Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Raja Vellanki Venkata Rama Row v. *Raja Papamma Row, from the High Court of Judicature at Madras; delivered 5th March* 1898.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

This suit was brought to recover possession of the village of Vundrazavaram lying within the zamindari of Nidudavolu which was formerly the property of the Zamindar Naraya Appa Row. Naraya died without issue on the 7th of December 1864 leaving a will which dealt with the zamindari and the village separately.

The suit was commenced in February 1888. The original Plaintiff was Jagannatha the Appellant's father. He died at an early stage of the proceedings and the Appellant was substituted as Plaintiff in his stead. The Defendants were Papamma the surviving widow of Naraya and an infant also called Naraya Appa Row whose late father Ramaya had been adopted by Papamma some time after the completion of the transaction the effect of which is now in question. The infant Naraya died in the course of the litigation and on his death his interest became vested in the Respondent Papamma.

It is common ground that Jagannatha was in possession of the village in dispute from 1869 to 1879 and that during this period his possession

was undisturbed. From 1879 to 1883 he was continually in trouble and litigation with the ryots who withheld their rents and refused to accept pattas at the instigation, it is said, of Naraya's widows or their manager Venkatadri. In 1883 Papamma having survived the younger widow Chinnamah who was Jagannatha's sister came forward openly and dispossessed Jagannatha.

The sole question at issue is this :—In what character or in what capacity did Jagannatha hold the village while he was in possession ? Was he absolute owner as the Appellant contends or was he as the Respondent has variously asserted tenant for life or tenant at will or grantee upon certain conditions for the breach of which he was liable to be dispossessed or lastly was he as the High Court has held merely manager under a revocable appointment.

By his will which was dated the 6th of December 1864 the day before his death Naraya gave his zamindari and all his other property to his two wives Papamma and Chinnamah. To Jagannatha and Sura who were brothers of his junior wife he gave the village of Vundrazavaram in perpetuity. The testator gave three other villages to Sura's son Venkata Krishna. He enjoined his wives to live in harmony with Venkatadri whom he described as his younger brother but whose exact relationship to the testator does not appear. And he gave his wives authority to adopt a relative.

The testator's wives signed the will in token of their consent to abide by its terms and on the 9th of December 1864 they sent a copy of the will to the Collector and notified their intention of acting in accordance with its provisions.

It appears that neither Jagannatha nor Sura took any steps to obtain possession of

Vundrazavaram on the testator's death. There was no opposition on the part of the Ranis nor was there so far as appears any unwillingness on their part to carry out the testator's wishes. But Jagannatha considered that he had not been fairly treated by the testator who had made a more liberal provision for the family of his younger brother and so he refrained from accepting the bequest in his favour in the hope that the Ranis would increase it. In the meantime the village remained part of the zamindari and the rents were received by or on behalf of the Ranis and went into their treasury.

In 1869 Sura being then dead and his son Venkata Krishna who had married Venkatadri's daughter having succeeded to his rights the family differences were composed. It was arranged that the entirety of the village of Vundrazavaram should be made over to Jagannatha as from the commencement of the current year with the consent of Venkata Krishna who was to receive satisfaction for his moiety from the Ranis. The meeting at which the arrangement was completed took place on the 22nd of January 1869. There were present among others Venkatadri Jagannatha the Appellant and Venkata Krishna and one Prakasa the Rajah of Vutukuru a near relative who is now dead. The Ranis were there too though of course in their own apartments and communications took place with them from time to time through Prakasa the Appellant and Venkata Krishna. Before Venkata Krishna consented to place his moiety at the disposal of the Ranis for the purpose of the arrangement he was assured by them that he should either have the moiety bequeathed to him by the testator or receive other villages instead. When he was satisfied Venkatadri dictated to his clerk an order

addressed to the Amildar directing him to make over the management of the village to the person sent by Jagannatha on behalf of his master. The order was then given to Venkatadri. He handed it to Prakasa and then to Jagannatha. They both read it. Jagannatha read it aloud and expressed his approval. It was then taken to the Ranis. They read it and signed it in the presence of Prakasa the Appellant and Venkata Krishna and again repeated their assurances to Venkata Krishna. In conformity with this order Jagannatha was put into possession of the village. Nothing further is to be found in the Record about Venkata Krishna. It must be taken that he received adequate compensation in accordance with the assurances that had been given him.

