(1879) 12 PRI CK 0004

Privy Council

Case No: None

Rajah Venkata Narasimha Appa Row Bahadur; Rajah Venkata Narasimha Appa Row		APPELLANT
	Vs	
Rajah Narayya Appa Row Bahadur and others; The Court of Wards and others		RESPONDENT

Date of Decision: Dec. 13, 1879

Citation: (1879) 7 IndApp 38

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

Judgement

Morgan, C.J.

1. "I gave my reasons for affirming the decree of the District Court orally at the conclusion of the argument. So far as I can now recall them, they were substantially as follows.

2. "Admitting, as the Appellant''s counsel argued, that the Respondents were bound to show that the ordinary rules of succession were inapplicable, I thought they had sufficiently proved that the estate in dispute, is an ancient zemindary of a peculiar character, and that it is impartible.

3. "So far as its history can be ascertained, it was, in its origin and before the Britsh rule, a military jaghire held on the tenure of military service,

4. "Though not at first strictly heritable, it ultimately became so; and from its nature the succession to the zemindary would then be, not according to the general law of inheritance, but to the rule of succession for impartible inheritances.

5. "The interruptions in the holding, which occurred owing to the misconduct and incapacity of some of the proprietors, did not work any alterations in the tenure, so far as its impartible character was concerned.

6. "At the permanent settlement in 1802, and in consequence of the prior arrangements made between the brothers, Venkata Narasimha Appa Row and Ramachandra Appa Row, the zemindary became divided into two estates. It was contended that, by the acts of the parties and by the settlement transaction, the old tenure was then at an end, and that the lands included in the zemindary became two ordinary estates held under the British Government and having no peculiar incidents.

7. It is true that the former state of things and the ancient services were abolished for reasons of policy, and, in accordance with the previous agreement, two estates were then created in its place: but I find nothing to satisfy me that this division of the old zemindary was intended wholly to destroy its peculiar character and incident.

8. The mode in which the estate had been enjoyed since the settlement seems to me to support the conclusion that it is impartible.

Holloway, J.

9. "The only question at issue in the appeal was, whether the zemindary was divisible, or whether it was one of those to be held by an individual member.

10. "Encouraged by observations casually made in former proceeding this suit has been brought, and the argument there proceeded on the ground that the impartibility must in every case be made out by evidence. It was treated as a privilegium. This in our opinion is not the correct view. The rule of law to be applied is dependent in every case upon the nature of the tenure, and impartibility is in certain cases as much a rule of general law as partibility in others. The question is not, whether the exception is made out, but what is the rule.

11. "It is beyond dispute, and has frequently been recognised by the Judicial Committee, that with respect to many zemindaries in this presidency individual holding is the rule.

12. "The reason of it is undoubtedly that the tenure is governed by principles not wholly derived from private law.

13. "Impartibility has frequently been said to attach to ancient zemindaries. If antiquity is the single test on its first aspect, the case would be concluded. This is one of the most ancient. It was held by ancestors of the present family, previously to the cession of the Circars. That the owner in unquiet times was something of a plunderer, seized all that he could, only shows, still more forcibly, that in its inception this estate was rather a principality than mere private property.

14. "As history and the papers shew, he was a feudatory of the Nizam, dependent or independent according to the strength, at its extremities, of the central government. He was one of the many antitypes of the Nizam himself. His acceptance of the permanent sunnud altered in no respect the quality of his estate. It merely bound the Government, which granted it, not to exercise what with respect to tenures of this kind former Governments considered their undoubted right-the determination of the succession in each individual case. In the decision in 1818, in a suit seeking much the fame relief as is now sought, the Sudder Court held that the matter was without the scope of municipal law, that the Government alone had a right to determine how and by whom the estate should be held. As a construction of the regulation of 1802, that decision is undoubtedly open to much observation ; but the dismissal of the claim, undoubtedly well founded on the ordinary doctrines of Hindu law, is a decision that this estate is not held according to those doctrines. Probably, this attempt would never have been made, but for the proceedings by which, on their own petition, the Government allowed two of the brothers to take parts of the estate. It is argued that this entirely altered the quality of the parts and converted them into ordinary estates under Hindu law.

15. It is difficult to see on what basis this argument rests. The natural construction of the act seems to be-We will hold one half each upon the terms on which formerly one held the whole. There is nothing to displace this natural construction ; and if rules of inheritance could be varied by convention, there was certainly no agreement to make such variations.

