Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Stree Rajah Yanumula Venkayamah, Widow of Stree Rajah Uddandah Jaggappa Dorah, v. Stree Rajah Yanumula Boochi Venkondora (now deceased), and likewise Yanumula Ramandhorayara, from the High Court of Judicature of Madras: delivered 2nd of February, 1870.

Present:

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THE question on which the parties in the suit out of which this Appeal arises, joined issue and went to trial, was, whether the family, of which the Plaintiff and the Appellant's husband were members, was an undivided or a divided Hindu family.

Both the Courts below, giving effect to the presumption of Hindu law which the evidence failed to rebut, have decided, and in their Lordships' judgment have properly decided, that issue in favour of the Plaintiff. The general status, therefore, of the family, as an undivided family has been ascertained.

Accordingly, the strength of the argument of the learned Counsel for the Appellant has been directed to show that this case should be governed by that in the 9th vol. of Moore's Indian Appeals, which is generally known as the Shevagunga case. They have gone so far as to argue that the estate in question in this case, being impartible, must, from

its very nature, be taken to be separate estate, and consequently that, according to the decision in the Shevagunga case, the succession to it is determinable by the law which regulates the succession to a separate estate, whether the family be divided or undivided.

The authority invoked, however, affords no ground for this argument. The decision in the Shevagunga case will be found to proceed solely and expressly on the finding of the Court, that the Zemindary in question was proved to be the self-acquired and separate property of Gowarry Vallaba Taver. It assumes that if this had not been so, the decision would have been the other way. At page 589, the Judgment says :—

"Hence, if the Zemindar, at the time of his death, and his nephews were members of an undivided Hindu family, and the Zemindary, though impartible, was part of the common family property, one of the nephews was entitled to succeed to it on the death of his uncle. If, on the other hand, the Zemindar, at the time of his death, was separate in estate from his brother's family, the Zemindary ought to have passed to one of his widows, and failing his widows to a daughter, or descendant of a daughter, preferably to nephews; following the course of succession which the law prescribes for separate estate. These propositions are incontestible; but Gaurivullabha's widows and daughters have advanced a third, which is one of the principal matters in question in this Appeal. It is, that even if the late Zemindar continued to be generally undivided in estate with his brother's family, this Zemindary was his self-acquired and separate property, and as such was descendible, like separate estate, to his widows and daughters and their issue preferably to his nephews, though the latter, as co-parceners, would be entitled to his share in the undivided property. Upon this view of the law the question whether the family were undivided or divided becomes immaterial. The material question of fact would be whether the Zemindary was to be treated as self-acquired separate property, or as part of the common family stock."

Again, at page 605, it is said :—

"The substantial contest between the Appellant and the Respondent is, as it was between Unga Mootoo and the Respondent's predecessors, whether the Zemindary ought to have descended in the male and collateral line; and the determination of this issue depends on the answers to be given to one or more of the followiug questions :—

"1. Were Gaurivallabha and his brother undivided in estate, or had a partition taken place between them?

"2. If they were undivided, was the Zemindary the self-acquired and separate property of Gaurivullabha? And if so—

"3. What is the course of succession according to the Hindu law of the south of India of such an acquisition, where the family is in other respects an undivided family?"

And at page 606, their Lordships, dealing with the second of these questions, say :—

"The second question their Lordships have no hesitation in answering in the affirmative. Every Court that has dealt with the question has treated the Zemindary as the self-acquired property of Gaurivullabha. Their Lordships conceive that this is the necessary conclusion from the terms of the grant, and the circumstances in which it was made. The mere fact that the grantee selected by Government was a remote kinsman of the Zemindars of the former line does not, their Lordships apprehend, bring this case within the rule cited from Strange's 'Hindu Law.'"

It is therefore clear that the mere impartibility of the estate is not sufficient to make the succession to it follow the course of succession of separate estate. And their Lordships apprehend that if they were to hold that it did so, they would affect the titles to many estates held and enjoyed as impartible in different parts of India.

Has it then been shown that, though the family was undivided, this estate was in fact the separate property of the Appellant's husband?