That is in substance the whole of the evidence about the transaction which resulted in Jagannatha being put into possession of the village of Vundrazavaram. The only witness at the trial who appeared before the Ranis was the Appellant himself. The Subordinate Judge who observed his demeanour was satisfied that he was a truthful witness. Neither the Respondent nor Venkatadri came forwerd to contradict him. They were both cited as witnesses for the Appellant. But "the former" as the Subordinate Judge states "threw so many "difficulties to her examination on commission "that Plaintiff was obliged to abandon her as "his witness and the latter was reported to be "too seriously ill to subject himself to any "examination."

The transaction seems to be a very simple and a very intelligible arrangement if the position of the parties at the time is considered. Jagannatha was entitled to one moiety of the village and one moiety of the rents from the testator's death. His grievance was that the testator had not

given him as much as he thought he was fairly entitled to. With the consent of the person entitled to the other moiety the Ranis made over to him the whole of the village as from the commencement of the current year. In the absence of any evidence it is impossible to suppose that it could have been intended that his interest in the one moiety should be less than or different from his interest in the other. It was not suggested that he should surrender his absolute interest in his own moiety. Sura's moiety was made over to him as an addition to his own. The natural inference and indeed the only reasonable inference that can be drawn from the surrounding circumstances is that he was to hold the entire village in the same way as he was entitled to hold his own moiety and that his interest in the two moieties should be commensurate. Such a transaction would be perfectly good as a family arrangement. Jagannatha was put in possession of the whole and as the law then stood no writing was necessary to vest Sura's moiety in him.

Jagannatha's complaint was that one moiety of the village was not enough for the maintenance of himself and his large family. It is difficult to conceive that he would have surrendered his absolute interest in one moiety for a life interest in the whole which would have left his family unprovided for at his death. It is equally inconceivable that he would have accepted any interest less than a life interest. The suggestion that the village was granted to him on condition of personal attendance on the Ranis or on any terms involving a right of resumption is not supported by any evidence.

Of course if there were anything in the order of the 22nd of January 1869 inconsistent with an absolute interest in Jagannatha it would be a different matter. It would be impossible

for the Appellant to rely on possession obtained under a document which would have contradicted his present claim. But the order so far as it goes is consistent with an absolute interest in the person in whose favour it was issued. It directs the Amildar to deliver up the management of the village to the messenger of Jagannatha "so that he may get business "managed on his behalf." It states no doubt that the profits over and above the fixed rent required to cover the proportionate part of the Government revenue of the whole zamindari were to be enjoyed by Jagannatha as "Vasati" that is for support or maintenance. But it must be remembered that it was just because he complained that the profits of half the village were not enough for the maintenance of himself and his family that he was put in possession of the whole. There is not a word in the order cutting down Jagannatha's interest to a life interest or to a tenancy at will or imposing any terms as the condition of his continuing to hold the village.

The whole difficulty seems to have arisen from the singular way in which the Appellant insisted in presenting his case to the Court. He would have it that his interest was derived solely and directly from the testator and that Jagannatha was put in possession in conformity with the testator's will as indeed the Subordinate Judge held whereas it is perfectly plain that Jagannatha took Sura's moiety from the Ranis who purchased it from Venkata Krishna by giving him some equivalent. The Respondent on the other hand insisted that all parties ignored the will and treated the bequest of Vundrazavaram as a nullity. And so the learned Judges of the High Court have held. They say that "for 24 "years the will has been ignored and the estate "has not been given to the first Plaintiff" that is

Jagannatha "in accordance with its terms. On "the contrary he himself was a party to ignoring "it." That seems to their Lordships to be going too far in the other direction. The fact is that the will was plainly the foundation of the whole transaction though Sura's moiety was derived immediately by gift from the Ranis.

