

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Muttuvaduganadha Tevar v. Periasami alias Udayana Tevar, from the High Court of Judicature at Madras delivered 27th June 1896.*

Present :

LORD WATSON.

LORD HOBHOUSE.

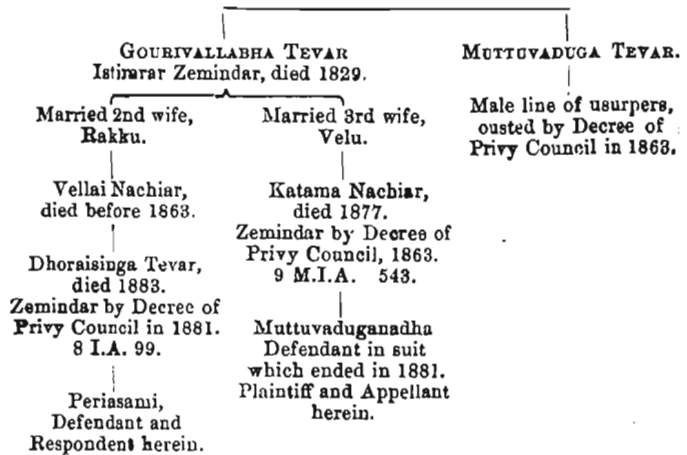
LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

Her Majesty in Council is called upon to decide yet another dispute arising out of the succession to the zemindary of Shivagunga. The nature of the dispute is best stated by reference to the pedigree set out in the case of the Respondent, who was the Defendant below.

Pedigree.



The effect of the litigation which ended in the year 1863 was to establish that the zemindary

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was the self-acquired property of the Istimrar Zemindar, and that it devolved upon his younger and only surviving daughter Kattama in preference to collateral heirs.

Kattama died in 1877, when her son the present Appellant, who was Plaintiff below, claimed to be entitled in preference to Dhoraisinga, the son of Kattama's sister, who was eldest daughter of the Istimrar Zemindar. In that litigation, which ended in the year 1881, it was established that though the zemindary was impartible, Kattama took it for the ordinary Hindoo woman's estate, and that upon her death it devolved not on her heir but on the heir of her father.

Dhoraisinga being dead, the Plaintiff has preferred a fresh claim to the zemindary. He maintains that the Istimrar Zemindar is still the root of title, and that he, being a grandson, is entitled to succeed in preference to the Defendant who is a great-grandson. The Defendant maintains that Dhoraisinga acquired full and complete ownership, and became a fresh root of title, so that the property descended to his son.

Both Courts below have decided that the Defendant's contention is right. The Plaintiff's claim is founded on the idea that the present question is the same as that which arose on Kattama's death. Then the Istimrar Zemindar was the root of title, whose heir was to be sought; therefore it is argued he is so now. That argument loses sight of the difference between the imperfect or obstructed heritage of a female, and the full heritage of a male successor. It is not disputed by the Appellant's Counsel that, if the property were partible, Dhoraisinga would have taken an absolute ownership constituting him a new stock. But it is contended that a different rule is applicable

to an impartible estate, and that if the inheritance of such an estate once becomes obstructed, it is always obstructed, so that on the death of each owner the true successor is the heir of the last unobstructed owner. They have not produced any authority, nor suggested any principle for such a distinction. When an estate is impartible it is enjoyed in a different mode from that prescribed by the ordinary Hindoo law; but the inheritance is to be traced by the same mode, unless some further family custom exists beyond the custom of impartibility.

Their Lordships do not discuss the question of survivorship, because Mr. Cozens Hardy distinctly stated that he rests his claim not on survivorship between the Plaintiff and Dhoraisinga, but on the Plaintiff's greater proximity to the true root of title. But on both points they express their agreement with the learned Hindoo lawyer who presided at the hearing of this case in the High Court, and whose services have recently been lost to that Court.

Their Lordships will humbly advise Her Majesty to dismiss the appeal. The Appellant must pay the costs.

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