

(1874) 03 PRI CK 0001

Privy Council

Case No: None

Oolagappa Chetty

APPELLANT

Vs

Hon. D. Arbuthnot,
Collector and Agent To
The Court of Wards of
Behalf of The Minor
Son of Gandama Rama
Krishnama Naiker,
Zemindar of
Gundamanaikanoor;
Kantimatinada Pillai,
Manager of The Said
Estate;
Muthuvenkatadri
Naiker, Zemindar of
Ediacottai and
Guardian of The Said
Minor and Valundi
Ammal Natural
Guardian and The
Mother of The Said
Ward

RESPONDENT

Date of Decision: March 15, 1874

Citation: (1874) 1 IndApp 268

Hon'ble Judges: James W. Colvile, Barnes Peacock, Montague E. Smith, Robert P. Collier,
Lawrence Peel, JJ.

Judgement

1. This is a suit to enforce the payment of a debt due by the late possessor of the polliem of Gundamanaikanoor by the guardians of his minor son, and the Lower Court has found that the debt was incurred for money lent to pay off arrears of peshcush, for which the polliem was about to be attached, and for reproductive work done upon the land, and has

decreed the liability of the Defendants to pay the sum claimed from the revenues of the polliem, as well as from the private property of the late poligar, inherited by the minor.

2. The ground of appeal relied upon by the Defendants is, that so much of the decree as adjudges payment of the debt out of the revenues of the polliem is wrong, the polliem not being an estate of inheritance, but an estate which had been held by the minor's father and the possessors of it who preceded him, for life only, under grants made to them severally by the Government. This objection, I am of opinion, must prevail.

3. It has long been considered an established rule of Hindu law in this Presidency, that an heir is not liable to be sued for the debts of the person whose heir he is, except assets have come to his hands,—that is, he has acquired property by succession from the deceased debtor, and then only to the extent of such assets. Now clearly, as respects the polliem, the Defendant is not in that position. On the determination of the estate of his father by his death, the proprietary right to the polliem reverted absolutely to the Government, and by their fresh grant to the Defendant a newly created estate for life became vested in him. In this respect the present case differs from the cases of *Naragunty Lutchmeedavamah v. Vengama Naidoo*, and *the Collector of Madura v. Veeracamoo Ummal*, cited in argument from 9 Moore's Indian Appeals, pp. 66 and 446. They were cases of disputed titles to polliems which were, it appears, hereditary. The Defendant, therefore, is not liable as the personal representative of his father by reason of his possession of the polliem.

4. So far the learned Counsel for the Respondent hardly contested seriously the non-liability of the Defendants (the Appellants). His main argument was, that by the Plaintiff's loan the polliem had been saved from confiscation, and the grant of it secured to the minor, and that afforded an equitable ground for making the liability in the present case an exception to the general rule.

5. It does not appear to me that the necessary effect of enforcing the attachment would have been to deprive the minor of a grant from the Government; but even assuming that such would have been its effect, I can see no grounds of equity upon which to rest the Plaintiff's claim, which is, in effect, to treat the debt as a charge upon the minor's estate. The Plaintiff simply made the late zemindar his sole debtor for advances to enable him to protect his life interest by paying off the charge for arrears of peshcush. They stood, in short, in the relative positions of ordinary simple contract creditor and debtor....

For these reasons I am of opinion that the decree of the Lower Court must be reversed so far as it declares the liability of the Defendants in respect of the revenue of the polliem. In other respects the decree will stand affirmed. I think the Appellants' costs should be paid by the Respondent.

6. The only question is," said Mr. Justice Holloway, " whether the revenues of a polliem, not hereditary, can be held liable for the debts of the previous holder.

7. The ground upon which it is sought to bind them is that the debts were incurred for the release of the estate from attachment. If this had been proved, and the present holder had taken the estate through the borrower, there would be no doubt of the liability, and the reason would be that the successor takes both the rights and liabilities of him under whom he claims, and must discharge the latter to the extent of the assets taken. It is unnecessary here to advert to any exceptions. The reason why this rule does not apply to the successor to a polliem is that, as pointed out in 3 Madras H. C. Kep. 303, there is no continuance of the 1 previous estate; the present holder does not succeed....