16. "It is to us abundantly clear that there is not an estate in these provinces of which the original impartibility may be more safely Predicated, and we are satisfied the acts which are supposed to have charged this state of things did not even profess to do so.

Innes, J.

17. "I agreed at the time judgment was pronounced on the ground that the evidence shewed clearly that the zemindary was an ancient impartible estate in the nature of a principality, and that what occurred subsequently between the brothers had not altered the character of impartibility attaching to the portions of i he original estate which they then agreed to hold separately."

18. Cowie, Q.C., and Grady, for the Appellant, contended, that the effect of the sunnud of 1802 was to render the zemindary of Nuz-vid partible and subject to the general Hindu law of inheritance. It created a new zemindary carved out of the original estate which had been resumed by the Government in 1793. There is nothing to show that the Government intended by the grant of 1802 to preserve the original military tenure under which the ancient estate had been held. The resumption put an end to the impartibility, the regrants were never subject to that rule. No family usage was proved specially regulating the descent of the zemindary

in question, and it cannot be presumed that it was granted subject to any rule of inheritance other than the ordinary one. Reference was made to the Shivagunga Case 9 Moore''s Ind. Ap. Ca. 606.; Rajkishen Singh v. Ramjoy Surma Mozoomdar 1 Ind. L. R. (Cal. Ser) 186.

19. Leith, Q.C., and Mayne, for the Respondents, contended that as the original character of the whole estate was that of a military tenure connected with a raj, impartibility was impressed upon the whole of it. The zemindary of Nuzvid, it must be presumed, in the absence of clear proof to the contrary, remained impartible. Impartibility does not import indivisibility; the former term means that an estate is not subject to the Hindu law of partition, although a division may be effected, as in this case, not according to that law. Here the division was by act of the ruling power, and the presumption is, that the character of impartibility is impressed upon each portion of the estate so divided. Reference was made to the Hunsapore Case, Beer Pertab Sahee v. Maharajah Rajender Pertab Sahee 12 Moore''s Ind. Ap. Ca. 34. The intention of the Government must be taken to have been to restore the zemindary with those incidents of tenure which previously existed. In the analogous case of a settlement under Reg. XXV. of 1802, the effect would be not to alter the tenure but to fix the revenue.

Come, Q.C., replied.

Dec. 13 The judgment of their Lordships was delivered by

Barnes Peacock, J.

20. This is an appeal from a judgment and decree of the High Court of Judicature at Madras, affirming a judgment and decree of the Acting i District Judge of Guntur, in a suit in which the Appellant was the Plaintiff, and the deceased Respondent, Rajah Narayya Appa How, was one, and the principal one, of the Defendants.

21. The suit wan brought to recover, amongst other things, a sixth part or share of the zemindary of the six pergunnahs of Nuzvid, in the Kondapalli Circar, to which the Plaintiff claimed to be entitled by inheritance, as one of the six sons of Rajah Shobhanadri.

22. It was not disputed that the zemindary, prior to the year 1802, formed part of an ancient and much larger estate which was indivisible and descendible to a single heir, and that prior to the British rule it was a military jaghire held on the tenure of military service, and in the nature of a raj or principality.

23. It is unnecessary to trace the succession to the ancient zemindary further back than to the year 1772. It is found by the Judge of the first Court that, in that year Vankatadri, who had succeeded to the estate, died, and was succeeded by his son Narayya, who was proclaimed a rebel, and made a state prisoner in 1783. The entire estate was confiscated and resumed by Government, and in the year 1784 was restored to Venkata Narasimha, the eldest son of Narayya, the rebel. It may be

assumed that the estate, which was restored in its entirety, was restored as it existed prior to the confiscation, and that the rule as to impartiality and descent continued as before. See the Hunsapore Case 12 Moore''s In Ca. 1.

24. Narayya, the rebel, had three sons, Venkata Narasimha, the eldest, to whom the estate was restored, Ramachandra, and Narasimha.

25. In 1793 the estate was again resumed by Government for arrears of revenue, and in 1802 two new zemindaries were carved out of it, of which the zemindary of Nuzvid, now the subject of dispute, was granted to the second son Ramachandra, and the other, Nidadavolu, which was of much greater extent, to the eldest son Venkata Narasimha.

