Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Rajah Suraneni Venkata Gopala Narasimha Row Bahadur v. *Rajah Suraneni Lakshmi Venkama Row, from the High Court of Judicature at Madras; delivered 13th July*, 1869.

Present:

SIR JAMES W. COLVILE.
SIR JOSEPH NAPIER.
LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THIS Appeal has been very ably argued by Mr. Latham, who has stated in support of it everything which in their Lordships' opinion could be said; but the facts and the authorities are too strong for him, and their Lordships are unable to see any ground upon which the Appeal can be supported.

The proof in this case has, perhaps, been somewhat complicated, and rendered less effective than it otherwise might have been by the introduction of an issue which is now admitted to be out of the case; the issue as to the alleged adoption.

The only question now arguable is, whether at the date of the death of the Respondent's husband this family was a divided or an undivided Hindoo family, because the course of succession, of course, depends upon that fact. The property is admitted to be ancestral, and it is now also admitted that the zemindary which forms part of it, is not one of those impartible zemindaries of which there are many in the south of India, but must be treated, as in fact it appears upon some of the earlier documents to have been decided to be, as in its nature partible; therefore, the question is simply whether at the date I have mentioned the family was still an undivided family, as it was up to a certain

period, or whether it became divided by virtue of the Agreement which is at page 23 of the Record, and which has been the chief subject of the argument before us.

Now, although Mr. Latham has pointed out here and there some minute differences in the wording of the two agreements, their Lordships find it impossible to distinguish the arrangement come to in this case from the arrangement which had been entered into in the case of *Appovier* v. *Rama Subbà Aiyan and others*, 11 Moore, I. A. 75, in which this Committee held that although the agreement for a partition had not been carried out by actual partition, by metes and boundaries of the property, it was neverthelesss binding upon the contracting parties, and operated as a division of the family. Their Lordships observe that the Judgment delivered by Lord Westbury was, in fact, an affirmance of the Judgments of two of the Courts below, and was fully supported by the authorities then before the Court. It is however satisfactory to find in the present case, that the High Court of Madras, not adverting to the case in Moore, which probably had not then come to their knowledge, has in its learned judgment arrived at the same conclusion, and that upon independent grounds, and upon the earlier authorities. The passage which they quote from the Mitacshara fully supports the proposition involved in the Judgment. The passage runs thus: "If partition be denied or disputed, the "fact may be known and certainly be obtained by "the testimony of kinsmen, relatives of the father "or of the mother, such as maternal uncles, and "the rest being competent witnesses as before de- "scribed;" that is one mode of proving partition. It then goes on in the disjunctive, "or by the evidence of a writing or record of the partition," which we have here. And then it says, "It may also be ascertained by separate or unmixed house and field;" that is, if other evidence of partition be wanting, it may be supplied by proof that the houses and fields had been actually divided and were held separately.

It follows from what has been said that in their Lordships' view, this question is really concluded by authority.

It has however been argued by Mr. Latham,

that even if this agreement amounted to proof of a partition, yet upon the evidence in the cause their Lordships ought to come to the conclusion either that the agreement was waived, or that there had taken place that which might, according to Hindu law, have taken place, namely, a reunion of the two brothers. Their Lordships, however, looking at the issues in the cause which are stated at page 3, cannot find that those points have ever been raised. Certainly there is no suggestion of such a thing as a reunion, which would imply that there had been an actual division, and then a coming together by mutual agreement of the two brothers; and their Lordships are further of opinion that they must presume, that although there was no division of the zemindary, or of the lands, by metes and boundaries, yet that the arrangement proceeded upon the footing of the deed, that the rents were divided according to the stipulations of the deed, and that if the contrary took place, it lay upon the Plaintiff to show that such was the case. It seems to their Lordships that he has entirely failed to do so, and, therefore, they can see no ground whatever for interfering with the judgment of the Court below.

Their Lordships deem it right (although it has really no bearing upon the decision of this Appeal) to make a remark upon one passage in the otherwise very learned and able Judgment of the Court below. The passage is this, "If it" (that is, the zemindary) "was not partible, and the brothers "were, as the Plaintiff contends, undivided, at the "brother's death, the widow would, according to "the decision of the Privy Council in the Sheva-"gunga Case, be entitled to the whole estate; so "that, whether the Plaintiff's own view, or that "which we here take is correct, the Plaintiff is not "entitled to succeed in this action." Now that seems to proceed upon a singular misapprehension of the effect of the Shevagunga Case. It is immaterial, as I said before, to the decision of this case, because it is admitted that the zemindary was not impartible; but the Shevagunga Case was this, the family was shown to be undivided, but the impartible zemindary was shown conclusively to have been the separate acquisition of the person whose succession was the subject of dispute. The ruling

of this Court was, that in that case the zemindary should follow the course of succession as to separate property, although the family was undivided; but if that zemindary had been shown to have been an ancestral zemindary, as in this case, the Judgment of the Board would no doubt have been the other way.

Their Lordships think it necessary to make this observation, in order to avoid future misconception as to what was decided here in the Shevagunga Case.

They must humbly recommend Her Majesty to dismiss this Appeal, with costs.