Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Srimantu Raja Yarlagadda Mallikarjuna v. *Srimantu Raja Yarlagadda Durga and another, from the High Court of Judicature at Madras; delivered 1st May* 1890.

Present:

LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The question in this appeal is whether a large estate called Devarakota, in the Northern Circars in the Presidency of Madras, is impartible, and descends to the eldest son of the last owner. The parties to the suit are the three sons of Ankinidu, who died possessed of the estate on the 6th April 1875. The Appellant is the eldest son, and shortly after his father's death he took possession of the estate, and had remained in possession of it till the bringing of the suit. The Respondent Durga Prasada is the second son, and on the 16th April 1880 he brought the suit in the District Court of Kistna against his brothers, praying that he and the two Defendants might be declared each entitled to a one third share in the property. Issues were framed, of which only the second is now material. That is, whether the estate called in the issues the Zemindari of Devarakota is an impartible zemindari, and descendible to the eldest as

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against other sons, or partible. The District Judge held that the estate was impartible, and disallowed that part of the Plaintiff's claim. In respect of other matters, which need not now be noticed, his claim was allowed. The High Court of Madras, on appeal, held that the estate was partible, and reversed that part of the decree.

In Mr. Grant's Political Survey of the Northern Circars, submitted to the Governor General and Council at Calcutta on the 20th December 1784, and inserted in the Appendix to the Fifth Report from the Select Committee of the House of Commons on the affairs of the East India Company, there is a notice of the family in which it is stated that they first settled at Devarakota as combies or husbandmen in 1580, and were supposed to have got their first sunnuds for Desmooky jurisdiction from Abdullah Kootub Shah in 1640, though not constantly confirmed in the possession of it by future rulers. In 1732, being involved in the general proscription of Rustum Khan, they lost all territorial jurisdiction rights and privileges, but in the confusion of subsequent revolutions they regained possession, and were numbered in the Convention of 1766, by which the Northern Circars were transferred to the East India Company. Devarakota is stated by Mr. Grant to be in the Circar of Condapillee, and appears from the rental concluded with the ryots to have been one of the largest estates there.

Their Lordships think that, in considering the evidence upon the question of impartibility, it is not necessary to go further back than 1766. At that time one Kodandaram was in possession of the estate. He died on the 20th November 1791, leaving three sons, Venkatramanna, Naganna, and Venkatadri. Venkatramanna succeeded to the whole estate, and died after a few months in 1792. On his death the zemindari was claimed by

Naganna, and a claim was set up on behalf of his son Ankanna, then a boy of 13 or 14 years old, on the ground of his having been adopted by Venkatramanna. The adoption was denied by Naganna. The Government, which appears at that time to have been the only authority which had power to decide the question, there being no Civil Court competent to do so, resolved that the right of succession was in Naganna, and ordered him to be put in possession. In November 1796 Naganna was dispossessed of the estate by the Collector of Masulipatam, who, in his letter to the Board of Revenue assigning his reasons for doing so, said,—"It appears that the Zemindar "has failed in the payment of the customary "tribute due by him to the Company on account "of that zemindari." And in a letter from the Board of Revenue to the Governor in Council, dated the 22nd March 1798, they say,—"The "conduct of Nageswaram Naidu (another name "for Naganna), although it ought to disqualify "him from being longer entrusted with the care "of a zemindari, certainly has not been such as "to set aside for ever the rights of his son, who, it "appears by the report of the Chief and Council "of the 12th March 1792, contested the suc- "cession with his father, under the plea of "having been adopted by his uncle Venkatara- "mayya, the late Kondandaram's eldest son, "who died without issue soon after his father. "We, therefore, in consideration of this right, "not as giving a preference to Zemindari "management, concur in Mr. Oakes' (the Col- "lector) recommendation in his favour."

