

(1890) 02 MAD CK 0001

Madras High Court

Case No: None

Vira Chinnammal

APPELLANT

Vs

Akkulu Ammal

RESPONDENT

Date of Decision: Feb. 7, 1890**Acts Referred:**

- Evidence Act, 1872 - Section 57

Citation: (1896) 6 MLJ 341

Judgement

1. The property in litigation is the palayapat of Erchakka Nayakanur in the District of Madura and the parties to this appeal are the co-widows of

the last male owner, Kadirvelu Sam Nayak who died without male issue in February 1886. Shortly after his death, the Collector of the District

made an enquiry in order to ascertain whether the Court of Wards ought to assume management of the estate, and came to the conclusion that it

was unnecessary to interfere with the respondent's right of management. The palayam was registered in her name but a disagreement since arose

between her on the one part and the appellant and her mother-in-law Virakamu Ammal on the other. The last mentioned lady claimed the estate in

O.S. 36 of 1886, but her claim was dismissed both by the Original and Appellate Courts. The appellant, the junior widow, then brought the

present suit.

2. She claimed the right of sole possession and management in case the palayapat was considered impartible, and a moiety of the property or its

net income by way of equal participation in its beneficial enjoyment in the event of its being held to be partible property. She claimed also partition

of moveable property left by the late palayagar. The Subordinate Judge decreed this claim and the respondent has not appealed from that portion of his decree.

3. As the ground of her claim, the plaintiff stated that the appellant was the senior widow and that the estate was partible. Admittedly the respondent is Kadirvelu Sami's first wife and is the appellant's senior by marriage. The Subordinate Judge has found that the respondent is also the elder of the two according to the evidence on record and the objection taken to his finding is not pressed upon us at the hearing. The contest in appeal is that the palayapat is not, as found by the Subordinate Judge, an impartible estate, and is therefore capable of enjoyment by more than one member of the family at a time. The question arising then for decision is one of evidence concerning the custom obtaining in the family. The course of succession, so far as it is ascertainable by evidence, is not decisive either way. The first palayagar recognized by the British Government was one Muthalagiri Nayak, and he died in 1815, and was succeeded by his only son. The second palayagar Chinnavobala Nayak died without male issue in 1835, and though there was a controversy about the right of succession between his widows Papammal and Chinnammal, and though the Original Court decreed [328] partition between them in O.S. 265 of 1836, the death of the former pending the decision of the Appellate Court terminated the controversy before there was a final adjudication. The junior widow died in 1853 and was succeeded by Chinnavobala's only daughter Virakamu Ammal. In 1882 she transferred the estate to her only son, KadirVelu Sami, whose death has led to this litigation. Thus there have been five cases of succession, and in four there was no competition, whilst in the fifth, though there was a controversy, death of one of the rival claimants superseded the necessity for final adjudication on family custom. The Subordinate Judge then rests his decision (1) on the absence of partition from 1758 (2) on the military tenure upon which the estate was held prior to the introduction of the British rule, (3) on the statements made from time to time by several members of the family when there was no controversy between them, and (4) on the usage obtaining among the

majority of the Palayams or Zamindaris in the districts of Madura and Tinnevely, and we shall now proceed to consider the evidence as to each of those grounds of decision.

4. The first ground is that the Palayapat has existed from before 1758 or for more than 130 years and that there never has been a partition. No

sanad or original grant has been produced" but Exhibit VII, which contains replies to question addressed by Sir Thomas Munro in 1822 to

Zamindars regarding their family usage, contains the following answer to the question as to the date when this palayapat came into existence.

As my ancestors in the territories of Rayar and during Rayar's regime, pleased him very much by their conduct and by their rendering justice to the

duties entrusted to them, and as they converted the forest adjoining Pasumalai into a fertile spot, these lands were granted to them in writing in

consideration of their services as jaghire. Thus my ancestors got the lands and the Pattain (dignity).

5. Again it appears from Nelson's Manual that Erchakka Nayakanur was one of the Dindigul palayams sequestered by Hyder Ali in 1757, that it

was restored by one of his Amildars in 1758, that it was again resumed in 1773 by Mir Saheb who held the Dindigul. country on military tenure

under the ruler of Mysore and restored to the dispossessed palayagar in the same year shortly [329] after Colonel Laing had taken Dindigul, and

that it was resumed for the third time by Tippu Sultan in 1788 and restored to the then palayagar by the British Government after Colonel James

had captured Dindigul in 1790. (Nelson's Manual, Part III, Chap. XI, 2902). The contention for the appellant is that neither Exhibit VII nor the

Manual is legal evidence and that the Subordinate Judge was in error in relying on either. How far Exhibit VII is evidence and what weight is due to

it, we shall consider presently; but as regards the Manual, it may, in our opinion, be referred to in connection with ancient facts of a public nature,

provided it is an approved, public and general history (Taylor on Evidence, Vol. II, page 158). It is provided by Section 57 of the Indian Evidence

Act that on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books of reference. The Manual in,

question was compiled and published under the orders of the Madras Government and contains frequent references to official documents and it

was referred to by the Privy Council in *The Collector of Trichinopoly v. Lekhamani* (1874) L.R. 1 IndAp 314 : S.C. 14 Beng. L.R. 115.

