Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of—

Kachi Kaliyana Rengappa Kalakka Thola Udayar

v.

(1) *Kachi Yuva Rengappa Kalakka Thola Udayar and another* (*No.* 70 *of* 1902); (2) *Periyammal and another* (*No.* 71 *of* 1902); (3) *Veeraghava Aiyengar and another* (*No.* 72 *of* 1902); (4) *Thangachi Ayal and others* (*No.* 73 *of* 1902); *and* (5) *Kumara Vijaya Oppilatha Malavaraya Nainar and another* (*No.* 74 *of* 1902);

AND OF

Kachi Yuvaraja Rengappa Kalakka Thola Udayar

v.

(1) *Kachi Yuva Rengappa Kalakka Thola Udayar and another* (*No.* 75 *of* 1902); (2) *Periyammal* (*No.* 76 *of* 1902); (3) *Veeraraghava Aiyengar* (*No.* 77 *of* 1902); (4) *Thangachi Ayal and another* (*No.* 78 *of* 1902); *and* (5) *Kumara Vijaya Oppilatha Malavaraya Nainar* (*No.* 79 *of* 1902);

AND OF

Kachi Yuva Rengappa Kalakka Thola Udayar

v.

Kachi Kaliyana Rengappa Kalakka Thola Udayar (*No.* 80 *of* 1902),

from the High Court of Judicature at Madras; delivered the 31*st July* 1905.

Present at the Hearing:

LORD MACNAGHTEN.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

These consolidated Appeals have been brought from a judgment and decree of the High

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Court of Judicature of Madras which varied a judgment and decree of the District Court of Trichinopoly. The litigation relates to the title to a Zemindari known as the Zemindari of Udayarpalayam. The principal question is whether the zemindari is a partible estate, as was held by the Court of First Instance, or an impartible estate descendible according to the rules of primogeniture, as the High Court has determined. There were two other questions raised on the Appeals which may be mentioned for the purpose of putting them aside. It was objected by the Appellant in the first five Appeals that, assuming the estate to be impartible, still he was entitled as the preferable heir. Further, it was asserted that if he was to be held entitled only to maintenance, the maintenance allowed was insufficient in amount. On the other hand, the principal Respondent, the Appellant in the 11th Appeal, alleged that the allowance was extravagant and appealed on that ground. The first of these two questions is concluded by authority. It is settled in accordance with a ruling of this Board that when impartible property passes by survivorship from one line to another, it devolves not on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line—a position held by the principal Respondent (*Naraganti* v. *Venkatachalapati*, I.L.R. 4 Mad. 250). As regards the second of these two questions, it is sufficient to say that it is not the practice of this Board to interfere in a question as to the amount of maintenance. That is a matter with which the Courts in India are better qualified to deal.

The history of the Palayams, or Polliams, of Southern India is set out in the Fifth Report of the Select Committee on the affairs of the East India Company. It is there stated that the Carnatic Poligars " were originally no more than " officers of police to whom was committed the

" protection of a given portion of country; " headmen of villages, or public servants of " other descriptions, whose actual condition had " become changed to that of military rulers during ' those revolutions of power in the Deccan which " had everywhere contributed to the usurpation of " authority and in no part more than in the " southern division of the Peninsula." In this connection it may be convenient to refer to the judgment in the case of *Naragunty Lutchmee-davamah* v. *Vengama Naidoo* (9 Moo. I A., 66, at p. 85) where the following passage occurs :—

" A Polliam is explained in Wilson's Glossary to be 'a tract " ' of country subject to a petty chieftain.' In speaking of " Poligars he describes them as having been originally petty " chieftains, occupying usually tracts of hill or forest, subject " to pay tribute and service to the paramount State, but seldom " paying either, and more or less independent, but as having " at present, since the subjugation of the country by the East " India Company, subsided into peaceable landholders. This " corresponds with the account read at the Bar from the " Report of the Select Committee on the Affairs of India in " 1812. A Polliam is in the nature of a Raj; it may belong " to an undivided family, but it is not the subject of partition, " it can be held by only one member of the family at a time, " who is styled the Poligar, the other members of the family " being entitled to a maintenance or allowance out of the " estate."

It is not disputed that the estate which is the subject of the present litigation was in its origin impartible. The High Court confirming the finding of the District Judge expressed the opinion that there could be " no doubt that the " Palayam was, up to 1765, held by one member " of the family only not being subject to the " ordinary rule of Hindu law."

Between the year 1765 and the establishment of British rule in 1801, the fortunes of the family were of a very varied character. Throughout these troublous times, in turmoil or warfare, sometimes successful rebels, sometimes outcasts or exiles, the Poligars of Udayarpalayam maintained or asserted their claim to the possession of their ancestral estate.

