

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Raja Jee Bahadur Garu v. Raja Parthasaradhi Appa Row and Others, representatives of Raja Papamma Row Bahadur (deceased), from the High Court of Judicature at Madras; delivered the 13th December 1902.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

SIR JOHN BONSER.

[*Delivered by Sir Andrew Scoble.*]

For some years after succeeding to his estate Narayya, Zeminder of Nidadavole, was in serious pecuniary difficulties. He owed a large sum of money to his kinsman, the Zeminder of Nuzvid, besides considerable sums to other creditors and to Government for arrears of revenue. In 1839, a compromise was effected whereby a portion of the Nidadavole estate was to be handed over to the Nuzvid Zeminder in satisfaction of his claim; and to complete the matter, it was proposed that the Government demand should be relinquished, and "the remaining portion of the "estate" made over to Narayya, "in the event "of his satisfying other private creditors."

In order to carry out these arrangements the Court of Directors of the East India Company, in a despatch dated 24th August 1842, directed that the whole estate of Nidadavole should be

sold; and this was accordingly done, and the estate was purchased by the Government for eight lakhs of rupees. By this purchase the Government became absolute owner of the estate, and the proprietary rights of Narayya were for the time extinguished. The claim of the Zeminder of Nuzvid was satisfied by the transfer to him of certain villages; but the Board of Revenue, in a letter dated 4th January 1844, recommended that it was not advisable that Narayya should be placed in possession of his part of the estate "until all questions connected with the subject be definitely settled."

Among these questions was the satisfaction of the claims of other private creditors. It was proposed by the Collector of Masulipatam, who represented the Government in the negotiations, that "the most possible method of adjusting these claims, if the consent of the parties could be obtained, would be by the transfer permanently or temporarily, as the circumstances of each case might appear to require, of a certain portion of the estate, from the proceeds of which each claim might be realised"; and an adjustment on this basis was eventually made "after frequent conferences" between Narayya and the various parties in the presence of the Collector.

Of the claims thus adjusted the only one with which their Lordships have to deal is that of Simhadri and Venkatadri, the representatives of a younger branch of Narayya's family, who were entitled to maintenance out of the estate, and to whom a considerable sum was owing for arrears. The terms of the settlement with these claimants are contained in two documents which are thus described in paragraph 9 of the Collector's Report to the Board of Revenue, dated 18th November 1843:—"Enclosures 5 and 6

“ contain stipulations entered into by Narayya  
 “ on the one hand, and Simhadri and Venkatadri  
 “ on the other, by which it is agreed that eight  
 “ villages appertaining to the Ambarpottah  
 “ Muttah . . . and two Mocassah villages . . .  
 “ shall be permanently alienated to Simhadri  
 “ and Venkatadri, they paying the peishcush  
 “ which may be assessed on them . . . This  
 “ cession, it will be observed, is proposed not only  
 “ in full satisfaction of the whole amount of  
 “ arrears due for marriage expenses and the  
 “ monthly allowance of 400 rupees due up to  
 “ this period, but also in lieu of all further  
 “ payment on account of the monthly allowance.”

In forwarding the Collector's proposals for the sanction of Government, on 4th January 1844, the Board of Revenue say : “ The alienation in favour of the Simhadri branch of the family, it is proposed, shall be in perpetuity.” The final orders of Government appear to have been given on this basis ; and Simhadri and Venkatadri were placed in possession of the villages, which may conveniently be described as the Tangellamudi Muttah.

On the 15th March 1846, the Zemindar of Nuzvid assigned the Muttah of Chavendra to Simhadri and Venkatadri in satisfaction of their claims upon him for maintenance past and future, and on the 7th August 1846, the two brothers made a partition of their joint property under which Simhadri took the Muttah of Tangellamudi, and Venkatadri took Chavendra and two other villages. This partition was made “ through and in the presence of Narayya ” and proceeded on the assumption that Tangellamudi and Chavendra were held on the same absolute and permanent tenure.

Simhadri died in 1861, and his widow Sitayya succeeded to his estate. Sitayya died in 1885, and the contest in the suit under appeal is now

between her daughter's son (who would be her heir according to Hindu law) and persons who claim either under Venkatadri or Narayya. The sole question is whether, under the settlement of 1844, and the subsequent partition of 1846, Simhadri acquired an absolute title to the Tangellamudi Muttah.

Upon the history of the case, as above stated, their Lordships have no doubt that the origin of the title was in a grant from the Government, and not from Narayya, who at the time of the transaction had no estate out of which he could make a grant. Nor do the documents relied on by the Respondents, and which have already been mentioned as Enclosures 5 and 6 to the Collector's report of 18th November 1843 conflict with this view. These documents are two *arzis* dated 13th August 1843, addressed to the Collector of Masulipatam, one by Narayya, and the other by Simhadri and Venkatadri. It was contended on behalf of the Respondents that the *arzi* signed by Narayya was, as regards seven of the villages mentioned therein, a grant by him for maintenance only, and therefore resumable on the death of Sitayya, the last person entitled to maintenance thereout. This was the view taken by the Subordinate Judge who tried the case in the first instance, and by the High Court of Madras on Appeal. But their Lordships are unable to accede to this view. The *arzi* signed by Narayya was in no sense a conveyance. It was, as its name denotes, a petition to the Collector, which, after stating the terms of settlement agreed on between the parties, went on to say—"further that no claims of whatever nature may hereafter be for ever advanced, either by them for the payment of the said allowances, or by us regarding the aforesaid villages. I also gave my assent, and agree to abide according to the aforesaid conditions, and

“humbly solicit you will therefore be pleased  
“to forward our petitions with your recom-  
“mendation to the honourable Government and  
“to the Board of Revenue, and at the time  
“when the Nidadavole and Bahurzally Parga-  
“nahs as well as Ambarpett Muttah may be  
“made over to me by the Circar, allow the afore-  
“said eight villages in the Ambarpett Muttah  
“to be taken possession of by the said Simhadri  
“and Venkatadri and continue the aforesaid  
“conditions in force.” These words leave no  
doubt that what Narayya contemplated was a  
grant by the Government to Simhadri and  
Venkatadri of these villages in full settlement  
of their past and future claims on the estate, and  
by the partition in 1846 Simhadri’s title to them  
was completed.

Their Lordships will humbly advise His  
Majesty that this Appeal should be allowed, and  
the Decrees of the Court of the Subordinate  
Judge and the High Court reversed, and the  
Plaintiff’s suit dismissed with costs throughout.  
The Respondents who were substituted for  
Papamma Row, the original Respondent, must  
pay the costs of the Appeal, including the costs  
of the revivor proceedings.

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