PRIVY COUNCIL

Komammal

Vs.

Annadana Jadaya Gounder

Privy Council Appeal No. 31 of 1924
(Viscount Summer CJ., Lords Atkinson Sinha, J. Sir John Wallis and Sir Lancelot Sanderson JJ.)

15.12.1927

JUDGMENT

SIR JOHN WALLIS J.

1. This litigation is concerned with the right of succession to the Jadaya Gounder Jaghir or Chinna Tiruppadi Hill Polliem, as it was formerly known, in the South Arcot District of the Madras Presidency. These ancient polliems in Southern India have always been held to be impartible, and this estate has now been included in the schedule of impartible estates to the Madras Impartible Estates Act 2 of 1904.

2. It is therefore according to the definition in Section 2 of the Act an estate descendible to a single heir and subject to the other incidents of impartible estates in Southern India, and the proprietor of the estate is the person entitled to the possession thereof as single heir under the special custom of the family or locality in which the estate is situated, or if there be no such family or local custom under the general custom regulating the succession to impartible estates in Southern India.

3. This statutory definition would appear to be in entire accordance with what has often been laid down by this Board, that these impartible estates are the creatures of custom, and with the decision in *Katama Natchier v. Raja of Shivagunga* that where no special custom is proved, the customary law of succession is to be found in the Mitakshara, which is the general customary law in this part of India, with such qualifications only as flow from the impartible nature of the subject, and that consequently, in applying this law the impartible estate, though in the sole enjoyment of the holder, is to be regarded for the purposes of succession as the joint property of the holder and his family and as passing by survivorship, unless it is shown to be the

separate property of the holder or his branch, in which case it is descendible according to the rules of the Mitakshara as to separate property.

4. In this case the first plaintiff, who is the mother of the last holder, claims the estate as the nearest heir to his separate property, whereas the defendant, who is a distant male agnate, claims to succeed to it as joint family property. The plaint included an alternative claim by the second plaintiff, who is the son of the first plaintiff's sister under a will made by the last holder. This claim has been rejected rightly in both the lower Courts as Section 4, Impartible Estates Act, restrains the proprietor from making any alienations to ensure beyond his own lifetime except for necessary purposes, except in so far as Sub-Section (3) preserves his right to provide for the succession to the estate in default of heirs. As regards the first plaintiff's claim, the District Court held that the estate was the separate property of the last holder and decreed her suit, but this decree was reversed by the High Court of Madras, who held that defendant 1 was entitled to succeed, as the estate had not ceased to be the joint property of the family of the last holder and defendant 1.

5. It will be convenient in the first place to refer briefly to the history of the estate, to set out the pedigree showing the descent from a common ancestor, and to show how the present case arose. It appears, as the result of inquiries made by the Inam Commissioner in the sixties of the last century, the results of which are embodied in the Inam Register, Ex. 3, that the estate consists of forty villages in the hilly tracts of the Kallikurichi taluq of South Arcot, and had been granted by a former Government for services rendered to one Ramappa Jadaya Gounder, a remote ancestor of the then Poligar Lakshmanappa Jadaya Gounder.

6. It is also recorded in the register that in 1813, shortly after the introduction of British Rule, the then Poligar was recognised as exempt from payment of revenue. In view of this fact and of the long and undisturbed enjoyment of the family, it was recommended that the forty villages, which are described in the register as serva or tax-free inam, should be enfranchised subject to the imposition of am annual quit rent of one-eighth of the income then derived from them by the Poligar, which was treated as the assessment in view of the fact that the villages had never been surveyed or assessed. Under the every primitive conditions, which still exist, the income of Rs. 1,800 was shown to be derived from a plough tax, certain poll taxes, and jungle rent and tree tax. The recommendation was adopted by the Inam Commissioner on 22nd October 1868, and an inam patta or permanent grant was accordingly issued to the Poligar.

7. The following pedigree taken from the judgment of Ramesam, J., in the High Court, shows the descent of the family from the common ancestor, the Poligar Lakshmanappa Jadaya Gounder, who died in 1822. (For pedigree see p. 71.)

8. The letters R. 1, R. 2 show the persons entered under the heading "Surviving heir of the present incumbent in the order mentioned in the inam register already mentioned.