26. Upon the death of Ramachandra he was succeeded by his only son Shobanadri. In 1816 the third brother, Nurasimha, brought a suit against his eldest brother, the zemindar of Nidadavolu, and against the guardian of the minor zemindar of Nuzvid, in which he claimed one third of the whole property as being joint and divisible family property. He obtained a decree in his favour in the original Court. This was reversed on appeal by the Sudder Court, and his suit was dismissed. The ground of the decision was that the act of the Government in creating the two zemindaries was an act of state, and that the zemindars held by a title which the Courts could not question. No appeal was preferred against the decree of the Sudder Court, which became final. The unsuccessful Plaintiff died some time after the decree, and an arrangement was made by which the two zemindars settled an annual sum upon his family for their maintenance. This was afterwards commuted into a grant of land in full of all claims pa: t and future. Whatever, therefore, might have been the rights of the third brother, Nurasimha, they have been extinguished.

27. On the 7th of December, 1864, the eldest of the said three brothers, the zemindar of Nidadavolu, died, leaving two childless widows, and a will, in which he expressed a wish that his estates should be divided equally between his widows. The Collector, in reporting the facts to the Board of Revenue, expressed his opinion that the elder wife should be recognised as successor, and that no division of the estates should be allowed, as they were of ancient origin.

28. Shobanadri, the second holder of the newly-created Nuzvid zemindary, had six sons. In 1866 his extravagance and mismanagement of the estate had caused quarrels between himself and his eldest son, Narayya, the principal Defendant and the original first Respondent, for the settlement of which the assistance of the Collector and the Government was invoked. In consequence of these disputes, Shobanadri presented a petition to Government in November, 1866, praying that orders might be issued for the division of his estate among his sons. On the 7th of January, 1867, the Government replied, referring him to the Collector, to whom instructions had been communicated on the subject of his petition. What those instructions were does not appear. From what follows, however, it is evident, as

stated by the Respondents in their case, that his request for a division was refused.

29. Shobanadri died on the 28th of October, 1868, leaving six sons, of whom the Plaintiff was one. The eldest, Narayya, was placed in possession of the zemindary by the Collector, and on the 19th of December was registered under the orders of the Board of Revenue as zemindar of Nuzvid.

30. On the 30th of November, 1868, Venkata Narasimha, the Plaintiff and present Appellant, petitioned Government praying for a division of the zemindary, and was informed in reply that the estate was not divisible. He repeated his application on the 26th of January, 1869, referring to the wish expressed by his father that the zemindary should be divided among his sons. To this petition the Government again replied that the zemindary cannot be divided, except under the provisions of Regulation XXV. of 1802, or in conformity with a decree of a competent Court.

31. On the 20th of October, 1871, the Plaintiff commenced his suit against the deceased Respondent, Narayya, as the principal Defendant, and joined his four other brothers as co-Defendants.

32. The first Defendant, Narayya, put in a written statement, and contended that the disputed zemindary was an ancient zemindary, and of the nature of an impartible raj. The other Defendants upheld the Plaintiff''s right to a division of the zemindary, but stated that the Plaintiff had no cause of action against them.

33. On the 8th of July, the First Court framed, amongst others, the following issue, viz., "Whether the real property constituting the zemindary of Nuzvid is divisible or not," and having found that issue against the Plaintiff dismissed his suit, so far as it related to the zemindary in dispute.

34. The High Court, upon appeal, affirmed the decision of the first Court, whereupon the Plaintiff appealed to Her Majesty in Council against the judgment and decree of the High Court.

35. Pending the appeal, the first and principal Defendant, Rajah Narayya, who was the first Respondent, died, and by order of revivor the Court of Wards was made Respondent in his place.

36. The case has been fully argued on both sides, and the only question to be considered is whether when the ancient zemindary was divided into two, the newly constituted zemindary of Nuzvid now in dispute was subject to the same rule as regards impartibility and inheritance as that to which the entire ancient zemindary was subject.

37. The sunnud under which the zemindary of Nuzvid was granted to Ramachandra is dated the 8th of December, 1802. It is directed to Ramachandra, describing him as the zemindar of the six pergunnahs of Nuzvid in the Kondapalli Circar, and, after reciting the benefits to be derived from a permanent settlement of the revenue, it

was declared in the 2nd paragraph that the Government had resolved to grant to zemindars and other landholders and their heirs and successors a permanent property in their lands in all time to come, and to fix for ever a moderate assessment of public revenue on such lands.

