PRIVY COUNCIL

Chota Raja Saheb Mohitai

Vs.

S. Sundaram Ayyar

Privy Council Appeal No. 111 of 1928
(Lord Thankerton, J. Sir Shadi Lal and Sir George Rankin JJ.)

27.2.1936

JUDGMENT

LORD THANKERTON J.

1.This is an appeal from a judgment and decree of the High Court of Judicature at Madras, dated 21st January 1924, which affirmed, subject to a modification, a decree of the Subordinate Judge of Tanjore, dated 1st July 1918, and made in an interpleader suit, which was instituted on 8th July 1912, by the receiver and manager of the Tanjore Palace estate, in order to have the right of succession to these properties determined by the Court. Maharajah Sivaji, the last King of Tanjore, died in 1855, leaving no male issue. On his death the East India Company, in the exercise of its sovereign powers, took possession, as an act of State, of all his properties, which included the properties in suit. About a year later, the senior widow of the Rajah, filed a bill in equity against the East India Company, disputing the legality of the seizure of the private properties of the Rajah, and seeking recovery of the same in her right as senior widow of the Rajah. The litigation was finally determined by this Board on 27th July 1859, when it was held that the seizure of the properties was an act of State, into which the municipal Courts were not entitled to enquire, and that those who otherwise might have had by law a claim on the inheritance of the late Rajah, could have no such claim on the properties in the hands of the Government. The case is reported in *Secy. of State v Kamakshi Boye Soheba,* which may be referred to for the history of the seizure. It is sufficient to quote two passages from the judgment of the Board (p 531) which was delivered by Lord Kingsdown, viz :

> The next question is, what is the real character of the act done in this case? Was it a seizure by arbitrary power on behalf of the Crown of Great Britain of the

> dominions and property of a neighbouring State, an act not affecting to justify itself on grounds of Municipal law? or was it, in whole or in part, a possession taken by the Crown under colour of legal title of the property of the late Raja of Tanjore, in trust for those who, by law, might be entitled to it on the death of the last possessor? If it were the latter, the defence set up, of course, has no foundation.

2. It is extremely difficult to discover in these papers any ground of legal right, on the part of the East India Company, or of the Crown of Great Britain, to the possession of his Raj, or of any part of the property of the Rajah on his death; and, indeed, the seizure was denounced by the Attorney-General (who, from circumstances explained to us at the hearing, appeared as Counsel for the respondent, and not in his official character for the appellant), as a most violent and unjustifiable measure. The Rajah was an independent Sovereign of territories undoubtedly small, and bound by Treaties to a powerful neighbour, which left him, practically, little power of free action; but he did not hold his territory, such as it was, as a fief of the British Crown, or of the East India Company; nor does there appear to have been any pretence for claiming it, on the death of the Rajah without a son by any legal title either as an escheat, or as bona vacantia. It should seem, therefore, that the possession could hardly have been taken upon any such grounds;

> and later at p. 539:
> With respect to the property of the Rajah, whether public or private, it is clear that the Government intended to seize the whole, for the purposes Which they had in view required the application of the whole They declared their intention to make provision for the payment of his debts for the proper maintenance of his widows, his daughters, his relations and dependants; but they intended to do this according to their own notions of what was just and reasonable, and not according to any rules of law to be enforced against them by their own Courts.

3. After various steps had been taken unsuccessfully to persuade the Government to restore the Raj, and, failing that, to make permanent provision for the family of the late Rajah, on 23rd June 1862 the Government of India, which had succeeded the East India Company, informed the Government of Madras that they sanctioned the relinquishment of the whole of the landed property of the Tanjore Raj in favour of the heirs of the late Rajah. In pursuance of these instructions the Government of Madras, on 21st August 1862, passed an order, the material part of which is as follows:

> (1) In Colonel Durand's letter above recorded the Government of India have

furnished their instructions with reference to the disposal of the landed property of the Tanjore Raj, regarding which this Government addressed them under date 17th May last. Their decision is to the effect that "since it is doubtful whether the lands in question can be legally dealt with as State properly, and since the plea in equity and policy for treating them as the private property of the Raja is so strong that it commands the unanimous support of the members of the Madras Government" the whole of the lands are to be relinquished in favour of the heirs of the late Raja.

(2) This question having been settled, it has to be determined on what principle the distribution of the property both real and personal shall be made, or in other words, what are the respective rights of the Raja's widows and of his daughter. The Government have now before them the opinion of the Hindu law officers of the Sudder Court on a question put with a view of ascertaining the Hindu law as applicable to the case.

(3) The law officers differ. The Senior Pandit is of opinion that the real property should go to the widow who has a daughter, and if there be no widow having a daughter, then the real property as well as the personal property should be divided among the widows in equal shares without any regard to seniority. The Junior Pandit holds that the senior widow should succeed to the enjoyment of the whole of the property both real and personal, being at the same time responsible for the maintenance of the others.

(4) The Governor in Council concurs in the opinion of the Junior Pandit which, he observes, is in accordance with the provisions of the Hindu Law as sanctioned by several decisions of the Sudder Court. In the decree passed by that Court in Appeal Suit No. 5 of 1824 printed at p. 454, Vol. 1 of " Selected Decrees", and in that passed in Appeal Suit No. 1 of 1835 printed at p. 40, Vol. 2, the principle that where there are no male heirs, the senior widow is entitled to succeed to the management of the Estate, both real and personal, is distinctly recognised. The Senior Pandit admits that the rights of the widows, according to his construction of the law, whereby they are severally declared to be entitled to an equal share of the real and personal property, are limited to the use of it during their life-time, that they cannot alienate it, and that on the death of the widows it goes to the next heir of the husband. It is obvious that such a distribution of the property, as the Senior Pandit contends for, would greatly endanger its security and the rights of those next in succession. On the other hand, the recognition by the law of a senior widow who during her life time

manages the property providing for the due participation in its proceeds by the other widows-her co-heirs, prevents much confusion and endless disputes, and by limiting the responsibility to a single individual gives greater security to the property itself.