9. Lakshmanappa I, who died in 1822, was succeeded by his second son Annadana I, described as the 30th Jaghirdar, who died in 1860. The circumstances under which his elder brother Ramappa was ; et aside were investigated in the suit brought in 1875 by Annadana's grandson Annadana II, the 32nd Jaghirdar to recover the estate from his cousin Lakshmanappa who was the grandson of Ramappa and grandfather of defendant 1 here, and had taken possession of the estate during his minority and claimed to be rightful heir.

10. In that case the High Court in Reg. Appeal 116 of 1876, on appeal from the judgment of the Subordinate Judge at Cuddalore in O. S. No. 7 of 1875, were inclined to think that in 1820, two years before his death, Lakshmanappa I, had relinquished the estate to his second son Annadana because his eldest son Ramappa was of week intellect and Ramappa's son Kannappa, if then born, an infant of tender years : and they found as a fact that by an arrangement between the Poligar and the adult members of his family the Polliem was transferred to his second son Annadana, and that information of this was given to the revenue officials and was recorded by them. They found also that after Annadana's death in 1860 he was succeeded as of right by his son Lakshmanappa II alias Narayanappa, and that his claim was not challenged by the defendant in the suit, who was then 33 years of age.

11. The High Court also found that at the death of the Poligar Lakshmanappa alias Narayanappa in 1866, leaving a son Annadana, then aged three years, the defendant had succeeded in getting himself recognised and installed as Poligar, but that what happened did not give validity to the defendant's title or affect the plaintiff's right to hold the estate which by inheritance had passed to him on his father's death. There was thus a clear decision that as between the two branches the right of succession was in the junior branch. It is also clear, and has been rightly decided by the lower Courts that no question arose in that ease as to whether the effect of the supersession of the senior line in 1820 had the effect of separating them from the junior branch, and that consequently that question is not *res judicata* in the present case by reason of the judgments in that case.

12. The inam register, which was compiled before 1866, shows the Poligar as still residing on Chinna Tiruppadi Hill, but some time prior to the institution of the suit just referred to, the minor's mother removed him to the plains ; and he afterwards took up his residence there in the village of Akkarayapalaryam. The remaining members of the family continued to reside in the family home at Chinna Tiruppadi, which consisted of a number of thatched buildings, one of which, known as the kutcheri or office, was allowed to fall into ruins after the Poligars had ceased to reside there. The Jaghirdar Annadana II died in 1901 and was succeeded by his son Narayanappa, who died in 1914, when this branch of the family became extinct in the male line. Thereupon Annadana, the present defendant, who belongs to the senior branch of the family took possession, of the estate claiming to have succeeded by survivorship, and was subsequently sued by Narayanappa's mother, Konammal, the present plaintiff, who alleged that the estate was the separate property of her deceased son and that she was entitled to succeed to it.

13. The onus of proving that the estate had become the separate property of the junior branch was on the plaintiff, who based the claim in the plaint on the following grounds : (1) That Annadana (the 30th Jaghirdar) and his descendants had all along owned and held the estate as their separate and absolute property ; (2) that they had also acquired a title by adverse possession ; (3) that the defendant 1's claim was barred by *res judicata* by reason of the judgments and decrees of the Small Cause Court at Cuddalore in 1875, and of the High Court of Madras in 1876 ; (4) that the late Jaghirdar and his ancestors were separated from Ramappa and his descendant, and in any case after the proceedings of 1876 and by their subsequent conduct there had been a complete separation between the two branches ; and (5) that the late Jaghirdar and his ancestors had been holding the estate as their separate and absolute estate to the knowledge and with the acquiescence of the senior branch.

14. All these allegations were denied by defendant 1 and formed the subject of issues 3, 4 and 8 which cover all the questions raised before their Lordships.

> 3. Was the Jaghir held by Annadana Jadaya Gounder and his descendants as their separate estate and absolute property asserting an exclusive title themselves ?
> 4. Has there been a separation of status between the different branches of the family, as alleged by the plaintiffs, or are the families still joint ?
> 8. Is defendant 1's claim to succession affected by the rule of *res judicata* by the decision in O.S 7 of 1875, in the file of the Sub-Court, Cuddalore ? This issue

has already been disposed of.

