

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of Abdul Aziz Khan v. Appayasami Naicker (since deceased) and others; and of Munhar Das and others v. Abdul Aziz Khan and others; and of Abdul Aziz Khan v. The Commercial Bank of India, Limited, and others; and of Munhar Das and others v. Abdul Aziz Khan and others; from the High Court of Judicature at Madras; delivered the 13th November 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

These Appeals were heard together, as the decision in all depends upon the same point. The material facts may be very shortly stated.

Bungaru, who succeeded to the zemindari of Kannivadi, in the Madras Presidency, in the year 1852 was a member of a joint Hindu family governed by the Mitakshara law. The zemindari is an impartible estate, the succession to which is regulated by the custom of primogeniture, and upon the death of Bungaru on the 9th February 1881, without male issue, his brother Appayasami succeeded to the zemindari.

Bungaru had found the estate heavily encumbered; and after endeavouring for some years, without much success, to manage it through agents, he executed, on the 20th July 1861, an

instrument by which he transferred to one Adimulam for 30 years the possession and management of the whole zemindari, with the exception of three hill villages, in order to secure the regular payment of the Government demand, the gradual reduction of existing debts, and a modest income for himself. Having made this arrangement, Bungaru proceeded to incur fresh liabilities, and in 1870 and 1871 numerous suits were brought against him, and money decrees obtained by creditors. Two of these were transferred to the Appellant Abdul Aziz Khan. The first, dated 18th March 1870, was for Rs. 5,264.15.9, with interest and costs; and the second, dated 7th March 1871, for Rs. 20,904.9, with interest and costs. In execution of these decrees, 12 villages of the zemindari were attached and sold by order of the District Court of Madura, and were purchased by the Appellant above-named for a total sum of Rs. 7,010. The certificate of sale of seven villages is dated on the 7th March 1873, and that of the remaining five villages on the 22nd March 1876. In both cases, what was purchased was expressed on the face of the certificate to be "the right, title, and interest" possessed by the Defendant Bungaru in the properties mentioned.

As has been already stated, Bungaru died without issue in 1881, and on the 23rd April in that year the Respondent Appayasami (since deceased) filed a suit against Adimulam and others to set aside the instrument of 20th July 1861, as not binding upon him for reasons given in the plaint. The District Judge found that it was not binding as a lease, but was binding as a mortgage, and after taking an account of what was due to Adimulam as mortgagee, passed a decree in his favour for Rs. 1,87,835 with interest. Upon appeal to the High Court at Madras, this decree was affirmed, with

the exception that the sum payable to the mortgagee was reduced to Rs. 1,20,000. To satisfy this decree and redeem the property, Appayasami borrowed money from various persons, whose claims are now represented by the Respondent the Commercial Bank of India.

On the 20th July 1891 the term of 30 years reserved in the conveyance to Adimulam expired, and the Appellant Abdul Aziz Khan brought a suit to recover possession of the twelve villages which he had purchased at the Court sales before-mentioned from Appayasami, whom he alleged to be in wrongful possession of them. Appayasami, in his written statement, asserted that all that was attached and sold in execution of the money decrees held by the Appellant "was the right, title, and interest of the deceased Bungaru, and that such right, title, and interest ceased with his death." Of the numerous issues raised, the most important was the sixth, viz., "Whether what was attached, bargained for, sold, and purchased by the (Appellant) was only the life interest of the deceased Bungaru?"

The Civil Procedure Code of 1859, which was in force at the time of the execution sales, "required that property sold in execution should be described as the right, title, and interest of the judgment debtor, and it has been held in many cases that the presence of these words in the sale certificate is consistent with the sale of every interest which the judgment debtor might have sold." (*Mahabir Pershad v. Markunda Nath Sahai*, L.R. 17 I.A. 11, at p. 16). Each case, however, must depend upon its own circumstances, and "in all the cases, at least the recent cases, the inquiry has been what the parties contracted about if there was a conveyance, or what the purchaser had reason to think he was buying if there was no

“ conveyance, but only a sale in execution of a “ money decree ” (*Simbhunath Panday v. Golab Singh*, L.R., 14 I.A. 77, at p. 83). As Lord Watson put it in the course of the argument in the case of *Pettachi Chettiar v. Sangili Veera Pandia* (L.R. 14 I.A. 84, at p. 85), in the case of a sale in execution of a money decree, “ the questions are, what did the Court intend “ to sell, and what did the purchaser understand “ that he bought? ” These are questions of fact, or rather of mixed law and fact, and must be determined according to the evidence in the particular case.

In the present case, it is not disputed that Bungaru and his brother constituted an undivided Hindu family, and that the debts in respect of which the decrees were made were not debts for which the joint estate was liable, if it passed by survivorship to the younger brother. What then was the extent of the interest held in the estate by Bungaru in his brother's lifetime, and which he was entitled to charge in favour of a personal creditor? As regards the law of the matter in 1873 and 1876, when the sales took place, it was the accepted law in Madras that the holder of an impartible zemindari who was himself a member of an undivided family, could not alienate or encumber the corpus of the estate so as to bind his coparceners, except for justifiable especial causes. Prior to 1889, there had been a series of decisions to this effect in the Madras Courts, but in that year, following the judgment of this Committee in the case of *Rani Sartaj Kuari v. Rani Deoraj Kuari*, L.R. 15 I.A. 51, the High Court of Madras over-ruled those decisions (*Beresford v. Ramasubba* I.L.R. 13 Mad. 197); and it has recently been held by this Committee in the case of *Raja Rao Venkata v. Court of Wards*, L.R. 26 I.A. 83, that impartible zemindaris in the Presidency of Madras are not

inalienable in the absence of proof of some special family custom or tenure attaching to the zemindari, and having that effect. This reversal of the previously accepted interpretation of the law does not, in their Lordships' opinion, displace its application to the construction of the contracts contained in the certificates of sale now under consideration. "The rights of the parties to a contract," as Mr. Justice Willes observes in delivering the judgment of the Court of Exchequer Chamber in *Lloyd v. Guibert* (6 B. and S. 100 at p. 133), "are to be judged of by that law which they intended, or rather by which they may justly be presumed to have bound themselves." Their Lordships agree with the Courts below in holding that in 1873 and 1876, when the sales took place, the parties must be taken to be bound by the law as it was at that time understood, and that the estate purchased by the Appellant was only the life interest of the then zemindar. Their Lordships will humbly advise His Majesty that these Appeals should be dismissed, and the Decrees of the High Court at Madras confirmed.

Munhar Das and his Co-Appellants have not appeared before their Lordships in support of their Appeals. Their Lordships will accordingly order them to pay the costs of those Appeals incurred by the Commercial Bank of India, the only Respondent who has appeared. The Bank's costs of the other two Appeals must be paid by Abdul Aziz Khan, the Appellant therein.

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