(5) The Senior Pandit refers to an opinion given by himself and by the Junior Pandit in reply to a question put to them on 22nd October 1855 which, it appears to the Governor in Council, exactly meets the case now under consideration. The opinion in question is referred to by the Senior Pandit with the view of showing that the Junior Pandit did not always hold the opinion for which he now contends, but it appears to the Government to tell just the other way. In the opinion referred to it is not suggested that the property should be divided, but it declared (and no distinction is made between real and personal property) that it vests first in the widows and after their deaths is to be inherited by the daughter. This, the Governor in Council conceives, is strictly in accordance with the principles of Hindu Law as expounded by the Court of Sudder Adawlut in the decrees already referred to, and with the evidence adduced in, and decision given by the Supreme Court in the suit instituted against the Government by Kamakshi Bai; and by this principle the Government must be guided in dealing with the estate of the late Raja of Tanjore. The Estate will therefore be made over to the senior widow who will have the management and control of the property, and it will be her duty to provide in a suitable manner for the participative enjoyment of the Estate in question, by the other widows, her co-heirs. On the death of the last surviving widow, the daughter of the late Raja, or failing her the next heirs of the late Raja, if any, will inherit the property.

(6) The Governor in Council directs that the Government Agent at Tanjore will communicate this decision to the widows and daughter of the late Raja, and will take steps to place the senior widow in possession of the property, both real and personal, impressing upon her the responsibility which will attach to her both in regard to her conduct towards her co-heirs and for the security of the property. She will, of course, be required to give a receipt for the whole of the personal property on being placed in possession of it.

4. The decision of the present appeal depends on the proper construction of the terms of the grant at the end of para. 5. At his death in 1855 Sivaji Rajah was survived by (a) sixteen widows, of whom Kamakshi Bai was the senior widow, (b) his mother, (c) two daughters by a predeceased wife, Rajes Bai, married to Sakharam Saheb, who

died in 1856, and Muktamba Bai, married to Sakharam Saheb after her sister's death, and (d) forty sword wives and six sons by six of them.

5. The present question arose when the succession opened on the death of the last widow, Jijamba Bai Saheba, on 3rd May 1912. The parties now claiming the right to the estates are: first, the appellant, defendant 3. who claims to be the adopted son of Sambu Singh, who was adopted by Muktamba Bai, who died without issue in 1885. Second, respondent 2, who was original defendant 1, but is now deceased, and whose representatives have been substituted for him, and respondent 3, original defendant 2, but who is now insolvent and is represented by the Official Receiver, West Tanjore, respondent 21. Defendants 1 and 2 were the two sons of Rajaram who was adopted by Kamakshi Bai, the senior widow of Sivaji, in 1863. Third, various respondents, who either are or represent original defendants 4 to 11, and are the parties entitled to the shares of the sons of the sword wives of Sivaji.

6. The appellant maintains (1) that, under the grant of 21st August 1862, a right to the estates had vested in Muktamba Bai prior to her death in 1885, which passed to her heirs, and that he, as such heir, is now entitled to the whole estate, and (2) that, in any event, he is entitled to take as a "next heir of the late Rajah". In view of the concurrent findings of the Courts below, he no longer challenges the right of the sons of sword wives to share in the inheritance, but he maintains that Rajaram's descendants and the sons of sword wives and their descendants are excluded either (a) on the ground that ?next heir" means next after the daughter, and that they could only come in before the daughter, or (b) on the ground that, in view of the surrounding circumstances at the time of the grant, the intention of the Government to exclude them ought to be implied in the grant. While the adoption of the appellant by Sambu Singh is challenged by the respondents, their Lordships, in considering the contentions of the appellant, will assume that it has been established. Both the lower Courts have rejected the appellant's contentions; the High Court only modified the decree of the Subordinate Judge as regards the share of the estate falling to the sons of sword wives and their descendants. Their Lordships find no difficulty or ambiguity in the; construction of the grant; in their opinion, no gift is expressed in favour of the daughter until the death of the last surviving widow, and no right vested in her until she survived that period, and the words " or failing her" mean failing her survivance at the death of the last surviving widow. This also makes clear that "next heirs" means nearest heirs at the time when the succession opens on the death of the last surviving widow. The daughter, on survivance, would come in as a named heir, and the preceding gift to her

does not affect the legal order of succession denoted by the words next heirs." As regards the surrounding circumstances, from which the appellant seeks to imply an intention to exclude Rajaram and his descendants and the sons of sword wives, their Lordships agree with the views of the High Court on this point, but they would also add that the stronger and more compelling that these circumstances were, the more striking would be the unqualified terms of the grant, which negative the possibility of making any such implication. Their Lordships are therefore of opinion that the appeal fails and should be dismissed with costs, and that the decree of the High Court should be affirmed, and they will humbly advise His Majesty accordingly.

Appeal dismissed.

Cases Referred.

(1857-59) 7 MIA 476=7 WR Eng 722=4 WR 42=1 Suther 373=1 Sar 684 (PC),