8. What the advance of money preserved, if indeed it preserved anything, was the estate of the then holder. It had and could have no connection with an estate which had not then and might never have existence, since it wholly depended on the will of others....

The rule of law perfectly well established here is, that a man must discharge the liabilities of him under whom he claims, to the extent of the assets taken. It follows that the assets so taken are the only fund upon which the creditor has a claim, and the nature of the estate taken shews that its object matter is not assets, and for the simple reason that it was not taken from or through the debtor. I have no doubt that the decree of the Lower Court must be reversed so far as it seeks to fasten the debt upon the income of the polliem.

9. No appeal was preferred against this decree within the six months allowed for an appeal to Her Majesty in Council. But, on the 26th of April, 1871, the High Court of Madras heard and decided an appeal in a case in which one Lekkamani Ammal was the Appellant, and the Respondents were the Collector of Trichinofoly and the present zemindar of Marungapuri (the case which forms the subject of the next Report Infra, p. 282).

10. As the decision in the last-named case overruled the doctrine upon which the suit of Oolagappa Chetty v. Arbuthnot and Ors. had been decided adversely to the Appellant, and as the time for appeal to Her Majesty in Council had expired, the Appellant applied for special leave to appeal to Her said Majesty in Council; stating, amongst other things, that the title to numerous estates in the Presidency of Madras depended upon the question whether unsettled polliems were held only for life, or for an estate of inheritance, and that it was for the public interest that such question should be determined by a final decision.

11. Her Majesty, by Order in Council, bearing date the 5th of February, 1872, accordingly directed and ordered that the Appellant should be allowed to enter and prosecute his appeal.

12. The appeal now came on to be heard.

13. Mr. Field, Q.O., and Mr. J. B. Mayne, for the Appellant:

The history of the poligars is to be found in the Manual of the Madura District, compiled from official sources by Mr. Nelson, by order of the Madras Government; and in the Regulations of 1802 and 1822. It appears that excessive assessment produced rebellion, and that the Government afterwards contemplated a permanent settlement of the rent to be exacted from each poligar; but some of the polliems were treated as only temporarily settled, and some were assumed for a time, in order to ascertain what they would yield.

14. In the meantime a poligar in possession of his polliem, even if the assessment has not been permanently settled, can exercise almost every power which a proprietor in England could exercise. He lets land to ryots, receives rent, pays peshcush to Government, and has, as it were, the fee simple; and the Government may resume the land if he does not pay. On his death his son gets the land. He appears to be the owner, the Government shews no intention to interfere with his assessment, and credit is given to him as proprietor. In the present case the Appellant lent money to the late zemindar for purposes beneficial to him and to the estate; the family does not contest it; it is only the collector, as guardian of the minor, who disputes the claim; it was admitted that this was a reasonable charge if the estate was liable to the debts of the ancestor. There is no evidence of the nomination of the holders of this polliem by the Government, or of any interference on its part. The Hindu family is a continuous institution; but with family enjoyment you find family obligations. Even where an estate is held as a raj by a single member of an undivided family, those who are joint with him in family are entitled to maintenance. Where the Government leaves a polliem in the possession of one family from generation to generation, this gives the poligar credit, and enables him to obtain advances. The razinamah is in the nature of a charge on the polliem, and was made upon good consideration. Among the Hindus, prima facie, all property is hereditary. Even the humblest village offices have a strong tendency to become hereditary. All property, being hereditary, is liable in the son's hands, for the debts of the father. The liability for debts is not only legal, but religious. Sir Thomas Strange, Hindu Law, vol. i., p. 166, states, as the two grounds on which a man takes property, the duty of performing the obsequies, and that of discharging the debts: and in this respect he makes no distinction between, personal and real property, ancestral and acquired. In the case of Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree 6 Moore's Ind. Ap. Ca. 421 the Court says that the liability depends on the character of the debt, and not on that of the estate. The principle of the adverse decisions was an alleged universal rule, that no unsettled polliem could be hereditary; and therefore, if it be shewn that one unsettled polliem was hereditary, the principle fails.

