case, 1919, 24 C.W.N. 226; *Baijnath's* case, 1921, L.R. 48, I.A. 195; the *Dhalbhum* case, 1927, L.R. 54, I.A. 289; *Shiba Prasad Singh's* case, 1932, L.R. 59, I.A. 331. The plaintiffs' reply is that this line of decision was abandoned or deflected by the judgment of the Board in the *Gorakhpur* case, 1934, L.R. 61, I.A. 286, which, as he contends, established the right to maintenance as belonging to all junior male members of the family by virtue of their interest as co-owners. This interesting and difficult question has recently (4th July, 1941) been determined by the Board in another case (*Commissioner of Income Tax, Punjab,* etc. v. *Dewan Bahadur Dewan Krishna Kishore*) in a sense unfavourable to the plaintiffs, whose learned counsel recognised that it would be neither reasonable nor useful to ask the Board to give a contrary decision in the present case. Their Lordships on this part of the case agree with the learned Subordinate Judge who negatived this ground of claim.

Their Lordships have read the Subordinate Judge's judgment and both judgments in the High Court with high appreciation and have been struck by the skill and care with which the various questions have been elucidated and by the ability with which they have been discussed. But the plaintiffs' suit must fail.

Their Lordships will humbly advise His Majesty that the appeal of the defendant should be allowed, the appeal of the plaintiffs dismissed, the decrees of the Indian Courts set aside, and the suit dismissed. The plaintiffs must pay the defendant's costs of both Courts in India and of these appeals save that the defendant must pay to the plaintiffs their costs in the trial Court of the issue numbered 5 which relates to the paternity of the plaintiffs, with a set-off in India in respect of these costs.

(14057) Wt. 8194—7 150 11/41 D.L. G. 338

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