6. We see no reason to doubt that it is an appropriate book of reference in connection with the question whether this palayam was one of the

group of Dindigul playams whose history forms part of the political history of the District of Madura prior to the British rule.

7. The feudal organization of this group of Palayams into military fiefs under the rule of Visvanath Nayak in the sixteenth century is also a matter of

general political history. It is stated in the Manual already mentioned (Part III, pp. 94 and 99), "" that there were 72 bastions to the fort of Madura

and each of them was placed formally in charge of a particular chief who was bound for himself and his heirs to keep his post at all times and under

all circumstances. He was also bound to pay a fixed annual tribute, to supply and keep in readiness a quota of troops for the Governor's army and

to keep the Governor's peace over a particular tract of country. And in consideration of his promise to perform these and other services, a grant

was made to him of a tract of country consisting of a certain number of villages and proportioned to the rank and favor with which Visvanatha

regarded him, together with the title of Palayagaran.

8. Speaking of the Nargantipalayam in 1861, the Privy Council observed that a Palayam was in the nature of a Raj and, although it might belong

to an undivided family, it was not subject to partition (*Naragunty Lutchfiieedavamah v. Vengama Naidu* (1831) 9. M.I.A. 66 : 1 P.C. 30.

Adverting to the Zamindari of Sivaganga in 1863, their Lordships of the Privy Council remarked that its ancient tenure was that of a Raj or

Principality (*Kattama Nacthiar v. The Rajah of Shivaganga* (1863) 9. M.I.A. 543 : 2. Suth. P.C. 31). In the Collector Mr. Wynch's report of the

24th November 1795,--Erchakka Nayakanur is entered as one of the 24 palayams in the Dindigul country paying at that time a tribute of 500

chakkrams (Nelson's Manual. Part IV C. Clause 15) and it appears from that that the several palayagars were petty chieftains paying tribute to the

paramount power. Again, in (1881) L.R. 8 I.A. 99 (Privy Council) the Judicial Committee observed in advertence to impartibility, "such is the case

generally with reference to Palayagar countries as was laid, down in the Narganti case.

9. We are therefore of opinion that the observation of the Subordinate Judge that the Palayam was held on feudal or military tenure prior to the

British rule and that it existed at least from 1758 and that the tenure raised a presumption-of impartibility is well founded.

10. The third ground is the belief or consciousness in the family as to the usage in favor of impartibility. The first document on the subject is Exhibit

VII to which we have already referred. It contains a distinct declaration by the palayagar of 1822 that "there had been no custom at any time by

which the palayam may be divided." It appears, however, that Chinnavobala, the playagar of 1822, was only 15 years old when he forwarded

Exhibit VII and that the document was not acted upon in O.S. No. 1 of 1856, so far as it stated that females were altogether excluded from

succession. The youth of Chinnavobala Nayak is clearly not a valid objection to the admissibility of the document in evidence as it comes from

official custody. As regards, however, the weight due to it, it must be remembered that Chinnavobala had no motive to misrepresent, and though it

purports to be addressed by him, the fact that it was a reply to a circular addressed by the local Government, renders it probable that it was

framed in communication with 1.331] other and adult members of the family at the time. We are therefore inclined to hold that it should not be

altogether excluded from consideration, but that the weight due to it should materially depend upon the extent to which it is corroborated by other

evidence in the case.

11. Their Lordships, after discussing the evidence of the family tradition on the subject and reviewing the history of past litigation, continued.

12. The only description of evidence that remains for us to consider is the usage of other Palayams and Zamindaris in the districts of Madura and

Tinnevely. The Subordinate Judge has discussed the evidence bearing on this point in paragraphs 10 and 11 of his judgment, and we agree in the

conclusion at which he has arrived. The joint enjoyment by co-widows in the palayapats of Tennakudi and Sandeyur may be by mutual agreement

whilst the usage obtaining in a large number of other palayapats ;in the neighbourhood of the one in dispute is against the appellant's contention.

13. Considering the evidence then, as a whole, the tenure on which the palayam was held prior to the British rule raises a presumption that it was

originally impartible. Though it has existed for more than 130 years, there has been no partition and this strengthens the presumption. The tradition

in the family as evidenced by statements made from 1822 when there was no controversy is strongly in favor of impartibility. The usage of many of

the palayams, in the neighbourhood belonging to the same caste is another circumstance in favor of impartiality. Exclusive enjoyment by one

member of the family at a time, even among male co-parceners, being an incident of impartibility, ? the general presumption is that the same is the

case among cowidows between whom no partition is allowed except by way of equal beneficial enjoyment. The recital in Exhibit G as to

temporary joint enjoyment, for a time by Papammal and Chinnammal was avowedly by consent, and in derogation of the right of exclusive

enjoyment asserted by both in O.S. 265 of 1836. There is also the fact that, so far as those ladies were concerned, they were married at one and

the same time. The conclusion, therefore, to which we come is that the Subordinate Judge ; has come to a correct finding and that this appeal

cannot be supported.

14. We accordingly dismiss the appeal with costs.