Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Raja Viravara Thodhramal Rajya Lakhshmi Devi Garu v. *Sri Raja Viravara Thodhramal Surya Narayana Dhatrazu Bahadur Garu, from the High Court of Judicature at Madras; delivered 7th April* 1897.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

This is an appeal against a decree of the High Court of Madras affirming a previous decree of the District Court of Vizagapatam. The Appellant who was Defendant in the action is the widow of the late Zemindar of Belgam who died on the 29th October 1888 without leaving any issue and intestate. She claims to be entitled to a widow's estate in the entire zemindari. The Respondent (Plaintiff in the action) claims to be entitled in possession to one moiety of the zemindari on the ground that the zemindari was part of the joint property of his and the late Zemindar's family and he alleges that the zemindari being partible in title his brother Surandara Narayana (who was made a Defendant in the action but is not a party to this appeal) is entitled to possession of the other moiety. On the other hand the widow and Appellant contends that the zemindari was

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mpartible in title and that owing to certain family arrangements it had become the separate property of her late husband.

The zemindari of Belgam was originally created by a sunnud dated 21st October 1803 granted by the Government to Somasundara Narayana (the first Zemindar). The sunnud itself has been lost but the contents of it sufficiently appear from the kabuliat or counterpart executed by the Zemindar and dated 28th April 1804 which was put in evidence. It appears from this document to have been in a form which is stated to have been usual in grants by the Madras Government of that period. It conferred on the Zemindar liberty to transfer by sale gift or otherwise his proprietary right in the whole or any part of the zemindari and granted the estate to him his heirs successors and assigns at the permanent assessment therein named. It would seem from the arrangements made in the family that the zemindari was regarded as impartible. But whether that be so or not it has been now decided in the case of *Venkata* v. *Narayya* (L. R. 7 Ind. Ap. 38) on the construction of a sunnud of similar form and granted about the same date that the zemindari thereby created was not impartible or descendible otherwise than according to the ordinary Hindu law. It must be taken therefore that the Zemindari of Belgam was not impartible whatever the parties may have thought and the misapprehension of the parties could not make it so or alter the legal course of descent. It will however be found that as between the Appellant and the Respondent the question whether the zemindari is partible or not is of no importance. Even if impartible it may still be part of the common family property and descendible as such in which case the widow's estate of the Appellant would be excluded. The real question therefore

is whether it has ceased to be part of the joint property of the family of the first Zemindar or (in other words) whether there has been an effectual partition so as to alter the course of descent.

Somasundara Narayana the grantee and first Zemindar died in the year 1814 leaving two sons Dhananjaya No. 1 and Visvambhara No. 1. Dhananjaya was allowed by his brother to succeed to the estate and became second Zemindar. Two documents dated the 16th and the 18th February 1816 were executed on this occasion and were the first transaction relied on by the Appellant in proof of the separation of estate or partition which she alleged had taken place. The first document was a "Pharikat sunnud" given by Visvambhara in the following terms:—

"*As we have both equally divided and taken all the cash jewels and other (property) in the Palace to which both of us are entitled I bind myself not to claim (anything) from you at any time I shall reside in the village of Addapusila which you were pleased to give me for my maintenance and act according to your wishes.*"

By the second document (also called a "Pharikat sunnud") Visvambhara stated:—

"*I or my heirs shall not at any time make any claims against you or your heirs in respect of property moveable or immoveable or in respect of (any) transaction. As our father put you in possession of the Belgam Zamindari I or my heirs shall not make any claim against you or your heirs in respect of the said Zamindari.*"

Their Lordships do not find any sufficient evidence in the arrangement made by these documents of an intention to take the estate out of the category of joint or common family

property so as to make it descendible otherwise than according to the rules of law applicable to such property. The arrangement was quite consistent with the continuance of that legal character of the property. The elder brother was to enjoy the possession of the family estate and the younger brother accepted the appropriated village for maintenance in satisfaction of such rights as he conceived he was entitled to. In the opinion of their Lordships it was nothing more in substance than an arrangement for the mode of enjoyment of the family property which did not alter the course of descent.

The second Zemindar died in 1849 leaving two widows and one daughter Ratna Mani Amma but no son. At this time the estate was in the hands of a mortgagee and remained so during Visvambhara's life. He died in 1865 leaving two sons Ramachandra and Janardana. A suit was commenced by Ratna Mani Amma (her father's widow being then dead) to recover the zemindari from Ramachandra. This suit ended in a compromise by which the Plaintiff withdrew her claim to the estate on condition of Ramachandra paying her Rs. 500 a year. Ramachandra had already by a kararnama dated 13th October 1866 on the application of his brother Janardana and with a view to enable him and his family to live decently granted to him as *towji* the villages of Addapusila and Vuddavolu conditional on Ratna Mani's suit being settled in the manner mentioned. Ramachandra seems to have recovered possession of the estate from the mortgagees and succeeded as fourth Zemindar. This transaction does not tend to support the case of the present Appellant.

Ramachandra having no male issue adopted Sivan Narayana the eldest son of Janardana but afterwards attempted to repudiate the adoption.

