

Judgment of the Judicial Committee of the Privy Council on the Appeal of Sri Rajah Satrucharla Jagannadha Razu (Zemindar of Merangi) v. Sri Rajah Satrucharla Ramabhadra Razu and others, from the High Court of Judicature at Madras; delivered 31st January 1891.

Present:

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Mr. Shand.*]

The matter for determination in this case, which arises on a question of disputed succession between the parties, is whether the zemindari of Merangi is partible or impartible. The Appellant, the present registered zemindar of Merangi, maintains that the estate, which is described on the record as consisting of 86 villages with their hamlets, situated below the Ghauts, and adjoining the zemindari of Jeypore, is impartible; and he complains of the decisions of the District Court of Ganjam, and of the High Court at Madras, in both of which Courts the judgments have been to the effect that the zemindari is partible, and consequently divisible between him and the Respondents, for whom no appearance was made at the hearing of this appeal.

Their Lordships are of opinion that the judgments of the Courts of First and Second Instance

are right. It is unnecessary to recapitulate the facts, which are fully stated in the judgments complained of. For the purpose of this decision it may be assumed, as it was by the Subordinate Judge—the High Court say there is no evidence of it—that the zemindari was at one time held under military tenure from the Rajah of Jeypore, when it was granted to an ancestor of the present Appellant. It may further be assumed, though there is little if any evidence to warrant the assumption, that the tenure continued to be the same after the estate had been taken by force and incorporated in Kurupam zemindari, and subsequently when by conquest it again became part of the Vizianagaram zemindari which was dismembered in 1795. Taking it, in accordance with the argument of the Appellant's Counsel, that impartibility was the rule then applicable to the estate, their Lordships are clearly of opinion that the subsequent dealings with the estate, the nature and terms of the grants under which it has been held throughout the present century, the absence of proof of any usage or practice of impartibility in the succession to the estate, contrary to the ordinary Hindu law of succession, and the character of the estate, which is in no way distinguishable from an ordinary zemindari subject to the payment of a fixed assessment of revenue, all clearly lead to the conclusion that the zemindari is now a partible estate in a question of succession.

The grant of 1803 by the Government does not appear amongst the documents on the record; but it is clear from the kabuliat that the sannad-i-milkeat istimidar was in the ordinary terms of such grants. There is nothing in the circumstances under which this grant was made to lead to the inference that the Government had in view, in making this new grant, the creation of an impartible zemindari, as an exception to the

ordinary rule of succession of the Hindu law. The single circumstance that the property was given to a representative of an elder branch of the family formerly in possession, in preference to the representative of a younger branch who had been in arms against the Government, is of very little weight; and accordingly, even at this early date, in the beginning of the century, it appears to their Lordships that the zemindari of Merangi, if impartible before, became partible in a question of succession, as it became also subject to the disposition of the zemindar by deed of transfer on sale or gift of the whole or part of the property.

What occurred in 1835, however, makes the determination of the case perhaps even more clear. The estate had again come into the possession of the Government. It had been exposed to public sale for payment of debt due by the zemindar, and might have been bought by any third party as purchaser. The Government, however, bought it, and held it for some time. During this time the Dewan of the former zemindar, and certain of the Doratanams, performed an important service to the Government, who had offered a considerable pecuniary reward for the capture or putting down of certain rebels who had caused much disturbance in the district. They succeeded in putting down the rebellion. Instead of the pecuniary reward to which they became entitled, they begged that a new grant of the zemindari might be given to the son of the former zemindar (then still in life), who was a boy of only nine years of age, and the grant was accordingly made to this boy in the usual terms of a sannad-i-milkeat istimidar, and his heirs, with the ordinary power of sale or disposal of the property in whole or in part, and concluding with the words:—Art. 14. “Continuing

“ to perform the above stipulations, and to
 “ perform the duties of obedience to the British
 “ Government, its laws and regulations, you are
 “ hereby authorized and empowered to hold in
 “ perpetuity to your heirs, successors, and assigns,
 “ at the permanent assessment herein named the
 “ zemindari of Merangi.” It appears to their
 Lordships that here again, for a second time, there
 was such a dealing with the estate, as in the cir-
 cumstances, and having regard to the terms of the
 grant, clearly shows that there was no intention
 to create an impartible estate, assuming there
 was power to do so, or to restore an estate pre-
 viously impartible. The circumstances were
 entirely different from those which occurred in
 the Hunsapore case, where an estate, in itself an
 important Raj or Principality, was simply con-
 fiscated to the Government and again given
 out to the nearest heir of the next line. As
 was observed in the judgment, “ the transaction
 “ was not so much the creation of a new
 “ tenure as the change of the tenant.” In
 the present instance the grant followed on a
 purchase of the property by the Government;
 it was given, on the solicitation of persons who
 had a claim against the Government, to one who,
 though no doubt the son of the former zemindar,
 might have had no such grant but for the inter-
 vention of those persons who were attached to
 him; and there is nothing in the terms of the
 grant to support the contention of the Appel-
 lant,—on whom the onus lies of proving that
 this is the exceptional case of a zemindari
 impartible in its nature,—and nothing to prove
 a usage or custom of succession, throughout the
 operation of the grants of 1803 or 1835, contrary
 to the ordinary rule of the Hindu law.

Their Lordships therefore will humbly advise
 Her Majesty that the decree of the High Court
 ought to be affirmed and the appeal dismissed.

The appeal having been heard *ex parte* their Lordships make no order as to the costs of it.

The costs of an application for leave to be heard, which was made, after the conclusion of the hearing of the appeal, by certain of the Respondents, and which was opposed by the Appellant, must be paid by those Respondents.