38. By clause 4 the settlement was fixed at a certain amount. By clause 7 it was said, "You shall be at free liberty to transfer, without the previous consent of Government, or of any other authority to whomsoever you may think proper, either by sale gift or otherwise, your proprietary right in the whole or in any part of your zemindary; such transfers of your land shall be valid and recognised by the Courts and officers of Government, provided they shall not be repugnant to the Mahomedan or the Hindu laws, or to the regulations of the British Government." And, finally, after annexing to the grant certain stipulations, the 15th article declared that "continuing to perform the above stipulations, and to perform the duties of allegiance to Government, you are hereby authorized and empowered to hold in perpetuity to your heirs, successors, and assigns, at the permanent assessment herein named the zemindary of....." The name of the zemindary is not inserted, but at the end of the sunnud there was added a list headed "A list of the villages in the zemindary of the six pergunnahs of Nuzvid, in the Kondapalli Circar."

39. The name of the zemindary in dispute appears, therefore, to be in strictness, "The zemindary of the six pergunnahs of Nuzvid, in the Kondapalli Circar," but for convenience it is treated as the zemindary of Nuzvid.

40. The provisions of the sunnud differed in no respect from those which are contained in every ordinary deed of permanent settlement ; the feudal or military tenure was at an end; the six pergunnahs to which the sunnud related became a new zemindary, subject only to the payment of a fixed land revenue, and subject to the ordinary stipulations and the performance of the duties ordinarily im posed upon zemindars.

41. It is stated in the 11th paragraph of the written statement of the first Defendant, "that under the empire of the Mahomedans the ancient zemindary of Nuzvid was extensive, and was governed by its chiefs with absolute power and independence; but under the policy of the British Government the same has become divested of its military character, and dwindled into a large peiscush paying zemindary."

42. This; is doubtless a correct statement.

43. In the former state of things indivisibility and impartibility and descent to a single heir were the ancient nature of the tenure, and with good reason when the estate was subject to military services and under the government of a chieftain, and was in the nature of a raj or principality; but when the ancient zemindary was resumed and two new (states were created out of it, of which the zemindars ceased to be; liable to military service, or to be independent chiefs, but held merely as ordinary zemindars, subject to the payment of a fixed assessment of revenue, there

was no reason why the rule of impartibility or descendibility to a single heir, according to the rule of primogeniture, should be extended to the newly created estates.

44. There was no state policy which required that the new estate of Nuzvid should be indivisible, otherwise clause 7 would not have been inserted in the sunnud. If Ramachandra had transferred by gift, sale, or otherwise any portion of his zemindary such portion would not have been impartible or descendible, according to the rule of primogeniture to a single heir of the transferree, if a Hindu or Mahomedan. Indeed it was expressly stipulated in the sunnud, that transfers in whole or in part should be valid, provided they should not be repugnant to the Hindu or Mahomedan laws, which they would have been if they had been limited to the eldest son or oilier single heir of a Hindu or Mahomedan transferee. There was no reason why the new zemindary should have been made impartible or limited to Rajah Ramachandra and his heirs according to the rule of primogeniture, when, so far as Government was concerned, he might have divided it by will amongst several devisees.

45. The limitation in paragraph 15 of the sunnud was to his heirs, by which, according to their Lordships'' interpretation, his heirs according to the ordinary rule of Hindu law were intended. Ramachandra did not at the date of the sunnud hold an estate descendible to a single heir according to the rule of primogeniture, and there is no reason why the limitation to his heirs should be construed to mean a single heir according to the rule of primogeniture, when the descent from his transferees would be regulated by the ordinary rules of inheritance. If the Government had intended to make the estate impartible, and to limit the succession to a single heir according to the rule of primogeniture, instead of to the heirs of the grantee, according to the rule of Hindu law, there is no doubt they would have expressed their intention in unambiguous language. Their Lordships have nothing to do with the case of Venkata''s new zemindary of Nidadavolu, and therefore abstain from any expression of opinion as to whether it was impartible or descendible to a single heir or not. Nor are they, nor were the Civil Courts, bound by any views of the revenue authorities as to the effect or construction of the grant or the intention of the Government. Nor has the decision of the Sudder Court in Narasimha''s case any bearing upon the construction of the sunnud of 1802, or upon the rights of the parties to the suit. In the Hunsapore Case 12 Moore''s Ind. Ap. Ca. 1., the zemindary was an impartible raj, which by family usage and custom descended to the oldest male heir, according to the rule of primogeniture, subject to the obligation of making babooana allowances to the junior members of the family for maintenance. It was seized and confiscated by the British Government in 1767, in consequence of the rebellion of the Rajah, who was expelled by force of arms. The Government, having kept possession until 1790, granted it in that year to a younger member of the family, on whom subsequently they conferred the title of Rajah. There was no fresh sunnud, and the only question raised was, what was the nature of the estate