15. It appears from several Madras cases that unsettled polliems might be hereditary. Madras Dec. 1857, p. 51; Madras Dec. 1860, p. 72; Collector of Madura v. Veeracamoo Ummal 9 Moore's Ind. App. Ca. 446.

16. The collector gave no evidence of the actual history of the devolution of the zemindary. The proposition on which the Court went was general, that no unsettled polliem could be hereditary. We submit that some unsettled polliems may be hereditary

and some not. There being a current of decisions that unsettled polliems were not hereditary, that point was not contested in the Court below; but it was not admitted that any evidence applying to this polliem in particular, shewed it not to be hereditary, and we are not excluded from contending here that there is no general rule that an unsettled polliem cannot be hereditary.

17. Supposing there were no evidence on either side, we say that polliems must be taken prima facie to be hereditary, though there are instances the other way. Even if a sunnud had been given, it would not be conclusive against us 14 Moore's Ind. Ap. Ca. 427. It is common to take a new sunnud on descent even where the tenure is hereditary. The allegation that this property is not of a hereditary character rests on arguments from Regulation XXV. of 1802, which was explained by

18. Regulation IV. of 1822. The decisions of the Sudder Court also rely on Regulation XXV. of 1802. Acts of the native Government in turning out, do not shew that the Government had right, only that it had power.

19. Bengal Regulation 1793, preamble, recites the practice of Asiatic Governments. There is a difference between the Bengal and Madras preambles; but it is a mistake to suppose that the Madras Regulations recognise no proprietary right, except that which rests on a permanent settlement. There is no ground for holding that the estate of the zemindar is that of a tenant for life. If not hereditary, he would be only at will--a squatter. In the west of India, large tracts are held by Nairs and others, without any sunnud, where the estates descend according to their own law. This interpretation of the Regulation only applies to those who have got sunnuds. It takes away no rights. Regulation IV., 1822, means that the Regulation is not to affect any class of property except as to the people who are to receive sunnuds; leaving all others as before.

20. If we suppose Regulation XXV. of 1802 had never been passed, and we go back to the old law, we find the property to be in the cultivators, Government having a right to a share.

21. In early Hindu society, there was no intermediate between the sovereign and the cultivator. Under Mahomedan law there were intermediates. Some Hindu tribes remained imperfectly conquered, and their chiefs retained greater power than elsewhere. This appears from the Fifth Report of the Select Committee of the House of Commons on the affairs of India (1812), and from the Madura Manual. The list of names in the Manual, pp. 10-12, shews that the polliems were held by Hindus. Sir Thomas Munro's account, in the Appendix to the Fifth Report, of the poligars of other districts, shews that their estates descended from father to son. The Government has treated them all as proprietors, has assumed the land when the rent was in arrear, and handed it back eventually. It has paid pensions to the ousted zemindars, and accepted the surrender of the property from them when they thought the burden of the rent too great. The permanent settlement was intended for all; but the Madras Government found it difficult to determine the annual

demand in each case Pages 98-100, Part iv. Madura Manual, extra. Proc. of Board, 1815.

22. In the official correspondence, they speak of the poligar paying his arrears on his restoration; but they still use language shewing they considered the property his. The reports divide the lands 0(into Government lands, where the Government is absolute owner (and makes its bargain with the ryots; and polliems, in which Ho Government takes the tribute, not claiming property. In a recent (case from Ganjam, of an unsettled polliem, it was laid down that a sunnud is only intended to fix the amount of the revenue, not to. recognise the title of the possessor of the land. The rights as between zemindar and ryot are the same, whether there is a sunnud or not.

23. The razinamah was given for good consideration, and the Court ought to have declared in the terms of the razinamah. It is the practice of the Momssil Courts to carry such agreements into effect.