The evidence concerning the original grant of it, and the terms on which it was held, is extremely scanty. The most material document is the Exhibit A at p. 10 of the record; which as the statement of the then Zemindar, made on an official requisition at a time when he had no interest in giving, nor apparent motive for giving, any but a true account of the history of the estate and of the custom of his family, seems to be in every way worthy of credit. Looking at that document, their Lordships are of opinion that the estate was in its inception part of the common family property, though impartible, and therefore with certain qualifications enjoyable by only one member of the family at the time. It appears to have been substantially granted to the common ancestor of the family, the Dewan Bapam Dhora; though with his consent and for some undisclosed reason, it was put into the name of his third son, Joggappa Dhora. The document states:—

"As the issues which the said Saraba Raghavaraz had, had failed, and as he had no near relatives and heirs, he made up his mind to give up the said Totapalli Taluk attached to Raghavaraz Sima to my said ancestor Bapam Dhora, and the Joddangi Taluk to Boggula Gannamreddi Dhora, and at the time of his death he executed Pattas in the names of Joggappa Dhora, the third of the four sons of Bapam Dhora, according to his consent, and of

Boggula Gannamreddi Dhora transferring to them respectively the Taluks of Totapalli and Joddangi, and authorizing them and their posterity to enjoy them as Jaghirs as he had done."

That the grant was to the family of Bapam Dhora is made more apparent by what follows :—

" From that time Joggappa Dhora enjoyed the Taluk (of Totapalli) for forty-nine years. In his time he had managed the affairs of the Taluk and lived at Totapalli, and provided Vasatis (landed gifts) to his three brothers, caused Pedda Mallu Dhora to live in the village of Vajrokutam, Rajani Rhora in Kottange, and Chinna Mallu Dhora in Nellipudi, and thus maintained them."

These grants by way of maintenance are in the ordinary course of what is done by a person in the enjoyment of a Raj or impartible estate in favour of the junior members of the family; who, but for the impartibility of the estate, would be coparceners with him.

It is argued, however, that whatever may have been the original nature of the property, the effect of what took place when Bapam Dhora supplanted and excluded Mallupa Dhora was to make it a new and fresh acquisition of Bapam Dhora; just as in the Shevagunga case, the new grant of the escheated Zemindary to Gowary Vallaba Taver, was held to constitute a new and separate acquisition by him, though a member of the family of the former Zemindars. Their Lordships are, however, of opinion that there is a clear distinction between the two cases. In the Shevagunga case the Zemindary had etscheaed to Government, which was free to deal with it as it chose. By a new sunnud it granted it to the Taver, conferring a legal title which none could dispute. What was done in this case? The document A states :—

" On his death Jaggappa Dhora's son, Mallappa Dhora, after joining the people called ' Desastula,' fell out with Sri Maharaz, and enjoyed the Taluk as Mokhasa without his interference, by causing much disturbances; consequently, my senior paternal uncle, Bapam Dhora, went to Peddapuram, visited Sri Maharaz, represented to him that in the event of your affording me assistance, I will turn out the said Mallappa Dhora, enjoy Totapalli Taluk, paying the Jamabundi amount formerly fixed by Rajam Dhora, and thus obtained the assistance of some Sibbandis (warriors), came and drove out Mallappa Dhora, entered Totapalli, and took possession of it, and paid 2,700 karuku pagodas for one year in full."

This account shows no legal forfeiture; no fresh grant by any person competent to grant a legal title. It only shows that on a dispute between Mallapa and the Superior, another member of the family came in, and, with the strong hand, and in concert with the Superior, succeeded in ousting Mallapa, and in assuming the position and rights of the Zemindar. And the document itself shows that the adopted son and successor of Bapam Dhora himself considered this as no substantial change in the nature or tenure of the property: that he still traced his title to the first Bapam Dhora by virtue of the original grant; and spoke of the Talook as having been enjoyed by six generations of his family during the period of 179 years.

Nor is it immaterial to observe what he states as regards the practice of succession observed in the family. He says:—

"As regards the practice of succ ssion observed in our family, I have to state, that if the holder of the Taluk has two or three sons, the eldest of them enjoys the estate, while the rest being provided with vasatis, conduct themselves according to his will, but it has never been the practice of dividing the Taluk among brothers. If the owner of the land has no issue, a competent person out of his nearest cousins is selected, and the Taluk put in his possession."

Their Lordships are therefore of opinion that, even if the case made for the Appellant at their Bar had been made in the Courts below (which apparently it was not) it must have failed; and that no ground has been shown for disturbing the Decrees under Appeal. They must therefore humbly advise Her Majesty to dismiss this Appeal, with the costs of the Respondent, on whose behalf an appearance has been entered here.

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