

Dinakarasami Setupati Vs. Bhaskarasami Setupati

Dinakarasami Setupati Vs. Bhaskarasami Setupati

SooperKanoon Citation : sooperkanoon.com/782174

Court : Chennai

Decided On : Sep-05-1893

Reported in : (1901)11MLJ29

Appellant : Dinakarasami Setupati

Respondent : Bhaskarasami Setupati

Judgement :

Muttusami Aiyar, J.

1. This was a suit for partition of the Zemindary of Ramnad in the District of Madura. The last Zemindar was one Muthuramalinga Setupati who died in February 1873 leaving him surviving two sons, three widows and five daughters. Respondent Bhaskarasami Setupati, the present Zemindar, is his eldest son by his wife Muttatta Nachiar, and appellant Dinakarasami is his second son by his fourth wife Dora-raja Nachiar. The former was born on the 3rd November 1868, and the latter on the 26th April 1871. During Muthuramalinga's life-time, the Court of Wards entered into management of the Zemindary under an arrangement made for the liquidation of a loan advanced to him by the Government and upon his death, continued in possession during respondent's minority. In November 1889, respondent attained his majority and the Court of Wards placed him in possession of the estate. In April 1889, appellant completed his eighteenth year and instituted this suit on the 27th January 1890.

2. The plaint states that in November 1889 appellant demanded and was refused partition and that the cause of action arose on that date.
3. The ground of claim disclosed by the plaint is that the Zemindary of Ramnad is ordinary coparcenary property and that the appellant is entitled to claim partition and possession of a moiety of the estate. On the other hand, respondent's case is that the Zemindary is impartible property capable of being enjoyed but by one member of the family at a time, and that its devolution is governed by the rule of primogeniture. His defence rests on the usage of the family and on the nature of the estate prior to the permanent settlement and the British rule, as a, Raj or principality or a feudatory estate. The principal question, therefore, is whether the Zemindary of Ramnad is or is not impartible. The court of first instance upheld respondent's contention, viz., that the estate was impartible. Hence this appeal. The main objection urged on appellant's behalf is that there is no adequate proof of impartibility and that the evidence does not warrant the finding of the Subordinate Court. The political history of Ramnad prior to the introduction of the British rule supplies important historical evidence in this case.
4. [His Lordship then commented on the advent of Maraver tribe from Ceylon and the assumption of the title of Setupati and proceeded as follows--]
5. The political history of Ramnad may be considered so far as it relates to the status of the Setupati family and the nature of its estate with reference (1) to the legendary period, (2) to the early historical period, (3) to the later or modern historical period commencing with 1605.
6. [Here his Lordship set out the historical evidence on heads 1 and 2 and proceeded]
7. Before I pass on to the period subsequent to 1605, I may refer to two important events in the history of the Naik dynasty. The first is the introduction into the Pandiyan kingdom of a system of military organization on feudal basis. About 1560, Visvanatha Naik, the conqueror of Madura and the founder of the Naik dynasty, handed over each of the 72 bastions to the fort then at Madura to the charge of a particular chief whom he termed 'Poligar' and declared it his duty to

maintain and defend his post at all times. To each chief or Poligar he made over a specific tract of the country, and to each grant he attached three obligations, viz., (1) the obligation to preserve the king's peace within the Palayaput, (2) the obligation to maintain, and when necessary to furnish, a fixed number of troops to serve with the king's army, and (3) the obligation to pay a tribute besides into the king's treasury every year. As will presently appear, the Setupatis were recognized as the chief of the 72 Poligars and played, an important part in the history of the Naik Sovereigns. This system of military organization continued until it was displaced by the permanent settlement of the Ramnad territory with the Istimrar Zemindar, Rane Mangaleswari Nachiar. It is noteworthy that as the preserver of the king's peace, each Poligar was the chief Magistrate of his own Palayaput; as a tributary chief, he collected his own taxes and, as a military chieftain, he was the commander of a provincial army and practically exercised sovereign powers in his own province subject to the three obligations mentioned above, and to such further occasional and casual interference on the part of his suzerain as their mutual relation, relative strength and other circumstances permitted.

8. The second historical event to which I have to refer is the extinction of the ancient Maravar dynasty for a time until it was restored in 1605 by the Naik ruler, Muthukrishnappa Naik. Nelson states in his District Manual, Part III, page 112, that the Pandiyan king Kulabhushana, who preceded Visvanatha Naik, treacherously killed Jayatunga Ragunada Setupati, grandfather of the Setupati of 1605, through fear and jealousy of his growing power and thereby put an end for a time to the ancient Maravar dynasty. According to Sewell's Antiquities, the dynasty was in abeyance for about 65 years. In 1602 Mnthukrishna Naik, the grandson of Visvana-tha Naik, became the ruler of the Pandiyan territory and the Ramnad country was then under the management of two Commissioners appointed by the Naik Sovereign. It would seem that their management was anything but efficient, no order was preserved, jungles sprang into existence in every direction, robbers infested public roads, blackmail was levied from pilgrims to Rames-varam, every village had its fort, the wild and turbulent race who cultivated the lands withheld payment of public revenue, and under these circumstances, the pilgrims clamoured for the restoration of the ancient Maravar dynasty. In order to remedy the abovementioned evils and to satisfy the pilgrims, Muthukrishnappa Naik

reestablished the dynasty, appointed Sadeika alias Udeiyan as Setu-pati of Ramnad and constituted him the chief of the seventy-two Poligars of Madura (see Nelson's District Manual, Part III, page 109).