15. As to what constitutes separation, it is clear that where an impartible zemindari has been acquired by the last holder or his branch as a self acquisition, the other undivided members of his family take no interest in it and it descends as the separate property of the acquirer. That was what happened in *Katama Nachier v. Raja of Shivagunga (Supra)*. On the other hand, it is also well settled that as regards an impartible estate which was or had to be considered joint family property, a member of the joint family might become separate with regard to it so as to lose his right to succeed to it by survivorship. That is what happened in *Periasami v. Periasami* where a member of the joint family, believing himself to be next in succession to the larger zamindari of Shivagunga, joined in a settlement under which he was held to have renounced all claims to the lesser zamindari. Or, again, an impartible zamindari might by consent be settled on a particular branch of the family as their separate property, as in *Ranganayakamma v. Ramaiya, 5 C. L. R. 439*.

16. The question in the present case is whether the evidence shows, that the estate had become the separate property of the junior branch; and it may at once be observed that in dealing with it the District Judge was at a disadvantage, as compared with the High Court, because he had not the guidance of the judgment of their Lordships delivered by Lord Dunedin, in *Baijnath Prashad Singh v. Tej Bali Singh* Prior to that decision the authority of the earlier cases which proceeded on the footing that the estate, though impartible must still be regarded as joint family property for the purposes of succession, had been shaken by the decisions of the Board in *Sartaj Kuari v. Deoraj* and the first and second *Venkata Surya Rao v. Court of Wards* and *Gangadara Rama Rao v. Raja of Pittapur* in which it was held that the holder for the time being had an unrestricted right of alienation inter vivos or by will and that the junior members of the family had no right to maintenance out of the estate not based on custom.

17. Further, in the Courts below the appellant relied on two decisions of this Board not long before Lord Dunedin's judgment : *Tara Kumari v. Chaturbhuj Narayan Singh* and the Bettiah Raj case (Supra). In the former case it was held that an impartible estate had become the separate property of one branch of the family by reason of a number of facts showing that the two branches had become separate. This case cannot now, in their Lordships' opinion, be treated as laying down any proposition of law for the purposes of the present case, as it does not deal with the question whether an impartible estate is to be treated for purposes of succession as joint family property or with the legal consequences that follow if it is.

18. The Bettiah Raj case (supra) went much further and contains observation denying that the junior members of the family have any coparcenary interest on the impartible estate even for purposes of succession, but these observations have been explained in Lord Dunedin's judgment.

19. In the light of these authorities the District Judge, on a consideration of the very voluminous, but often irrelevant evidence adduced by both sides, as to the Jaghirdar's relations with the other members of the family from the time the defendants' ancestor was set aside in favour of his younger brother, arrived at the conclusion stated in para. 94 of his judgment, that there was not the slightest reason to believe that the family of the defendant and that of the Poligar were joint or had been joint for a long time.

20. When the case came before the High Court the whole question had been reconsidered in the judgment delivered by Lord Dunedin in *Baijnath Prashad Singh v. Tej Bali (supra)* and it had been laid down that the earlier decisions as to the right of succession were not affected, and were not intended to be affected, by the line of decisions already mentioned, and that for purposes of succession an impartible estate must still be considered joint family property unless it were shown to be separate. It being established in the present case that this impartible estate was at one time the joint property of a family consisting of the descendants of the common ancestor of the defendant and the last holder, it is in their Lordships' opinion incumbent on the plaintiff to adduce satisfactory grounds for holding that the joint ownership of the defendant's branch in this estate was determined so that it became the separate property of the last holder's branch.

21. Now reviewing the cases which are collected and examined in the careful and exhaustive judgment of Ramesam, J., in the High Court, or referred to in the argument before their Lordships, it will be found that in the early decisions of the Board, which have now been re-affirmed in the leading case, the test applied was whether the facts showed a clear intention to renounce or to surrender interest in the impartible estate.

22. Thus in *Chowdhry Chintamun Singh v. Mt. Nowlukho Konwari* where there had been to some extent a separation in the family, it was held that the question was, whether the plaintiff's father and his branch had waived the right of succession and had impressed upon the taluqua the character of separate property.

