

(1874) 03 PRI CK 0005

Privy Council

Case No: None

The Collector of
Trichinopoly (As
Representing The
Interest of The
Governor of Fort St.
George); Pedda Amani
and Chinna Amani
(Second and Third
Widows of The Late
Zemindar)

APPELLANT

Vs

Lekkamani (First
Widow of The Late
Zemindar) Since
Deceased and The
Zemindar of
Marungapuri; The
Zemindar of
Marungapuri

RESPONDENT

Date of Decision: March 13, 1874

Citation: (1874) 1 IndApp 282

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

Judgement

With respect to the proprietary right possessed by the late zemindar, there is now before the Court the whole of the evidence which the parties have been able to adduce, and we have had the advantage of hearing the case ably argued. The question for determination is, whether he had vested in him an hereditary estate, which passed on his death to his heir in the order of legal succession, as the Plaintiff contends, or an estate for life, on the termination of which the right to dispose of the property reverted to the Government as the Defendants contend. The villages and lands mentioned in the plaint form one of the Manapuri polliems, but the estate and the holder of it have been commonly given the

designations used in the plaint, of zemindary and zemindar; it is, however, a conceded fact that no istimrari sunnud granting the estate under Regulation XXV. of 1802 has ever existed; and the positions advanced on both sides, stated summarily, are on behalf of the Plaintiff, that there is sufficient evidence from which to draw the inference that the property had been permanently assessed; but, if not, that the tenure by which the polliems not permanently assessed are held had not attached to it as an essential incident the limit of the life of the holder, but that, both historically and by judicial authority, the tenure is rather shewn to be in its nature hereditary or for life, according to the nature of the grant creating it, and that in the present case the evidence proved the polliem to have been held as an hereditary estate.

2. Then, after reviewing the authorities, the evidence, and the arguments of counsel, they proceeded--

Upon the whole, we are of opinion that it has been established as strongly as a claim of this nature can be expected to be proved, that the polliem in dispute is an ancestral hereditary estate which has devolved through several generations in the ordinary course of legal succession. Almost everything tending to this conclusion that could reasonably be looked for, it seems to us, exists, save the grant of a surmud under Regulation XXV. of 1802; and that is not, in our judgment, made by law indispensable, except to render the revenue assessment permanent. It follows that the right of succession contested in the present suit depends upon the question raised by the second issue in the suit, whether the second Defendant is the legitimate brother of the late poligar, Terumalai Puchaya Naiker. If so, he is the rightful heir to all the property claimed in the plaint, no division having taken place between him and his deceased brother. But if illegitimate, he has no right to any portion of it. No additional issue is necessary.

3. An issue was then directed to try whether the half-brother was legitimate or not.

This issue was found by the Zillah Judge in favour of the half-brother, and his decision was confirmed, on appeal, by the High Court of Madras, and the suit of the widow was dismissed with costs.

4. The Collector of Triahinopoly, as representing the interest of the Governor of Fort St. George in Council, appealed against so much of the judgment of the High Court, dated 26th of April, 1871, as decided that the succession to the polliem, the subject of the suit in particular, and to unsettled zemindaries or polliems in general, is a matter cognizable by the Civil Courts, and not dependent on the will of the ruling power, and that an istimrari sunnucl is not necessary to constitute such zemindaries or polliems hereditary estates. The original Plaintiff having died, two junior widows of the late zemindar named Pedda Amani and Chinna Amani obtained leave to appeal to Her Majesty in Council against the decree whereby Lehhamani's suit was dismissed with costs, and an order having been afterwards passed that the two appeals should be consolidated, and be heard upon one printed case on each side, they now came on to be heard.

5. Mr. Forsyth, Q.C., Mr. Macpherson, and Mr. J. B. Norton, appeared for the Appellant and the second Respondent in the first appeal, and the Respondent in the second appeal.

6. Mr. J.D. Mayne, and Mr. F C.J. Millar, appeared for the Co first Respondent in the first appeal, and the Appellants in the second appeal.

7. The appeal of Oolagappa Chetty v. Arbuthnot, in which the same point of law as to the polliem tenure was involved as in the appeal of the Collector of Trichinopoly, and which had for that reason been ordered to stand over until the hearing of the last-named appeal *Supra*, p. 281, was also placed in the paper.