In 1870 a suit was commenced by Sivan Narayana against Ramachandra to establish the adoption and praying for a decree establishing his title to the zemindari after the Defendant's death. During the pendency of the suit Ramachandra died without male issue but leaving one daughter and thereupon the suit was revived against Janardana and Ramachandra's two widows and his daughter. Their Lordships observe that these persons were the only persons then interested in contesting the adoption of Sivan Narayana and they must assume that they were made Defendants to the suit for the purpose of establishing the adoption against them. The suit was compromised as regards Janardana and one of the widows (named as 2nd Defendant) on the terms contained in a razinama dated 6th September 1871 and as regards the other widow on behalf of herself and her infant daughter in another razinama of the 16th September 1871. These are the documents which are chiefly relied on by the present Appellant in support of her case.

By this compromise Janardana agreed that the Plaintiff was the adopted son of his elder brother that the right to the zemindari should pass to the Plaintiff and that Janardana should be enjoying or continue to enjoy (for the words are translated both ways) the villages of Vuddavolu and Addapusila attached to the zemindari which had been in his possession and enjoyment in accordance with the kbararnama executed in his favour by his late elder brother and he also agreed to the provision to be made for Ramachandra's widows and daughter. The other Defendants agreed to the Plaintiff being the adopted son of the 2nd Defendant and her late husband and to the right of the zemindari being the Plaintiff's. Provisions were made for the two widows during

their lives out of lands attached to the zemindari. It was arranged that Ramachandra's daughter should be married to Sivan Narayana's son or in default provision should be made for her out of lands of the zemindari—and there were other provisions for the benefit of the widows.

The terms of the compromise seem to have been carried out and Sivan Narayana as adopted son of Ramachandra succeeded to the zemindari. He died in March 1882 and was succeeded by his son Dhananjaya (2) who died on the 29th October 1888 intestate leaving the Appellant his only widow and no issue.

The Respondent is one of the two sons of Chandrasekhara (deceased) the second son of Janardana and he and his brother are his only two surviving grandsons. It is alleged and seems to have been admitted in the case that Visvambhara (2) a brother of the late Zemindar Dhananjaya (2) had been adopted into another family and was excluded from any share in the property of his natural father's family and the proceedings in the suit were conducted on that assumption. Their Lordships will only point out that if any mistake has been made with respect to this fact nothing that is decided in this suit will affect his interest (if any) in the zemindari. Visvambhara applied to be made a party to the suit but his petition was refused on other grounds and no evidence was gone into as to his adoption into another family.

The present suit was commenced by the Respondent on the 25th April 1889 against the Appellant the Respondent's brother and the Court of Wards as guardian of the Appellant. The plaint ignores the adoption of Sivan Narayana and proceeds on the assumption that he succeeded to the estate with the permission of his natural father Janardana and his natural brothers and managed the estate on behalf of

himself and the other members of the family. It alleges that the estate is partible and is owned and enjoyed by the family of the Plaintiff. The prayer is that excluding the villages of Vuddavolu and Addapusila the zemindari be divided so as to give the Respondent his half share and the same recovered from the Appellant. The defence was in substance (1) that the zemindari is impartible (2) that the Respondent was estopped by the family compromise of 1871 from maintaining the suit and (3) that the suit is barred by the Law of Limitations. The validity of the adoption of Sivan Narayana is not now in dispute.

On the first point their Lordships have already expressed their opinion and have pointed out that as between the Appellant and Respondent the question is immaterial. It only arises as between the Respondent and his brother who is not a party to this appeal. The District Court decreed the Respondent possession of half of that part of the zemindari which is within the local jurisdiction of the Court and that was all that the plaint asked for.

On the second point their Lordships agree with the Courts below that the course of descent of the zemindari was not altered by the compromise of 1871 and that the widow is not entitled to succeed to a widow's estate as heir of the late Zemindar. The only question raised in the litigation of 1870 was as to the fact of Sivan Narayana's adoption by Ramachandra and it does not appear that any other contention was raised by Janardana when he was made a party to the suit or was in the contemplation of the parties. They may (as has been suggested) have been under the erroneous impression that the zemindari was impartible but there was nothing in the compromise inconsistent with the zemindari (even if impartible) remaining part

of the common family property. The two villages were originally granted by Ramachandra to Janardana as *touji* only and in order to provide a decent maintenance for him and his family and in 1871 it was agreed that Janardana should continue to enjoy the villages in accordance with Ramachandra's grant. It is said that Janardana and his family have dealt with these villages in a manner inconsistent with their holding them for their maintenance only. Their Lordships express no opinion on the point but even if they have exceeded their rights that will not alter the effect of what was done by the Agreement of 1871. It is impossible to treat that Agreement as a deed of partition by which the zemindari was converted into the separate or acquired property of Sivan Narayana.

Their Lordships also agree with the Courts below that the suit is not barred by the Law of Limitations. As between the Appellant and the Respondent the suit is not one for partition. The claim of the latter is not to hold jointly with the Appellant but to succeed adversely to her as one of the right heirs on the death of the last Zemindar. There has been no denial of the title of Janardana and his family or exclusion of them from the estate. On the contrary the possession has been under and in accordance with the Agreement of 1871 by which a provision was made for the junior branch.

Their Lordships will therefore humbly advise Her Majesty that this appeal should be dismissed. The Appellant will pay to the Respondent his costs of the Appeal.