23. *Periasami v. Periasami (supra)*, it was held on the facts that Muthu Vaduganatha Tevar, conceiving that he was entitled to succeed to the important zemindari of Shivagunga, had renounced for himself and his offspring all interest in the small and

dependent Palaiyam of Padamatur, thus, in the words of their Lordships in the second *Naragunty v. Venkatachalapati case [1882] 4 Mad. 250*, manifesting, his intention to separate himself and his descendants completely from the Palaiam.

24. On the other hand, in *Rajah Yanumula Venkayamah v. Rajah Yanumula Boochia Vankondora*, it was held that when Bapamdora, a junior member of the family, drove out the fifth Mansabdar, who had quarrelled with his overlord and involved the family in difficulties, and himself became the sixth Mansabdar, he must be held to have taken possession for the undivided family, and that it had not thereby become the separate property of Bapamdora himself and his descendants, so as to exclude the other members of the family from the right of succession. Similarly in the *Naragunty v. Venkatachalapati, (supra)* where the elder brother, Krishnappa, had stood aside and allowed his junior brother, Kuppi, to assert and to enforce the claims of his branch to succeed to the Polliem, their Lordships held that this transaction did not render the impartible estate the separate property of Kuppi and his line, but was consistent with the enjoyment by the other members of the family of their coparcenary interests represented by their enjoyment of maintenance and possibility of succession, and later on, when construing a deed executed by the elder brother, their Lordships observed that it cannot be held that he intended to renounce all claim on the part of himself and his heirs to the succession if it opened by reason of the extinction of the line of Kuppi.

25. Those authorities, in their Lordships' opinion, go far to support the inference deduced by Ramesam, J., from an examination of the cases that in order to establish that an impartible estate has ceased to be joint family property for the purposes of succession, it is necessary to prove an intention expressed or implied on behalf of the junior members of the family to give up their chance of succession to the impartible estate.

26. Their Lordships will now proceed to deal with the grounds of separation relied on in this case. It is, in their Lordships' opinion, clear upon the foregoing authorities that the fact that the defendant's ancestor was set aside in favour of the younger brother, Annadana and his line in 1820 in the circumstances already stated, is not of itself sufficient to show that Ramappa's line thereby lost their rights as members of the joint family to succeed to the estate on failure of Annadana's line.

27. It only remains to be considered whether anything else has happened to produce such a result. It was contended for the appellant that, though there had never been any formal partition, the evidence showed that there had been a separation between the

senior and the junior branches of the family, and also that the defendant's branch had become divided inter se, and that, in either event, the defendant's branch had lost their right of succession to the estate. Now once it is established - as it must now be taken to be - that for the purposes of succession an impartible estate may be joint family property, it is difficult to see upon what principle the fact that the members of the joint family or of any branch of the family have exercised their right of partition over their partible property should be held to divest them of their interest in the impartible estate over which they have no right of partition. It certainly cannot be put upon the ground of surrender or renunciation, for there is nothing in the fact of these partitions of their partible property to suggest any intention of renouncing their rights of succession to the impartible estate, nor do they receive any consideration for such renunciation. In Malabar, where all joint property is impartible, it is a matter of everyday occurrence for a female member of the tarwad and her descendants to acquire and hold property as a tahvizi or sub-tarwad without their rights of property in the main tarwad being in any way affected. Further, to lay down that members of a joint family could not partition their partible property without losing their rights of succession in the impartible estate would impose on these families a restriction on the free right to partition which has been so fully recognised by the decisions of this Board in recent years.

28. Those decisions, which have been cited for the appellant, affirm the right of any adult member of the joint family to become divided in interest as to his share in the joint property by a clear expression of his intention to divide, but there would not appear to be anything in these decisions of which the latest is *Palani Ammal v. Muthuvenkatacharla Moniagar*, to support the plaintiff's contention. On the other hand it is in conflict with the express decision of this Board in *Y. Mallikarjuna Prasada Nayudu v. Y. Duga Prasada Nayudu* In that case the plaintiff, who had sued for partition of a zemindari and other properties, and had failed as to the zemindari, which was held to be impartible, but had succeeded as to the other properties, was held not to have lost thereby his right to sue for maintenance out of the impartible estate on the ground that it had become the separate property of the holder.