Their Lordships are therefore unable to agree with the opinion of the learned Judges of the High Court who seem to have thought that Jagannatha's title to the possession of the village depended simply and solely upon the terms of the order of January 1869 which they construed as a revocable order committing the management of the village to Jagannatha during the pleasure of the Ranis.

One matter on which the learned Judges of the High Court very much relied as confirming their view ought perhaps to be noticed. Some letters were produced which the Subordinate Judge held to have been written by Jagannatha though there was a dispute about it. They are undated but they seem to belong to the period when Jagannatha was in difficulties with his ryots. The letter on which most reliance was placed purports to be addressed to his sister Chinnamah. It is abject and servile in tone and and incoherent in its language. In it the writer says "if you and Papamma should now write to "say 'you should give up that village' I will do "so without entertaining any contrary intention " . . . . the longest I should live would "be two or three years more, it (the village) "will then be added only to your possessions "irrespective of any one else. You must take "a little trouble and show an affectionate regard "by thinking 'these persons belong to a high "family and we will treat them with so much "fairness' if you do not think in that manner I "only lose my livelihood. I did not wish in the

" beginning for any right." Then there is a letter to themanager in which the writer says " I have " prepared and sent an account of some sort. " You will after perusing the same write to me " how I shall act in the matter of recovering the " moneys payable by the ryots. Hitherto I have " acted wisely so as to avoid disputes. As it is " not possible to do anything without your per- " mission in Vundrazavaram I have expressed my " opinion in detail and shall remain at Kadiyam " till a reply is received and shall manage in such " manner as you tell me to manage." The learned Judges say that " the words amount to an " unequivocal admission that the writer can only " hold the village for the short remainder of his " life and is liable to be called upon to surrender " it at any time at the will of the Rani." The Subordinate Judge thought that such letters written at such a time were not worthy of serious consideration. Their Lordships are disposed to think so too. The letters were apparently written at a time when the Ranis by their manager were covertly interfering with Jagannatha's possession and he was maintaining his title by legal proceedings against the ryots. He may well have thought that his sister would not openly declare herself his antagonist or proceed to extremities against him and that peace might be obtained at any rate in his time by abasing himself before the Ranis and their manager.

Their Lordships are of opinion that the Judgment of the High Court must be reversed and that the appeal from the District Judge ought to have been dismissed with cost and they will humbly advise Her Majesty accordingly.

The Respondent will pay the cost of this appeal.

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Sri Raja Rao Lakshmi Kantaiyammi v. *Sri Raja Inuganti Rajagopal Rao, from the High Court of Judicature at Madras; delivered 5th March* 1898.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Sir Richard Couch.*]

The only question in this appeal is what is the effect of a decree of the High Court at Madras made on the 2nd of May 1882 in a suit brought by Sitaramaswami against Sitaiyammi the mother and heiress of Rayadappa deceased who was the son of Ramarayanin and had died unmarried and without issue. Sitaramaswami was the son of a younger brother of Ramarayanin and the plaint which was filed in April 1869 in the Civil Court of Vizagapatam alleged that the Plaintiff was the nearest surviving heir of Rayadappa and stated that the relief sought for was a declaration of the Plaintiff's right to succeed after the death of Sitaiyammi to the enjoyment of the immoveable property described in the plaint and the annexed schedule and a declaration that the alienations of parts of the property which had been made by Sitaiyammi to the prejudice of the reversionary right of the Plaintiff to a number of persons who were also

made Defendants might be declared invalid or to be of no effect beyond her life. The plaint also asked for an injunction and the appointment of a receiver. The written statement of Sitaiyammi alleged that the whole of the property except a garden which had been granted to her son by the Zemindar of Boboli was her stridhan and the estate was managed for her by her husband and son and even if it was considered to be the acquisition of her husband her daughter and her daughter's son were entitled to succeed to it and the Plaintiff was not entitled to it in any respect. The other Defendants by their written statements asked that the suit might be dismissed. At the hearing before the Civil Judge of Vizagapatam he found that the families of the brothers were divided and the property was not the stridhan of Sitaiyammi and was the self-acquired property of Ramarayanin and therefore that the Plaintiff was not reversionary heir and decreed that the suit should be dismissed.

