

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No.

479

DATED

26th June 1897

[Despatch Abstract.]

Coming to the Court of Wards, letter from
A. Wilson Esq., Solicitor to the Secy of State, re:
Belgian Appeal Case.

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G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Revenue (1897) Department.

CURRENT No.

From A. Wilson Esq.
Solicitor to the Secy of State

Order in. No. 4798726th Jan 1897

Communicated

No.

to the Court of wards in
continuation of G.O. No 45
8 5 Jan: 97.

Dated 1st January 1896

Received 21st

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SUBJECT.

Regarding Belgium appeal
case.

List

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with one copy of the Memo.

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Legal Adviser's Department,
INDIA OFFICE.

ON HER MAJESTY'S SERVICE.

The Secretary to Government

Revenue Department

Makras

Dr. V. S.

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In the Privy Council.

ON APPEAL

FROM THE HIGH COURT OF JUDICATURE AT MADRAS.

BETWEEN

SRI RAJA VIRAVARA THODHRAMAL RAJYA
LAKSHMI DEVI GARU, widow of the late Zemindar
Dhananjaya Dhatrazu Bahadur Garu - - - *Appellant.*

AND

SRI RAJA VIRAVARA THODHRAMAL SURYA
NARAYANA DHATRAZU BAHADUR GARU - - - *Respondent.*

CASE FOR THE RESPONDENT.

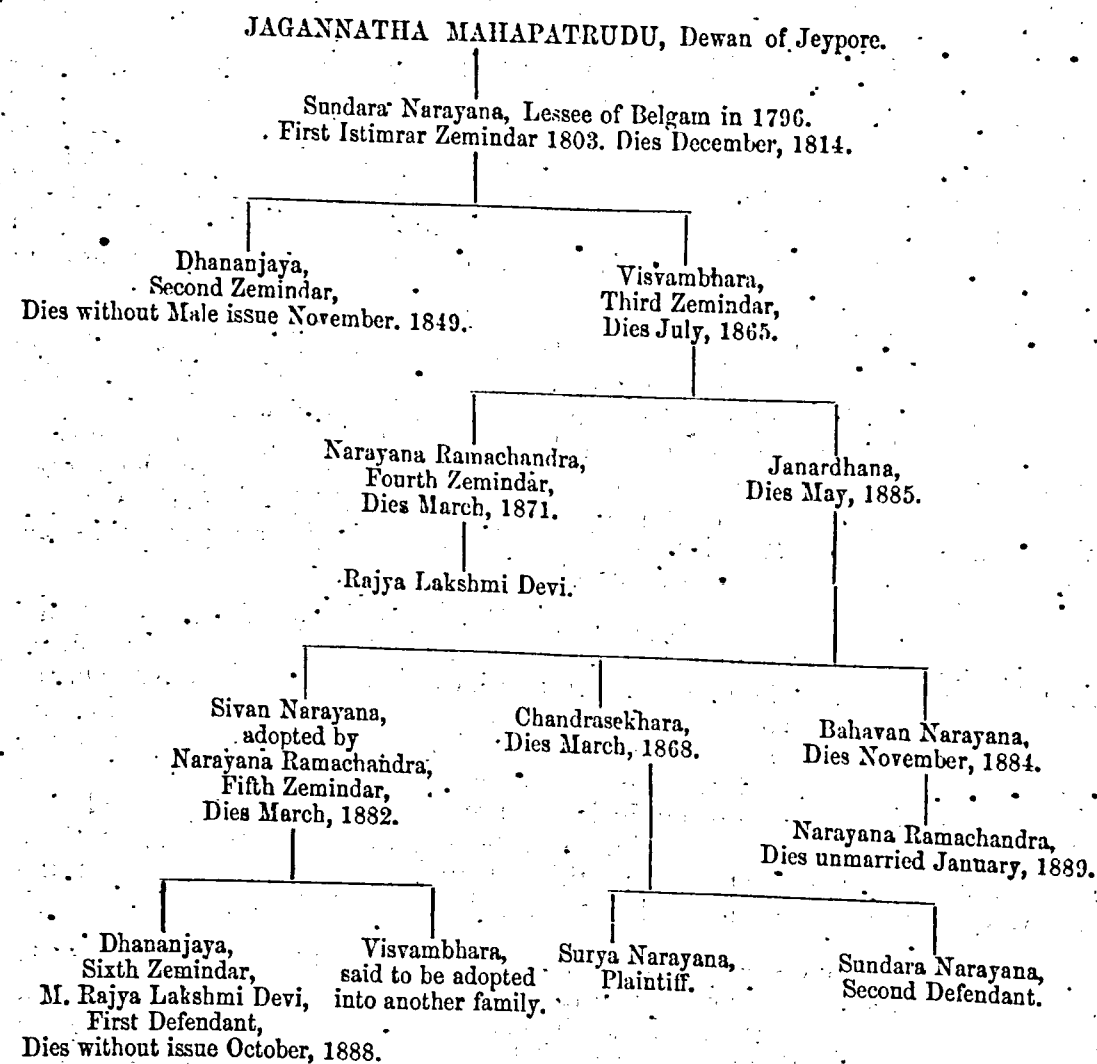
This is an Appeal against a decision of the High Court of Madras, which confirmed a decision of the District Court of Vizagapatam. The suit was brought by the present Respondent, a collateral relation of the last Zemindar of Belgam, for a moiety of the Zemindary and other property of the deceased, to which he asserted that he and his brother were the nearest heirs. The Defendant, who is now Appellant, was the widow of the Zemindar, and had been put in possession by the Government. Both Courts have decided in favor of the Respondent. The questions for decision in this Appeal appear to be purely questions of law.

