Judgment of the Lords of the Judicial Committee of the Privy Council on the appeal of Rajah Venkata Narisimha Appa Row Bahadur v. *Rajah Narayya Appa Row Bahadur, and others; and by order of Revivor of the said Rajah Venkata Narasimha Appa Row* v. *The Court of Wards, acting on behalf of the minor children and heirs of the late Respondent, Rajah Narayya Appa Row Bahadur, now deceased, and others, from the High Court of Judicature at Madras, delivered* 13*th December* 1879.

Present:

Sir James W. Colville.
Sir Barnes Peacock.
Sir Montague E. Smith.
Sir Robert P. Collier.

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 District Judge of Guntur, in a suit in which the Appellant was the Plaintiff, and the deceased Respondent, Rajah Narayya Appa Row, was one and the principal one, of the Defendants.

The suit was brought to recover, amongst other things, a sixth part or share of the zemindary of the six pergunnas 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.

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 jaghir held on the tenure of military service, and in the nature of a raj or principality.

It is unnecessary to trace the succession to the ancient zemindary farther 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 impartibility and descent continued as before. *See* the Hunsapore Case, 12 Moore Ind. Appeals, p. 1.

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

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 Nurasimha.

Upon the death of Ramachandra, he was succeeded by his only son Shobanadri. In 1816 the third brother, Narasimha, 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 past and future. Whatever, therefore, might have been the rights of the third brother, Narasimha, they have been extinguished.

On the 7th 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 recognized as successor, and that no division of the estates should be allowed, as they were of ancient origin.

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 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.

Shobanadri died on the 28th 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 December was registered under the orders of the Board of Revenue as zemindar of Nuzvid.

On the 30th 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 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.

On the 20th 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.

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.

On the 8th 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.

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.

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 were made Respondents in his place.

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.

The sunnud under which the zemindary of Nuzvid was granted to Ramachandra is dated the 8th December 1802, and will be found at page 153 of the Record. It is directed to Ramachandra, describing him as the zemindar of the six pergunnas 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 (p. 154) 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.

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 recognized 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 pergunnas of Nuzvid, in the " 'Kondapalli Circar.'"

The name of the zemindary in dispute appears, therefore, to be in strictness, "The zemindary " of the six pargunnahs of Nuzvid, in the Kon- " dapalli Circar," but for convenience it is treated as the zemindary of Nuzvid.

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 imposed upon zemindars.

It is stated in the 11th paragraph of the written statement of the first Defendant, " that under the " empire of the Mahomedans the ancient zemin- " dary of Nuzvid was extensive, and was governed " by its Chiefs with absolute power and inde- " pendence; 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."

This is doubtless a correct statement.

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 estates 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.

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 Hindoo 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 Hindoo or Mahommedan laws, which they would have been if they had been limited to the eldest son or other single heir of a Hindoo or Mahomedan transferree. 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.

The limitation in para. 15 of the sunnud was to his heirs, by which, according to their Lordships' interpretation, his heirs according to the ordinary rule of Hindoo 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 transferrees 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 Hindoo 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. Appeals, p. 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 case, 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 as 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 zemindarees, 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.

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 Hindoo law.

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 17th 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 December 1802 reference may be had to the letter of Mr. John Read, the Collector of Masulipatam, to the Secretary of the land revenue settlement division, dated 25th 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 Narasimha and of Ramachandra, preparatory to the introduction of the permanent settlement (Record, p. 169). 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 has been long and steadily maintained, so late, indeed, as the 17th 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."

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 Hindoo law.

Their Lordships will therefore humbly advise Her Majesty to reverse the judgments and de-

crees 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 pargunnas of Nuzvid, in the Kondapalli Circar, together with his costs in both the Lower Courts in proportion to the value of that property.

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 Plaintiff's 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.

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.

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.

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

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