granted; whether it was a fresh grant of the family raj with its customary rule of descent, or merely a grant of the lands formerly included in the raj, to be held as an ordinary zemindary. In that cast, the estate whilst in the hands of the Government had never been broken up, and it was held that it was the intention of the Government to restore the zemindary as it existed before the confiscation, and that the transaction was not so much the creation of a new tenure us the change of the tenant by the exercise of a vis major. There the estate was transferred in its entirety, but in this case the estate was divided into two distinct zemindaries, and a new sunnud granted allowing the same to be alienated in part or in whole, and making it inheritable by a person and his heirs and assigns for ever, that person being one who had never held an estate descendible to his eldest male heir.

46. The word "heirs" used in the sunnud must, in their Lordships'' opinion, be construed to mean the heirs of the grantee according to the ordinary rules of inheritance of the Hindu law.

47. With reference to the effect of the sunnud of 1802, some reliance was attempted to be placed on an agreement said to have been entered into between Venkata Narasimha and his brother Rajah Ramachandra, dated the 17th of July, 1795, but their Lordships do not think that it was legally proved, and therefore reject it. In considering the effect of the sunnud of the 8th of December, 1802, reference may be had to the letter of Mr. John Head, the Collector of Masulipatam, to the secretary of the land revenue settlement division, dated the 25th of July, 1802, in which he submitted a plan for the division of the ancient zemindary of Nuzvid, and offered an opinion as to the respective claims of Venkata Nurasimha and of Ramachandra, preparatory to the introduction of the permanent settlement. In that letter, of which their Lordships are of opinion that the official copy of the copy filed with the Board of Revenue (which was an official record) was under the circumstances admissible in evidence, Mr. Read says:

A perusal of the late Collector''s correspondence will show that Ramachandra Row''s claim to participate in the zemindary haw been long and steadily maintained, so late, indeed, as the 17ib of July, 1795. The views of Venkata Narasimha Appa Row and Ramachandra Row underwent the discussion of their relatives and adherents. In consequence, an agreement was exchanged, providing for the division of the estate, effects, and zemindary of their deceased father, conformable to the usage in such cases.

No doubt remains of the execution of this agreement, although I cannot find it received the sanction of the Collector. The elder Appa Row pretends to state that the document was forcibly taken, and has presented what he terms a corrected plan for the division of the zemindary. The charge of forcible exchange I believe to be incorrect, and the agreement to which Venkata Narasimha Appa Row appeals is no more than a loose memorandum in the handwriting of the Rajahmundry Peishkar.

48. But even without that letter their Lordships have no doubt whatever as to the proper construction of the sunnud of 1802, and that the zemindary thereby created for the first time was not impartible or descendible otherwise than according to the ordinary rule of the Hindu law.

49. Their Lordships will therefore humbly advise Her Majesty to reverse the judgments and decrees of both the Lower Courts, and to order that the Appellant do recover one sixth part or share of the villages included in the zemindary of the six pergunnahs of Nuzvid, in the Kondapalli Circar, together with his costs in both the Lower Courts in proportion to the value of that property.

50. It was found by the First Court that the kamatan lands and gardens in various villages to a total value of Rs. 58,500, of which a garden valued at Rs. 300 is in the Plaintiffs possession, and also the forts, houses, granaries, stables, &c., valued at Rs. 1,23,500, form part of the zemindary, and were therefore indivisible under the first issue, and no appeal was preferred against that finding.

51. Their Lordships will therefore further humbly advise Her Majesty that the said kamatan lands and gardens, forts, houses, granaries, stables, &c., above mentioned, be declared to be part of the zemindary above mentioned, and that the Appellant is entitled to recover one sixth part or share thereof, with the exception of the said garden valued at Rs. 300 in the Plaintiff''s possession.

52. Their Lordships will further recommend to Her Majesty that the amount of mesne profits from the date of dispossession of the share of the property ordered to be recovered to the date of restoration thereof be assessed in execution.

53. The costs of this appeal must be paid out of the estate of Rajah Narayya Appa Row, deceased, the original Defendant and Respondent.