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The relationship of the parties, so far as it is material to this Appeal, is shown by the following

PEDIGREE.



THE FACTS OF THE CASE

are as follows :—

The Belgam Zemindary was one of several Hill Zemindaries which were originally dependencies of the Maharaja of Jeypore, and subsequently of the Maharaja of Vizianagram. In 1794 the Maharaja of Vizianagram rebelled against the East India Company and was defeated. Lord Hobart, Governor of Madras, made direct settlements with the various Hill Zemindars. At that

time there appears to have been no Zemindar of Belgam. In 1796 "fourteen villages in the neighbourhood of the town of Parvatipur, taken from the contiguous Hill Zemindaries, were granted for life to Sundara Narayana as an acknowledgment of the services of his father" who was Dewan of Jeypore, and had kept the Jeypore people from joining in the rebellion of Vizianagram. In 1803 these villages were constituted into a Zemindary of Belgam for which an Istimrar Sanad was granted to Sundara Narayana.

Sundara Narayana died in December, 1814, and was succeeded as Zemindar by his eldest son Dhananjaya. In February, 1816, Visvambhara, the second son, executed two partition deeds to the new Zemindar, in which he recited that their father had put Dhananjaya in possession of the Zemindary, that he himself was residing in the village of Addapusila, which had been given to him for his maintenance, that they had divided all the personal property in the palace, and that he and his heirs would not make any claim in respect of the Zemindary.

Dhananjaya died in November, 1849, leaving a childless widow, Chandramma Patta Mahadevi, a daughter by another wife then deceased, and a daughter-in-law, the widow of a son who had died in early life; also his brother Visvambhara. Chandramma Devi claimed the succession, probably on the strength of the partition deeds, and an attempt appears to have been made to set up a pretended adoption. Mr. Smollett, the Governor's Agent at Vizagapatam, recommended that Visvambhara should be recognised as the Zemindar, and this course was adopted.

In 1856 Visvambhara mortgaged the Zemindary on usufructuary mortgage for 12 years to the Zemindar of Merangi, and subsistence allowances were paid by him through the Government to Visvambhara and his sons. On the 18th June, 1858, Visvambhara wrote to the Governor's Agent that in consequence of ill feeling between his sons they began to mess separately on the 14th June, and requested that the allowances which had hitherto been paid to them on their joint receipt might be paid on two separate receipts, and that their gardens and attendants might also be separated. This transaction is relied on by the Appellant as a partition between the two branches of the family which issued from Ramachandra and Janardhana.

On the death of Visvambhara (27th July, 1865) his elder son Ramachandra was recognised as Zemindar. Upon this Ratna Mani, daughter of Dhanajaya, brought a Suit 73 of 1865 against him claiming the Zemindary. The case was terminated by a Razinamah, by which the Plaintiff abandoned her claim in consideration of an annual payment of Rs.500. At the same time Ramachandra executed a Razinamah to his brother Janardhana, by which he undertook upon the restoration of the taluq by the Merangi Zemindar to put Janardhana in possession of the villages of Addapusila and Vaddavolu by way of maintenance.

On the 24th May, 1870, Sivan Narayana, eldest son of Janardhana, brought a suit against Ramachandra, in which he prayed for a declaration that

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Record
pp. 44, 82.

p. 60.

he had been adopted by the latter. Ramachandra died in March, 1871; and the suit was continued against Janardhana, the two widows of the deceased Zemindar, and his daughter Rajya Lakshmi. It was terminated by two Razinamahs, by which Janardhana recognized the adoption of the Plaintiff and abandoned his claim to the Zemindary in consideration of being allowed to continue in possession of Addapusila and Vaddavolu and the widows on their own behalf, and as guardians of the minor daughter made a similar agreement in consideration of being put in possession of the village of Lakshmi Narayanapuram. It would also appear that a further delivery of moveable property was made to the senior widow Gangamma Putta Maha Devi. These transactions were communicated to the Collector by Sivan Narayana on the 27th September, 1871, with a request that his name might be registered as Zemindar, which was accordingly done. This transaction again is relied upon both as a partition and a renunciation of right.

