

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Bommadevara Venkata Narasimha Naidu and Another v. Raja Bommadevara Bhashyarkaru Naidu and Others, from the High Court of Judicature at Madras; delivered the 18th April 1902.*

Present at the Hearing :

LORD DAVEY.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

[*Delivered by Sir Andrew Scoble.*]

This is an Appeal against a judgment of the High Court at Madras which affirmed with some modifications a decree of the District Court of Kistna in that Presidency. The suit was brought to obtain a partition of the Zemindary of Vallur and the moveable and immoveable property held therewith. The principal Plaintiff is the younger brother of the principal Defendant, the other parties being minor sons of the Plaintiff and Defendant respectively, who were made parties for conformity.

The property in question is of considerable amount, and the suit was hotly contested, many issues being raised to which it is unnecessary now to refer. The main contention in the District Court was that, whereas the principal Plaintiff alleged that the parties were members of an undivided Hindu family, the principal Defendant asserted that the Zemindary was impartible by family custom, and that the junior members were only

entitled to maintenance out of the family estate. But after a certain amount of evidence had been recorded, this contention was abandoned by the Defendant's vakils, and the issue was decided in favour of the Plaintiffs. It was one of the grounds of appeal to the High Court that the vakils exceeded their authority in giving up this issue, but the High Court held that a vakil's "general powers in the conduct of a suit include the abandonment of an issue which, in his discretion, he thinks it inadvisable to press;" and in this opinion their Lordships concur.

Before the issue of impartibility was decided, and before any evidence had been recorded, the Defendants' vakils applied to raise a general issue that the suit was time-barred, and the District Judge's refusal to raise such an issue has been made a ground of appeal both in the High Court and before their Lordships. But no question of limitation is raised upon the pleadings, and the Judges of the High Court held that although the District Judge had a discretion to raise such an issue, even at the stage of the proceedings at which it was asked for, he was not bound to raise it, and rightly exercised his discretion in refusing to do so. The written statement merely contains a traverse of the allegation that the principal Appellant had managed the properties on behalf of himself and the Plaintiff. The facts stated in the pleadings as to the Appellants' possession were at least consistent with either hypothesis that the zemindary was impartible or that it was partible family property. The character of the possession was dependent on the determination of that issue. In their Lordships' opinion no question of limitation was either raised by the pleadings or arose upon the evidence and it was not obligatory on the Judge to direct an issue.

Three questions were raised before their Lordships with regard to details of the property to

be included in the partition. The first of these related to a hoard of gold coins, called *Varahalu Petta*, of the estimated value of ten lakhs of rupees or thereabouts. This hoard is said to have originated in loot obtained at the siege of Seringapatam by the founder of the family, (who was a contractor attached to the British force), and to have been concealed for many years in a hollow beam in the Fort of Vallur. From this receptacle, some twenty years ago, according to the principal Plaintiff's story, the principal Plaintiff and principal Defendant removed the treasure which was then found to consist of 107,000 pagodas, and placed it in a chest in the main hall of the Fort, where it was watched night and day by a guard. In 1838, an attempt was made to steal the chest, and the treasure was consequently transferred to an iron safe in another room in the Fort, with a guard outside the window. In 1894, it is suggested that the principal Defendant paid a flying visit to Vallur, and removed the treasure and other valuables. It was contended before their Lordships that this was an incredible story, and no doubt it does contain some elements of romance, but the District Judge, who heard the evidence and saw the witnesses, believed it, and the High Court, after careful consideration, confirmed the finding of the District Court both as to the existence and value of the treasure. From this concurrent opinion of both Courts upon a question of fact their Lordships see no reason to dissent.

The second question is as to certain jewels, designated as *Samasthanam*, or estate family jewels, that is to say jewels belonging to the estate, and worn by members of the family on special festival occasions. There is some conflict of evidence as to the place of custody of these jewels, but it is admitted that they were not in the possession of the principal Plaintiff, and the High

Court held that as the principal Defendant admitted the existence of these jewels as joint family property, and could not charge the principal Plaintiff with possession of them, he as manager of the family was primarily responsible, and was bound to account for them. This appears to their Lordships to be a correct conclusion.

The last question is as to certain jewels enumerated in Schedules H 1 and H 2 to the plaint, which are admitted to be in the possession of the principal Plaintiff, and which for some inadequate reason, he at first appears to have considered not liable to partition. It was argued that his failure to disclose at the outset his possession of this property converted the suit into one for partial partition only, and that the suit ought therefore to have been dismissed. But their Lordships cannot assent to this argument. The plaint seeks a complete partition of the whole of the family property, and at an early stage of the case, the principal Plaintiff expressed his willingness to bring these jewels into hotchpot. The decree of the District Court accordingly directs a valuation and a scheme of division into two equal shares of the moveables mentioned in Schedules H 1 and H 2 as well as of the rest of the family property. There is therefore no question of partial partition.

For these reasons, their Lordships will humbly advise His Majesty that the decree of the High Court ought to be confirmed and this Appeal dismissed. The Appellants must pay the costs of the first and second Respondents who alone defended this Appeal; but the Appellants are not to be called upon to pay any costs incidental to the Appendix to the Record, which was sent at the request and at the costs of the Respondents and was not used in the proceedings here.