Sitaramaswami having adopted the present Appellant before the hearing he had been substituted in the suit as Plaintiff and he appealed against this decree to the High Court at Madras on the ground among others that the Court below ought to have found that he was entitled to the property on the death of Sitaiyammi as heir of her son the last full owner. It has been seen that Sataiyammi alleged that her daughter and her daughter's son and not the Plaintiff were entitled to succeed. The daughter is the present Appellant and on the suit being remanded by the High Court to the Lower Court to enable them to be made parties to the suit that was done and the Judge made a final decree declaring the adoption of the son to be invalid and again dismissing the suit. On the appeal again coming before the High Court it delivered the following judgment. "The Advocate-

" General admitted that the finding as to the " adoption of the substituted Plaintiff could not " be sustained and that the only question " remaining for disposal was whether on the " facts which have been found or are no longer " disputed the Plaintiff is entitled to any portion " of the relief sought. It is not shown that " there is any other nearer reversioner than the " Plaintiff and we are unable to distinguish this " case from others in which it has been held " that a reversioner is entitled to a declaration " that the acts of a Hindu lady in possession in " excess of her authority will not bind the " reversion if a case is made out for such relief." Then after saying that the Advocate-General had argued that no such case was averred or had been established the judgment says, " He (the " Plaintiff) will obtain a decree declaring these " alienations ineffectual to bind the reversion. " He has not established any necessity for the " appointment of a receiver and the issue of an " injunction to a lady in possession who may " alien a property for proper purposes would not " be justifiable except under extraordinary " circumstances. The residue of the claim is " therefore dismissed." " Therefore " refers to the reasons given in the preceding paragraph and " residue of the claim " means the appointment of a receiver and an injunction. The other questions in the suit are in their Lordships' opinion decided in favour of the Plaintiff. The decree declares the Plaintiff entitled to the substantial relief claimed in the plaint and although it does not contain a declaration that the Plaintiff is the nearest reversioner the judgment may be and ought to be looked at to see what was decided. The present Appellant in her written statement after she had been made a Defendant alleged that she and her son would be the heirs after her mother's

death and that the Respondent could not be the heir. The suit being dismissed by the District Judge the Plaintiff appealed to the High Court one of his grounds of appeal being that on the death of Sataiyammi he was entitled to the property as the heir of her son. The question whether he was the nearest reversioner was thus distinctly raised.

Sataiyammi died on the 4th of April 1886 and thereupon her daughter the present Appellant took possession of the property. On the 18th of April 1888 the Respondent brought a suit against the Appellant and other persons, the heirs and representatives of deceased Defendants in the original suit to recover possession. The defence set up by the Appellant in her written statement is that the Respondent's right as the nearest reversionary heir had not been established by the decree in the suit of 1869 and he was therefore not entitled to recover the estates. The District Judge on the 19th of December 1890 found that the Respondent was the reversioner and made a decree for possession against the first Defendant Kantaiyammi the Appellant and dismissed the suit against all the other Defendants. Kantaiyammi appealed to the High Court on the ground that the Lower Court was wrong in deciding the Plaintiff's title without framing an issue on that point and in holding that the decree in the suit of 1869 had in any way declared the title of the Plaintiff. This has been the contention before their Lordships of the learned Counsel for the Appellant. And if only the decree could be looked at there might be some reason for it but it would be wrong to look only at the decree. In *Kali Krishna Tagore* v. *Secretary of State for India*, 15 I. A., 186, the High Court of Bengal did this saying, " We cannot look to the judgment as we were " asked to do in order to qualify the effect of