

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Venkata Kannakamma Row and others v. Rajah Rajagopala Appa Row Bahadur, the Court of Wards, and others, from the High Court of Judicature, at Madras; delivered March 15th, 1882.*

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Present:

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

IT is not now disputed that the zemindary of Nuzvid is not impartible, nor is it disputed that the Plaintiffs Appellants are entitled to recover one half of that zemindary. The only question which is now raised is whether they are entitled to recover mesne profits of that moiety.

Their Lordships are of opinion that they ought to make the same decree now which the First Court ought to have given when the first Defendant, Rajah Narayya Appa Row, was living. The minors, the sons of Rajah Narayya, appealed to the High Court. If the First Court had given the proper decree, it would have been that the Plaintiffs should recover from the first Defendant, Rajah Narayya, one half of the zemindary of Nuzvid, together with the mesne profits of that one half of the estate.

Their Lordships therefore think that the decree of the High Court must be altered; and they will humbly advise Her Majesty that the decree of the High Court be reversed so far as it dismisses the claim of the Plaintiffs Appellants

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to the one half share of the zemindary of Nuzvid, and that, in lieu thereof, it be declared that they are entitled to recover from the representatives of the first Defendant out of his assets one half of the said zemindary, with mesne profits thereof from the time of the Appellants' dispossession, provided that they shall not recover such mesne profits for a period exceeding three years next before the commencement of the suit, subject to an allowance to the Respondents for all or any portion of such mesne profits which the Respondents may prove to have been duly applied for the benefit of the joint family; and that the case be remitted to the High Court to give effect to these directions. The Respondents must pay the costs of the Appeal out of the estate of the first Defendant.