

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Oolagappa Chetty v. The Honourable D. Arbutnot and others, from the High Court of Judicature at Madras ; delivered 14th March, 1874.*

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Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THIS case is governed by the principles laid down in the Appeal just decided between the Collector of Trichinopoly and the widow of the zemindar of Maremgapuri.

*Prima facie* the polliem was hereditary. If it was hereditary and descended to the minor son as the heir of his father, the income of the zemindary was liable to pay the debts incurred by the deceased zemindar.

The Civil Judge, upon the authority of decided cases, principally of those cited from the Madras Select Decrees, to which their Lordships have referred in the other appeal, held that the polliem was not hereditary, but that the object for which the debt was incurred was such that the debt was a charge upon the estate, and that the income derivable from it was liable to discharge the debt, and he gave a decree accordingly. (Record, p. 36.)

Upon appeal, the High Court held that, upon the death of the polygar, by whom the debt was contracted, the proprietary right to the polliem reverted absolutely to Government, and that, by their fresh grant to the Defendant, a newly-created estate for life became vested in him ; and that, consequently,

the Defendant, as the representative of his father, was not liable to pay the debt out of the revenues of the zemindary, and they reversed so much of the decree of the Lower Court as declared the liability of the Defendants in respect of the revenues of the polliem. The judgment of the High Court was pronounced on the 13th May, 1870, before the judgment of that Court in the Margungapuri Case was given. Their Lordships are of opinion that no sufficient evidence was given to prove that the polliem reverted absolutely to Government upon the death of the late polygar, or that the Defendant held under a fresh grant, by which a newly-created estate for life became vested in him.

They are, therefore, of opinion that the Decree of the High Court ought to be reversed, with the costs of this Appeal.

In ordinary course, their Lordships would at once proceed to recommend that the Decree of the Civil Judge be affirmed.

Mr. Forsyth, however, suggested that the Collector may have been misled by the decisions prior to the judgment in the Marungopuri Case, and may, in consequence of those decisions, have abstained from offering evidence to show that the polliem was not hereditary, and that, if the Decree of the High Court should not be upheld, the case ought to be remanded, to enable the Collector to adduce evidence to that effect, if he has any.

The first issue raised in the lower Court, viz., whether the zemindary or the income thereof was answerable for the debt contracted by the late zemindar, certainly involved the question whether the zemindary was hereditary or whether the late zemindar had merely a life interest in the estate. But that issue was too general; it involved several mixed questions of law and fact, and did not sufficiently direct the attention of the parties to the main question of fact necessary to be decided. Their Lordships are, therefore, of opinion that, if the Respondents, or either of them, desire it, it ought to be referred to the Lower Court to raise and try the following issue, viz., whether the late zemindar had an estate of inheritance in the zemindary which descended to his minor son as his heir.

That reference, however, ought not to be made except upon the condition of the Respondents, or

one of them, notifying to the High Court, within a reasonable time, their or his desire to have that issue referred for trial, and upon payment of the costs of this appeal and of the costs of the appeal to the High Court. Their Lordships will, therefore, humbly recommend to Her Majesty that the decree of the High Court be reversed; that the Respondents do pay to the Appellant the costs of this Appeal and also the costs of the Appeal to the High Court; and further that, upon payment of such costs the High Court do, under the provisions of Section 354 of the Code of Civil Procedure, refer for trial by the Court of the Civil Judge the following issue, viz., "Whether the late zemindar had an estate of inheritance in the zemindary which descended to his minor son as his heir," provided the Respondents, or one of them, do, within six months from the date of the order to be made by Her Majesty in Council, notify to the High Court their or his desire to have such issue tried; and that, in the event of no such notification being made within the period aforesaid, the Decree of the Civil Judge do stand affirmed; that, in the event of such issue being referred, all subsequent proceedings be taken under the provisions of Section 354 of the Code of Civil Procedure; that the costs hereby ordered to be paid come out of the estate; that the sum of 300*l.* in the hands of the Registrar, as security for the costs of the Respondents in case this appeal be dismissed, be returned to the Appellant, Oolagappa Chetty, or to his attorney.

The first part of the document discusses the general principles of the law of contract. It states that a contract is an agreement between two or more parties, which is legally binding and enforceable. The document then goes on to discuss the elements of a contract, which are offer, acceptance, and consideration. It also discusses the types of contracts, such as express and implied contracts, and the remedies available for breach of contract.

The second part of the document discusses the law of tort. It states that a tort is a civil wrong that causes harm or injury to another person. The document then goes on to discuss the elements of a tort, which are duty of care, breach of duty, and damage. It also discusses the types of torts, such as negligence, intentional torts, and strict liability torts, and the remedies available for tort.

The third part of the document discusses the law of property. It states that property is a legal right that a person has in a thing. The document then goes on to discuss the types of property, such as real property and personal property, and the rights of ownership. It also discusses the ways in which property can be transferred, such as by gift or sale, and the remedies available for breach of property rights.

The fourth part of the document discusses the law of succession. It states that succession is the process by which a person's property is transferred to another person after their death. The document then goes on to discuss the types of succession, such as testate and intestate succession, and the rules that govern the distribution of property.

The fifth part of the document discusses the law of trusts. It states that a trust is a legal arrangement in which one person (the settlor) transfers property to another person (the trustee) to hold and manage for the benefit of a third person (the beneficiary). The document then goes on to discuss the elements of a trust, which are settlor, trustee, and beneficiary, and the types of trusts, such as express trusts and implied trusts.