Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeal and Cross-Appeal of Raja Chelikani Venkayyamma Garu, widow and legal representative of Raja Chelikani Appa Rao Bahadur Garu, deceased, v. *Raja Chelikani Venkataramanayyamma Bahadur Garu* (*No.* 1 *of* 1900), *and Raja Chelikani Venkataramanayyamma Bahadur Garu* v. *Raja Chelikani Venkayyamma Garu, widow and legal representative of Raja Chelikani Appa Rao Bahadur Garu, deceased* (*No.* 57 *of* 1900), *from the High Court of Judicature at Madras; delivered the* 18*th June* 1902.

Present at the Hearing:

LORD MACNAGHTEN.
LORD LINDLEY.
SIR FORD NORTH.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

A Hindoo gentleman named Venkat Rao living in the Province of Madras where the Mitakshara law prevails died in 1869 leaving one widow who died in July 1875 and one daughter who died in 1884. He left no other widow and no descendant except his daughter and her issue. His daughter married and left two sons, viz., Niladri and Appa Rao. Niladri was born in his grandfather's lifetime and died in 1892; Appa Rao was born after his grandfather's death and died in 1901. Venkat Rao's property was his own separate property. The litigation which has culminated in these Appeals is between persons claiming under these two

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brothers, grandsons of Venkat Rao ; and the main questions raised on the Appeals and which their Lordships have to determine are as follows, viz. :—

1. Did Venkat Rao leave a will, or did he die intestate ?

2. If he died intestate did his property descend on the death of his daughter to her two sons jointly with benefit of survivorship or jointly or in common without benefit of survivorship ? in the latter case Niladri's share would on his death devolve on his widow and children.

There was a subordinate question relating to a supposed will of Niladri in favour of his widow but this will was found to be a forgery by two Courts in Madras, and it has not been seriously contended before their Lordships that this alleged will can be now relied upon. No further allusion will therefore be made to it.

As regards the first question it is clearly proved that Venkat Rao made a will disposing of his property in favour of his wife for her life and after her death in favour of his daughter for her life and after her death in favour of his grandson by her *i.e.* Niladri. This will was made in 1866 when Venkat Rao was ill; it was put into an envelope and was deposited and registered in the office of the District Registrar where it remained until he died. Venkat Rao however recovered from his illness and in 1867 he executed a Power of Attorney appointing a vakil to obtain the will out of the Registry and to restore it to him. Owing to some blunder this was not done. Venkat Rao's intention to get his will back into his own possession and not to leave it as it was cannot be doubted. There is some evidence to show that he believed he had destroyed it. He certainly cancelled some grants of land recited in it. Persons existed whose interest it was to claim under it but no one ever did so although it is difficult to believe that none of them knew of it. For nearly 30 years no one ever thought

of asserting any claim under it. The revocation of this will does not depend on any English Ordinance or Code; and actual destruction or a formal revocation in writing are not essential to constitute revocation. See *Pertab Narain Singh* v. *Subhao Kooer*, L. R. 4 Ind. App. 228 at p. 245. The District Judge who saw the witnesses came to the conclusion that the will was revoked and his decision has been affirmed by the High Court.

After carefully considering the evidence their Lordships are not prepared to advise His Majesty that their decision on this point ought to be reversed. The will must therefore be treated as revoked.

The next question which arises is whether the two grandsons took jointly with benefit of survivorship or whether each took an undivided share which on his death devolved upon his representatives or assigns. Upon this question the Courts below have differed. The District Judge held that they were joint owners with benefit of survivorship. He did not decide that they acquired the property as joint owners but he held that they had so dealt with it as to show that it was joint property. The High Court held that they succeeded as owners in common without benefit of survivorship and that they never ceased so to hold it. The High Court followed a previous decision of the High Court of Calcutta in *Jasoda Koer* v. *Sheo Pershad Singh*, Ind. Law Rep. 17 Cal. 33, the correctness of which was strenuously denied by Mr. Mayne and must be considered.