24. In the case of the Collector of Madura v. Veeracamoo Ummal 9 Moore"s Ind. Ap. Ca. 446, the Government sued for possession by escheat for want of male heirs of a polliem not held under Istimrari Surund, alleging that females were not competent to succeed to a polliem, though it had itself installed females as heirs; but the Privy Council sustained the decree of the Sudder Dewanny at Madras, which decided that a female was entitled to succeed as heir. No doubt the Sudder Court refused on that occasion to listen to the plea that the Government was entitled to appoint at will to such a polliem on the death of the incumbent, merely because the point had not been taken in the Court below; but it would certainly have been taken in the Court below if it had been a sound argument. It was singular to sue for an escheat if the estate was not hereditary.

25. The early Madras cases were decided without argument, and upon less information than the Courts now possess. The case of Naragunty Lutchmeedavama v. Vengama Naidoo 9 Moore"s Ind. Ap. Ca. 66, shews that an unsettled polliem may be hereditary. But the Government in that case would not select, but gave leave to the Applicant to sue as heir, and left it to the Court to say who was heir. This is fatal to the argument that polliems are not hereditary; for if Government had a right to appoint, it would have appointed. In the present case it was for the Defendant, the collector, to prove his assertion that the polliem went by the appointment of Government.

26. Mr. Forsyth, Q.C., and Mr. H.C. Merivale, for the first Respondent:

The history of the polliems shews that the Government treated the poligars not purely as landowners, but changed, assumed, restored, and dealt with their estates in various ways. The poligar was originally an officer and not a proprietor, and the language of the Madras Regulations shews that he was only to acquire proprietary rights on receiving a sunnud after the Government had made a settlement of revenue with him in perpetuity. It is for the Appellants to shew that the estate was hereditary, and they have adduced no proof of it. No doubt the Government has usually appointed the heir upon a vacancy, and

people seeing father followed by son, think the property must be hereditary, just as the eldest son of the Sovereign is popularly supposed to be Prince of Wales by right of birth, though, in fact, he is always created Prince of Wales.

27. Though the succession continued in the same family, it is not right, in the absence of all evidence, to presume that the tenure was hereditary. The report of the case of *Lekkamani v. Zemindar of Marungapuri* 6 H.C. Mad. 226 shews that the Judges thought that there was a great variety of tenures. In some cases, owing to the remissness of Government, no appointments were made by the Government. In others, nominations were made by the Government, always choosing in the family, and generally the eldest son. Probably they merely appointed without giving a sunnud on the occasion. In this case the zemindar contracted a debt and the creditor sued him; and upon his death his son was not made party, but a fresh proceeding was instituted, treating the son as a stranger. The order of Court required that heirs should be nominated, which implies that they required nomination. The son required no nomination to constitute him heir-at-law, though he was not entitled to the polliem without nomination.

28. In the *Marungapuri* case the Court examined the evidence adduced to shew that the Government appointed. Where property in anything is predicated--as it is said in the Regulations that the Government has the proprietary right--it must be assumed to be absolute until the contrary is proved; and the fact that the heir was usually appointed does not take away the right of Government. This is a very peculiar property; it had its origin before the days of the British Government, but we acknowledged it.

29. It is not denied that, by special grant of Government, a polliem. may be hereditary. In the *Naragunty Case* 9 Moore's Ind. Ap. Ca. 66, Government had granted a polliem to a man and his heirs, and the question was who was his heir. In that very case it appears that in 1866 the only surviving representative of the eldest branch of the family was nominated by the Governor of Madras in exercise of his prerogative. If the son takes, not as heir but under the appointment, this property cannot be answerable for the father's debt.

30. It was assumed in the Court below that the general law was, according to repeated decisions of the Madras Court, that polliems for which no sunnud had been given were not hereditary, but subject to appointment by Government; hence no evidence was offered to shew that this polliem had gone by appointment. If this is not held to be the general law, the case ought to be remitted to the Madras Courts for the purpose of taking evidence on the subject.

31. It was then mentioned to their Lordships that an appeal from the High Court of Madras in the *Marungapuri* case was coming on for hearing at an early date, and it was ordered, by consent of the Counsel on both sides, that the further argument of the present case should stand over till the *Marungapuri* case was before the Committee.