

Privy Council Appeal No. 101 of 1917.

Sri Sri Sri Vikrama Deo Maharajulum Garu, Maharajah of Jeypore,
and another - - - - - *Appellants*

v.

Sri Sri Sri Vikrama Deo Garu - - - - - *Respondent*

Sri Sri Sri Vikrama Deo Garu - - - - - *Appellant*

v.

Sri Sri Sri Vikrama Deo Maharajulum Garu, Maharajah of Jeypore,
and another - - - - - *Respondents*
(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 12TH MAY, 1919.

Present at the Hearing :

VISCOUNT CAVE.
LORD PHILLIMORE.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* VISCOUNT CAVE.]

This is an appeal from a decree of the High Court of Madras, which affirmed, with a variation, the decree of the Agent to the Governor at Vizagapatam, dated the 22nd December, 1909.

The suit was brought by the plaintiff, who is the cousin of the first defendant the Maharajah of Jeypore, for maintenance out of the impartible estate held by the defendant. In consequence of previous decisions of the Courts, the case took a course which makes it impossible finally to determine the matter to-day.

The plaintiff in the action rested his case upon the contention that, according to the general Hindu law, he, as the son of a brother

of the late Maharajah, was entitled to maintenance out of the estate. The defendants in their statements, proceeded more or less upon the same basis, but alleged a special custom which deprived the plaintiff of that which was treated as being his *prima facie* right.

Upon that, issues were framed, the important issues being the third and fourth. The third issue was:—Whether, if the plaintiff reverted to his natural family, by reason of his adoption into another family being invalid, the first defendant is bound to maintain him according to Hindu law out of the income of the Jeypore Zamindari. The fourth issue was:—“Whether according to the custom among Uriya Zamindars or the custom of the family, the first defendant is not liable to maintain the plaintiff out of the income of the Jeypore Zamindari.”

Both Courts acting, as they considered, upon the existing authorities, answered the first issue in the affirmative and, upon the evidence, answered the second issue in the negative; and, accordingly, maintenance was decreed to the plaintiff.

Since those decisions were given this Board, in the case of *Raja Rama Rao v. Raja of Pittapur* (45 I.A., 148), has decided that, apart from custom and from certain near relationships to the holder the junior members of the family of a zamindar entitled to an impartible zamindari have no right to maintenance out of it, and that there is no invariable custom by which any member of the family beyond the first generation from the last holder can claim maintenance as of right.

In view of that decision, it is plain that the issue which should have been tried was not that which in fact was tried but “Whether according to the custom among Uriya Zamindars, or the custom of the family, the plaintiff is entitled to maintenance out of the income of the Zamindari”; in other words, the burden should have been put upon the plaintiff to prove the custom entitling him to maintenance, and not upon the defendants to prove a custom negating the ordinary law.

That being so, it appears to their Lordships that, in order to do justice, the case must be sent back, in order that the issue which their Lordships have defined should be tried, and accordingly the case should be remitted to the High Court in order that they may direct that issue to be tried, and may dispose of the case in accordance with the finding.

Their Lordships have considered whether the question of amount should also be remitted; but, upon the whole, they have come to the conclusion that if as the result of the issue now directed, the plaintiff is found entitled to maintenance, the amount fixed by the High Court should not be disturbed.

Their Lordships will, accordingly, humbly advise His Majesty to remit the matter for the purpose mentioned.

The costs incurred in the Courts below will follow the ultimate event of the proceedings. There will be no costs of this appeal.

As regards the cross-appeal which was withdrawn on an undertaking to pay the costs, that undertaking will of course remain unaffected by the present order as to costs.



In the Privy Council.

SRI SRI SRI VIKRAMA DEO MAHARAJULUM
GARU, MAHARAJAH OF JEYPORE, AND
ANOTHER

vs.

SRI SRI SRI VIKRAMA DEO GARU

SRI SRI SRI VIKRAMA DEO GARU

vs.

SRI SRI SRI VIKRAMA DEO MAHARAJULUM
GARU, MAHARAJAH OF JEYPORE, AND
ANOTHER

(Consolidated Appeals.)

[DELIVERED BY VISCOUNT CAVE]