Sivan Narayana died in March, 1882, and was succeeded by his eldest son Dhananjaya. The latter married Rajya Lakshmi Devi, daughter of Ramachandra, by whom he had no issue, and died on the 29th October, 1888. The estate was immediately seized by the widow, who subsequently induced the Court of Wards to undertake the management of the Zemindary on her behalf. This led to

THE PRESENT SUIT.

On the 25th April, 1889, the present Plaintiff, the eldest son of Chandrasekara, filed his suit for possession of one moiety of the Zemindary and other property of the deceased, in the Court of the District Judge of Vizagapatam, against the widow and his own brother, who refused to join him as Plaintiff. He set out the history of the Zemindary, and alleged that the widow had fraudulently concocted a Will to the effect that her husband had given her permission to make an adoption. In the pedigree annexed to the plaint he entered Visvambhara as the second son of Sivan Narayana, and alleged that he had been adopted into another family.

On the 10th September, 1889, the Collector as Agent of the Court of Wards and guardian of the widow was added by order of that date as third Defendant.

On the 6th November, 1889, Visvambhara petitioned to be made a Defendant. This was opposed by the Plaintiff on the ground that Visvambhara was not in possession, that no relief was sought against him, that he had been adopted into another family, and had already brought a suit for a share of the estate, which had been dismissed. It is stated by the Judge that one of the first Defendants counsel also objected on the same ground. His application was rejected by the Court on the 27th November, 1889.

On the 16th January, 1890, the Collector put in a Written Statement on behalf of the first Defendant. He alleged that the Zemindary was impartible,

and that the families of the Plaintiff and first Defendant were divided. He also pleaded the Statute of Limitations, and asserted the genuineness of the Will by which the widow was authorised to adopt. The pedigree annexed to the Statement was substantially the same as that put forward by the Plaintiff, except that it made no reference to Visvambhara as a brother of the last Zemindar, nor to the minor son of Bahavan Narayana.

Seven issues were recorded, of which the fourth—as to the genuineness of the Will—was struck out before evidence was recorded. These issues were again reduced to three, which are called revised issues. The substantial questions submitted for decision appear to have been

First. Mixed questions of law and fact.

1. Was the estate of the last holder self-acquired, or
2. Divided, or
3. Partible.

Second. Questions of law.

1. Whether the widow had under any view of the case a superior title to the Plaintiff.
2. Whether the Plaintiff was estopped, or
3. Barred by time from bringing his suit.

A further question was raised by the Defendant during the hearing, viz.: that under any circumstances Visvambhara had a preferable title to the Plaintiff.

Besides the documents already referred to, the Defendant filed a number of bonds and mortgages for the purpose of showing that the members of the family in recent years had dealt in a manner inconsistent with the supposition that they were still a joint family.

As regards the separation between Ramachandra and Janardhana, described by Visvambhara in his letter to the Collector of the 18th June, 1858, much oral evidence was offered. The Defendant's witnesses asserted that it constituted a complete partition between the brothers. The Plaintiff's witnesses asserted that nothing took place beyond separation in their meals, and separate enjoyment of their sources of income. It is also alleged on behalf of the Plaintiff that he and his brother were always maintained by Sivan Narayana and by his successor, the late Zemindar. As it is admitted that there was no partition of the Zemindary or of Visvambhara's property, and as at the time of the alleged partition the dividing parties had only a contingent interest in the Zemindary, it is difficult to see how the transaction can have any bearing upon the case.

Some evidence as to the adoption of Sivan Narayana was also adduced.

Record
pp. 63—79.

pp. 117, 119, 122,
123, 126, 128,
129, 130.

pp. 97, 100, 102,
103, 104, 105.

pp. 101—103, 112.

p. 127.

pp. 117, 121.

Record
p. 141.
p. 146—190

On the 19th December, 1890, the District Judge decreed in favour of the Plaintiff that he was entitled to one half of the property left by the late Zemindar, including the Zemindary of Belgam. In his Judgment, which was very lengthy and elaborate, he dealt with the various contentions of the parties as follows:—

p. 171, l. 31.
p. 177, l. 22.

As to the first set of questions above set out he held (1) that the property was not the self acquisition of any one subsequent to the common ancestor, Visvambhara. It had always gone in the direct line of primogeniture, and there never had been any loss of the estate which could be followed by self-acquisition. (2) That there never had been any partition. The two points of time at which any partition was alleged were 1858 and 1871. Upon these he found that there was no intention to affect *status* or make a partition either in 1858 or in 1871. (3) That the Zemindary was partible, the family was not ancient, the grant in 1796 was merely of a life estate; that in 1804 was not made in any manner which carried with it an implication that it was to be impartible—the duration of the family was not sufficient to give birth to a custom overruling the ordinary law—and the mode in which the parties had dealt with each other was consistent with its being an ordinary undivided family under Mitakshara law, or at the outside with a mistaken belief that it descended to a single heir.

p. 179, l. 5.
p. 180, l. 17.
p. 183, l. 6.

p. 149.