29. It is true, their Lordships say, that in that suit a decree was made for partition of a portion of the family property, but it was a very inconsiderable portion, and had no relation whatever to the zemindari estate.

30. It has been contended that the weight of this decision is affected by the fact that it recognizes a right of the junior member to maintenance which has since been

negatived by the decisions of this Board. It is, however, clear that exactly the same question would have arisen if the claim had been to succeed as next heir instead of for maintenance, and that the decision would have been the same way.

31. In the present case the High Court, differing from the District Judge, have held that no separation has been proved either between the two branches or between the members of defendant 1's branch inter se. Their Lordships agree with that decision. A great deal of evidence had been adduced in the trial Court as to whether the two branches had continued joint in food, worship and estate. Ramesam, J., a Hindu Judge, necessarily of great experience in such matters, has pointed out that in Southern India evidence as to separate food and the absence of joint worship is of very little weight. As regards worship, there is practically no joint family worship, and the evidence which was adduced as to whether or not the defendant's branch had any part assigned to them in the annual festival of the local temple in which the Jaghirdar took a prominent part had no bearing on the present question. Similarly, as regards food, Ramesam, J., has pointed out that it is not the practice for the junior branches of the family to live with the owner of an impartible estate, and that no inference as to separation can be drawn from separate living. In the present case, what happened was that the members of defendant 1's branch continued to live in the old family residence on Tiruppadi Hill in houses closely adjoining the so called palace of the Jaghirdar, while the Jagirdar ceased to reside in the hills and acquired a new residence more to his taste in the plains. The position of the junior members was in no way altered : they went on living as they did before, and continued to enjoy the privilege of cultivating land free of the plough tax and poll tax levied on the other inhabitants, a privilege which, in the primitive conditions obtaining in these hills, was equivalent to maintenance. They also, on such occasions as marriages, as members of the Jaghirdar's family, received contributions from the inhabitants of the same kind as those received by the Jaghirdar himself.

32. As regards the alleged separation of the members of defendant 1's branch inter se, the evidence was equally unsatisfactory. One of them, a Hill Munsif, and his brother went to live where their duties and business took them. There was also some evidence that some members of this branch of the family purchased provisions in the plains, it was suggested, on their own account, and also effected some sales of produce.

33. Their Lordships agree with the learned Judges of the High Court that this is evidence of a very trivial and inconclusive kind. As pointed out for the respondent, the facts proved in this case are not nearly so strong as the facts which were held by the

Board to be insufficient to establish separation in *Chowdhry Chintamun Singh v. Mt. Nowlukho Konwari (supra)* and *F. T. Rajya Lakhshmi Devi Garu v. F. T. Surya Narayana Dhutrazu* In the latter case there had been separate living for no less than 70 years. For these reasons their Lordships are of opinion that the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

[1847] 1 Ex. 91 : 11 Jur. 478 : 16 L. J. Ex. 259,

[1877] 1 Mad. 312 : 5 I. A. 61 : 3 Suther. 508 : 3 Sar. 795 (P. C.),

AIR 1921 PC 62 : 43 All. 228 : 48 I. A. 195 (P. C.).

[1888] 10 All. 272 : 15 I. A. 51 : 5 Sar. 139 (P. C.)

[1899] 22 Mad. 383 : 26 I. A. 83 (P. C.)

AIR 1918 PC 81 : 41 Mad. 778 : 45 I. A. 148 (P. C.),

AIR 1915 PC 30 : 42 Cal. 1179 : 42 I. A. 192 (P. C.)

[1875] 1 Cal. 153 : 2 I. A. 263 : 24 W. R. 255 : 3 Suther. 204 : 3 Sar. 537 (P. C.),

[1869] 13 M. I. A. 333 : 13 W. R. P. C. 21.

AIR 1925 PC 49 : 48 Mad. 254 : 52 I. A. 83 (P.C.)

[1901] 24 Mad. 147 : 27 I. A. 151 : 7 Sar. 761 (P. C.).

[1897] 20 Mad. 256 : 24 I. A. 118 (P. C.).