The first act of the British Government after the cession of the Carnatic was to issue a proclamation addressed to the Zemindars, Jageerdars, Poligars, and inhabitants of the Carnatic, inviting them "to a ready and cheerful obedience to the "authority of the Company, in a confident "assurance of enjoying under the protection of "public and defined laws every just and ascer- "tained civil right, with a free exercise of the "religious institutions and domestic usages of "their ancestors."

In a Government Order of the 17th of July 1802, after referring to a report of the Collector of Trichinopoly on the Poligars of that Province, it is stated that, having regard to the acts of sovereign authority which had been exercised by the late Nabob in the frequent resumption of the lands of the Poligars, no claim could be established by them, supported either by long possession or prescriptive right; and that, while admitting the injustice of the Nabob's acts, it resulted that the expectations that might have been formed by the Poligars must have been raised on the foundation of the lenity and moderation of the British Government. At the same time they expressed their intention of adhering to the principles set forth in the Proclamation of December 1801.

Then followed a long period during which the Government were apparently collecting information and considering the best mode of settling the Province consistently with their declared intentions. During this period of suspense the Poligars, including the Poligar of Udayarpalayam, received an allowance of 10 per cent. on the net revenue of their respective Palayams, calculated from the day the Carnatic was ceded to the Company. The Poligars themselves were taken into counsel by the Government, or at any rate directions were given that their

views on the proposed arrangements should be ascertained.

It appears from an extract from the proceedings of the Board of Revenue of the 12th of May 1814 that the Poligars had been given to understand that it was intended to restore them to the management of their Palayams under a new arrangement of the conditions by which they formerly held them. The Board, however, observed that on further reflection they were induced to consider that the restoration of the Poligars to the management of their Palayams would be impolitic for many reasons, the principal of which were the known incapacity of the Poligars to manage such extensive tracts of country, and the confusion, ruin, and distress in which their failure would involve, not only the Poligars themselves, but inhabitants and ryots of the Palayams. With the view therefore of effecting a more judicious arrangement without departing from the intention communicated to them as above mentioned, in as far as immediate interests of the Poligars were connected with that intention, the Board intimated that they would be inclined to recommend the Government to grant to each Poligar such a number of villages as on an average would be equivalent to the benefit expected to be derived under the Zemindari tenure.

It was ultimately determined that the villages to be granted to the Poligars should be made over on Zemindari tenure, bearing a small Jumma in preference to that of Jagheer, as contemplated by the Government in 1814, in order that the character and rights of the Poligars might be better defined by a Sannud-i-Milkeat Istimrar.

Accordingly, on the 23rd December 1817, a Sannud in common form was granted to Rengappa, the Poligar of Udayarpalayam, conferring upon

him the rights of a Zemindar under Regulation XXV. of 1802, in 65 villages named in the Sannud. The Sannud was expressed to be granted in lieu of all former privileges. It declared that the grantee continuing to perform the specified stipulations, and to perform the duties of allegiance to the British Government, its laws and regulations, was thereby authorised and empowered to hold in perpetuity to his heirs, successors, and assigns at the permanent assessment therein named the Zemindari of Udayarpalayam.

It only remains to notice that from the date of the grant of the Sannud to the present time the zemindari has uniformly been enjoyed as an impartible estate.

In these circumstances the Court of Appeal has held, and their Lordships think rightly, that the estate is impartible, and descendible according to the rules of primogeniture.

There are two propositions which appear to their Lordships to be well established and to be decisive on the point.

In the first place it is clear, as observed by Sir Richard Couch, in the case of *Srimantu Raja Yarlagadda Mallikarjuna* v. *Srimantu Raja Yarlagadda Durga* (17 I. A., 134, at p. 144) that "the question whether an estate is subject "to the ordinary Hindu law of succession, or "descends according to the rule of primogeni- "ture must be decided in each case according to "the evidence given in it." And secondly, it must be taken to be settled that the acceptance of a sannud in common form under Regulation XXV. of 1802 does not of itself and apart from other circumstances avail to alter the succession to an hereditary estate.

The Zemindari of Udayarpalayam represents the ancient palayam of Udayar, and although for political reasons the estate has been circumscribed

in extent, it is clear that it was granted and accepted as equivalent in value to the ancient palayam. On the cession of the Carnatic the British Government assured the Poligars, of whom the Poligar of Udayar was one, that they would enjoy every just and ascertained civil right, with a free exercise of the religious institutions and domestic usages of their ancestors. To this assurance the Government over and over again expressed a determination to adhere, although they deliberated long, and reconsidered their views more than once, as to the precise arrangements to be made for the settlement of the country and the restoration of the Poligars.

Their Lordships will humbly advise His Majesty that these Appeals ought to be dismissed.

The Appellants in the first ten Appeals will pay the costs of those Appeals. The costs of the last Appeal will be borne by the Appellant therein and those costs will be set off against the costs of the other Appeals.