These findings necessarily cut away the ground for the first contention in the second set of questions, viz.—that the widow could possibly hold the Zemindary against the Plaintiff and his brother. The case put by the Defendant's counsel was that the Zemindary never had been divided, being impartible, but that the members of the family having become divided as to something else in 1858 and 1871, their *status* had become that of divided members, and that this *status* must govern the right of succession to the Zemindary though undivided. The Court held that this argument must fail, even if the facts were as alleged, on the ground that property which was designedly excluded from a partition remained joint, and was governed by the rule of succession, which excluded a widow while undivided males were in existence.

p. 150, 152.
p. 177, l. 34.

p. 173, l. 30.

The District Judge held (2) that there was no estoppel by virtue of the Razinamahs of September, 1871. Those agreements recognized the adoption of Sivan Narayana, and his right to take the place of his adoptive father, while provisions for the maintenance of the women of the senior branch and the males of the junior branch were at the same time settled. Nothing was said as to the order of succession on the extinction of the senior branch, and any arrangement contrary to that laid down by law would not bind the Plaintiff.

p. 157, l. 33.

As to limitation (3) no question could arise, as the Plaintiff's branch was not shown to have had any right of possession, until the property in 1888 vested in the Plaintiff as the late Zemindar's heir. Consequently it was not till then that the possession of another could be adverse to his branch.

p. 172, l. 23.

The Court refused to entertain the plea of *jus tertii*, as it appeared from the Defendant's own admission that she had designedly refrained from

raising the point at the settlement of issues, in order to spring it as a surprise upon the Plaintiff at the hearing. No denial of the alleged adoption was made in the Written Statement, and the Pedigree put in by the Defendant did not even suggest the existence of Visvambhara.

Record

Against this decision the Collector as guardian of the First Defendant appealed to the High Court, which on the 2nd March, 1893, dismissed the Appeal.

p. 195.

p. 197.

The High Court in their Judgment treated the case in a much more summary manner. They considered it as a matter beyond dispute that the Zemindary in its inception was not impartible, and that it had never become so by special custom, though the members of the family had agreed in treating it as if it were such. That being so, only two defences were raised; renunciation under the compromise of 1871, and limitation. As to the first, the Court held that no question beyond that of the present enjoyment of the Zemindary was present to the minds of the parties, and that Janardhana had no intention to separate himself and his descendants from the Zemindary. As to the second defence, the Court considered that there never had been any denial of the only right which is claimed in this suit, viz., that of succeeding in default of direct male heirs of Ramachandra, and therefore the question of limitation could not arise.

pp. 199—203.

p. 202, l. 32.

p. 199, l. 33.

p. 202, l. 10.

p. 201, l. 12.

It is submitted that the Judgments of both Courts are sound in law and in fact, and that the Appeal against the decree of the High Court should be dismissed for the following, amongst other,

REASONS.

- I. Because there is no evidence of such self-acquisition or partition as would be necessary to give the widow of the late Zemindar any right to hold against the male heirs of her husband.
- II. Because both Courts have rightly held that the Plaintiff's claim was neither barred by renunciation nor by time.
- III. Because there are concurrent Judgments that the Zemindary is partible, and such Judgments are in themselves sound.
- IV. Because the first Court was right in disallowing the plea of *jus tertii*, and it does not appear to have been raised on Appeal.
- V. Because after the withdrawal of the issue as to the alleged Will no defence founded upon an adoption made under it can be raised.

JOHN D. MAYNE.

In the Privy Council.

No. 55 of 1895.

ON APPEAL
FROM THE HIGH COURT OF JUDICATURE
AT MADRAS.

BETWEEN

SRI RAJA VIRAVARA THODHRAMAL
RAJYA LAKSHMI DEVI GARU, Appellant

AND

SRI RAJA VIRAVARA THODHRAMAL
SURYA NARAYANA DHATRAZU
BAHADUR GARU - Respondent.

CASE FOR THE RESPONDENT.

LAWFORD, WATERHOUSE & LAWFORD,
37, FINSBURY CIRCUS.

REV
1895 - 4978 - 5110 - 724

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READ

45/5-1-97 1st January 1896

Sir
Belgam Appeal Case
Since my letter to you of the
4th ult., the Respondent has appeared
and lodged his printed Case, two copies
of which are sent herewith. The case
will not be taken in the course of this
month, as anticipated, but will be
heard in the month of February.

Yours
J. W. L. S.
A. W. L. S.
Petition to the Co. of Mad.

Secretary to Govt
Madras

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