The law of inheritance in the case of women is left in great obscurity by the Mitakshara. The subject is dealt with in Chapter II. Section 11, and has more than once been considered by this Board. The nature of a widow's estate was settled in two cases in 11 Moore's Ind. App. pp. 139 and 487; and the nature of a daughter's estate was considered in *Chotay Lal* v. *Chunno*

Lal (L.R. 6, I.A. 15). It was there decided that under the law of the Mitakshara a daughter's estate inherited from the father is a limited and restricted estate only and not stridhun. Upon her death the next heirs of her father succeed thereto. In *Muttu Vaduganadha Tevar* v. *Dora Singha Tevar* (I.L.R. 3 Madras 290) the same principle was applied to cases in Madras governed by the Mitakshara law. Their Lordships therefore consider it conclusively established that, in this case, Niladri and Appa Rao, on their mother's death, succeeded as heirs to their grandfather's estate.

What then was the character of the property which they took? In the grandfather's hands it was separately acquired property. In the hands of the grandsons it was ancestral property which had devolved on them under the ordinary law of inheritance. Niladri and Appa Rao were members of a united family.

"According to the principles of Hindoo law, "there is co-parcenaryship between the different "members of a united family, and survivorship "following upon it. There is community of "interest and unity of possession between all "the members of the family, and upon the death "of any one of them the others may well take "by survivorship that in which they had during "the deceased's lifetime a common interest and "a common possession" (*Katama Natchiar* v. *The Rajah of Shivagunga*, 9 Moore 611). It is true that on acceding to their grandfather's property, Niladri and Appa Rao might have partitioned it, but they did not do so. It is the right to partition which determines the right to take by survivorship; and where there is no partition the survivor takes.

The High Court have proceeded on the principle that although persons who succeed to joint family property take jointly if their inheritance is unobstructed yet that in cases of

obstructed inheritances those who succeed take as tenants in common and not as joint tenants. But the authorities referred to by Mr. Mayne in his very able argument show that this last proposition is by no means universally true. Members of a joint family who succeed to self-acquired property take it jointly (*Rajah Ram Narain Singh* v. *Pertum Singh* 20 Ind. W. R. 189, and see *Rampershad Tewarry* v. *Sheochurn Doss* 10 Moore Ind. App. 490); but it may be that where sons succeed the inheritance as to them is unobstructed. Widows succeed jointly (*The Tanjore* Case 3 Madras High Court Rep. 424; *Bhugwandeen Doobey* v. *Myna Baee*, 11 Moore Ind. App. 487 see p. 514, 5, B, and *Sri Gajapathi Nilamani Patta &c.* v. *Sri Gajapathi Radhamani Patta &c.*, L. R. 4 Ind. App. 212 see 221); so do daughters (*Aumirtolall Bose* v. *Rajoneekant Mitter*, L. R. 2 Ind. App. 113 see p. 126, and see *Srimuttu Muttu Vizia Ragunada &c.* v. *Dorasinga Tevar*, 6 Madras High Court Rep. 310).

In *Jasoda Koer* v. *Sheo Pershad Singh*, Ind. Law Rep. 17 Cal. 33, the High Court of Calcutta certainly decided that the sons of a daughter (she being the only child) succeeded to their grandfather's property in undivided moieties and not jointly with benefit of survivorship. This decision was in 1889; it was followed in 1895 by the High Court of Madras in *Saminadha Pillai* v. *Thangathanni*, Ind. Law Rep. 19 Mad. 70. The decision of the High Court now under appeal is based upon these authorities. The Calcutta decision appears to their Lordships to have been based upon a view of Mitakshara law which further investigation shows to be erroneous; viz. upon the view that according to the Mitakshara law the doctrine of survivorship is limited to unobstructed successions and to the succession to the joint property of re-united coparceners. No

authority for such a limitation can be found anterior to the Calcutta case. The only previous decision directly in point is *Gopalasami* v. *Chinnasami*, Ind. Law Rep. 7 Mad. 458, where the two sons of a daughter were held to be jointly entitled to their grandfather's property but the decision was based on the way they had dealt with the property rather than on the title they acquired on succession. The headnote is rather misleading on this point. The authorities to which their Lordships have referred and others cited by Mr. Mayne and which their Lordships have examined although not directly in point are clearly opposed to the general doctrine laid down in the Calcutta case.