The Governor in Council, in a letter to the Board of Revenue of the 4th April 1798, said as to this recommendation, "We owe it to the "rights of the young Zemindar Ankanna, as "well as to considerations which arise from the "late Collector's administration, to concur in the

" recommendation of Mr. Oakes and your Board " for the restoration of this zemindari to An- " kanna." The words " rights of the young " Zemindar " are opposed to the view of the High Court that the changes of possession were simply acts of administration. At this time Ankanna had a younger brother named Gungadhara, and there is evidence of allowances for maintenance being made to him and to Venkatadri, the youngest son of Kodandaram. In a letter from the Secretary of the Board of Revenue to the Collector in February 1800 the Board approves of his making an allowance out of the revenue of Devarakota to Ankanna (there called Ankinidu) of 100 pagodas per month during the period his zemindari is under assumption, and directs him to continue the allowances granted to Nagesha Naidoo (Naganna) and the uncle of Ankanna (Venkatadri).

On the 28th February 1801 the Collector wrote to Ankanna by the name of Ankinidu as follows:—" It is surprising that you have " written to say that you will pay 10 pagodas " per mensem to your younger brother Gun- " gadhara Naidu, though the responsibility of " maintaining him rests to a great extent with " you. I think that at least 15 pagodas per " mensem should be given him. If you do not " do so, how will you acquire our good will?" It is apparent from this that Ankanna had before this time been restored to the zemindari, though it does not appear in the proceedings when this took place.

Their Lordships think that the result of the evidence in the suit is that at this time Ankanna was in possession of the estate by right of primogeniture as an impartible estate, and was so regarded by the Government.

Regulation XXV. of 1802 (Madras) was passed

on the 13th July. It recites that the public assessment of the land revenue had never been fixed, and that the Government had resolved to grant to zemindars and other landholders, their heirs and successors, a permanent property in their land in all time to come, and to fix for ever a moderate assessment of public revenue on such land, the amount of which should never be liable to be increased under any circumstances. On the 8th December 1802 an istimrar sanad was granted by Lord Clive, then Governor in Council of Fort St. George, to Ankinidu, otherwise Ankanna, fixing the assessment of the zemindari at the annual sum of 29,340 star pagodas, and declaring it to be permanent. Ankinidu thus acquired a permanent property in the land at a fixed assessment, but there was no grant of the land, and the rule of succession to it was not altered. The estate remained entire, and there is no evidence of any intention of the Government to alter the nature of the tenure. What is said by this Board in the judgment in the Hunsapore Case, 12 Moore, I. A., 35, is applicable to the present case. The estate continued to be impartible, and the rule of succession to it was not altered.

There is evidence of a later date which is some proof in support of this. Ankanna adopted Durga Prasada, the son of Gungadhara, and after his death in 1833 his widow adopted Ankinidu, the father of the Appellant and Respondents. Venkatadri left a son Karkotaka, and in 1866 his mother and guardian brought a suit on his behalf against Ankinidu for a monthly maintenance of Rs. 161. 11. 2, which had been paid to her late husband Venkatadri from the estate of Devarakota Zemindari, and for arrears from the 1st May 1856 to the 1st August 1866. The Defendant pleaded that the maintenance was for Venkatadri's life only, and did not descend to his son. In the judgment of the Principal Sadr Amin it is said,

"The parties have agreed that the zemindari descended to the eldest son," and the decision "that the Defendant be held liable to the pay-"ment of Rs. 50 per mensem to the Plaintiff's "minor son during the period of his minority" is founded upon the assumption that Venkatadri was by usage excluded from inheritance. No objection appears to have been made to this judgment being admitted in evidence, if it could have been made successfully.

The question whether an estate is subject to the ordinary Hindu law of succession, or descends according to the rule of primogeniture, must be decided in each case according to the evidence given in it. In this it appears that the claim of the Plaintiff under the ordinary Hindu law has been answered, and that the decree of the District Court disallowing the claim ought not to have been reversed. Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the High Court, and to affirm the decree of the District Court, with the addition of the costs of the appeal to the High Court.

The Respondents will pay the costs of this appeal.