It does not follow that because the reasons given for a decision are unsatisfactory the decision itself is erroneous. But in this case the decision in question appears to their Lordships to be opposed to the principles which regulate the devolution of joint family property to which the Mitakshara law is applicable and they therefore cannot adopt the decision in 17 Cal. 33. They think it erroneous. The decision in 19 Mad. 72 and the decision appealed from are both based upon it and are open to the same objections.

In the result therefore their Lordships agree with the District Judge. He however considered that the conduct of the parties and the mode in which the grandsons dealt with and enjoyed the property were sufficient to decide the case. But their Lordships do not think that the evidence so unmistakably negatives ownership in common as distinguished from joint ownership as to render it safe to decide the case on this ground alone. There is certainly nothing in the evidence which supports the view that the grandsons held the property in common rather than jointly: there is no separate dealing with any share. It is not suggested that if they succeeded jointly

they ever ceased to hold it in the same way. The property was treated and dealt with as a whole and so far joint ownership rather than ownership in common is the more probable. After their mother's death and whilst their father was living Niladri managed the whole property and acted as his brother's guardian during his minority which would hardly have been the case if the brothers had their separate interests in undivided shares. But there is nothing so clearly decisive either way as to render it unnecessary in their Lordship's opinion to decide the nature of the ownership which was acquired by the grandsons when they succeeded to the property. It is however satisfactory to find that the decision arrived at is in complete accordance with the mode in which the property has been dealt with by the family as long as Niladri was alive.

Their Lordships will therefore humbly advise His Majesty to dismiss the Plaintiff's Cross-Appeal (57 of 1900) setting up the will of Venkat Rao and to allow the Defendant's Appeal (1 of 1900) and to dismiss the Plaintiff's Appeal to the High Court with costs and to reverse the Decree of the High Court so far as it is inconsistent with the Decree of the District Judge and to restore that Decree and to remit the suit (No. 8 of 1893) whence these Appeals arise to the High Court for the purpose of executing or causing to be executed the Decree of the District Judge and the Order made on these Appeals.

It remains only to deal with the costs of the Appeals. These must be paid by the Plaintiff who has failed. But their Lordships cannot refrain from expressing their strong disapprobation of the expense which has been unnecessarily incurred in this case. A joint appendix of moderate dimensions would have been ample for

all the purposes of these Appeals. The Appellant's legal advisers in India appear to have endeavoured but unsuccessfully to reduce the bulk of matter to be printed. But instead of an appendix containing no more than was necessary several volumes of over 1,000 pages each have been translated and printed at vast expense, setting out accounts running over many years which it was wholly unnecessary to print and which no one has referred to. Their Lordships regard such reckless extravagance as an abuse of the rights of suitors whether Appellants or Respondents. The parties to blame are in India and their Lordships have no power to ascertain who they are nor to make them responsible for the abuse. Their Lordships will do what they can. They will call the attention of the High Court of Madras to the case and suggest to them the propriety of exercising their jurisdiction over those who conduct litigation and prepare Appeals from their decisions and of taking such steps as may be practicable to compel those who are to blame in this instance to pay the costs unnecessarily incurred. If nothing can be done under existing regulations rules should be made to check such gross abuses. Their Lordships will direct the Registrar in taxing the costs to take no account of any of the volumes except the two which were bound and used at the hearing; and not to allow more in respect of them than he thinks fair and reasonable.