9. This restoration marks the commencement of the modern political history of Ramnad, and the historical evidence since available is neither fragmentary nor imperfect, but more complete and connected than before. The writings of the Jesuit Missionaries, who were endeavouring to propagate Christianity in the Pandiyan territory from the 16th century, furnish valuable material for testing the general accuracy of the modern history, and Mr. Nelson states in the Madura Manual Part III, p. 114, that, tested by the letters of the Madura Jesuits, the modern history of Madura is on the whole fairly correct.

10. During this period, viz., 1605 to 1795, eighteen Setupatis as shown in the subjoined list ruled over Ramnad as Poligars.

11. [Here his Lordship gave the list of the eighteen Setupatis with their dates and the evidence about them and the rule of succession that obtained during the period and continued thus]

12. It is an undisputed fact that throughout this period extending from 1605 to 1795 the Ramnad territory was held but by one member at a time, save in two cases in neither of which the division that took place is referable to co-parcenary right. Thus there was absence of partition in the Setupati family for nearly two centuries after and for eighteen generations prior to the British rule. Its value as evidence of impartibility is considerably enhanced by the absence of any trace of partition at any former period of the history of Ramnad.

13. As regards the two exceptions already mentioned, the first division which led in 1646 to three persons marked 4 in the list of Setupatis owning different portions of Ramnad, was the result of an Act of State and the facts set forth by Nelson in connection therewith in his Manual, Part III, ch. VI, pages 128, 129 and 180 are shortly these.

14. The third or Dalavay Setupati, as he was called, became Poligar of Ramnad in 1635 and died in 1645, leaving him surviving three sons by his sister Gangai Nachiar. As he had no issue, he publicly announced his intention to appoint his eldest nephew as his successor ; but in this he was opposed by one Tambi, an illegitimate son of the first Setupati. By some intrigue, it is said, Tambi prevailed on the Naik Sovereign at Madura, Tirumala Naik, to espouse his cause and to appoint him as Setupati in place of Dalavay Setupati. However, Dalavay, supported as he was by the Maravar community, refused to abdicate his position and thereupon Tirumala Naik sent his troops to Ramnad, captured Dalavay, and threw him into prison at Madura. Finding, however, that all his efforts failed to induce the Maravars to acknowledge Tambi as their chief, he re-traced his steps, reinstated Dalavay and strictly enjoined Tambi to keep the peace. But some years later, Tambi's party again created a disturbance and murdered the Setupati; Tambi, however, continued to be obnoxious to the Maravars who still refused to recognize him as their chief. Tirumala Naik then divided the Ramnad territory into three parts, placed Tambi in possession of one part which included Sivaganga, made over another part to Ragunatha, the eldest nephew of Dalavay, and then gave the remaining third to his two other nephews Tanakka Tevan and Narriana Tevan. But Tanakka Tevan died shortly after, and Raghunatha incorporated his third share with his own. Tambi also did not long survive Tanakka, and his third share passed likewise into the possession of Raghunatha who thus restored the territorial unity of Ramnad apparently without any interference on the part of Tirumala Naik. On these facts it is argued by the appellant's Counsel that there was a division of territory among the three sons of a sister who were all brothers, and that it is, therefore, evidence of partibility of the Zemindary. ' To this contention, however, I am not prepared to accede for several reasons. In the first place, the division was not the spontaneous act of co-parceners in mutual recognition of their co-parcenary right, but one forced on Ragunatha Setupati, irrespective of his volition and contrary to the wishes of the Maravar community by an act of the paramount power over which he or they had no control. Again, the division made was not in accordance with the co-parcenary law. Tambi was not a co-parcener at all with Raghunatha and his brothers and yet he got a third share. Again, Raghunatha and his two brothers were each entitled to a third part of the remainder, and yet the

eldest brother got a moiety. Moreover, the disturbance of the unity of the estate was but, transient, and its re-establishment was not prevented or opposed by the Suzerain. Appellant's Counsel here draws attention to the omission of Tambi's name in Exhibit L, but this appears to be a mistake when it is tested by historical treatises and the detailed account given therein of Tambi's career. The second division was the one made between the 13th Setupati and Seshivarna Tevar into 3/5 and 2/5 whereby the Zemindary of Sivaganga was severed from Ramnad and constituted into one of its offshoots in 1744. Bavani Sankar, the 11th Setupati, was considered to be an illegitimate usurper, and Seshivarna and the 13th Setupati secured the aid of the Raja of Tanjore and of the Tondiman of Pudukottah, and cooperating with them, defeated Bavani Sankar and regained the Ramnad territory. Among the conquerors, the Raja of Tanjore got a portion ceded to him as the price of his aid, the Tondiman of Pudukottah was permitted to retain the Pudukottah territory as his reward, and the remainder was divided into 3/5ths and 2/5ths between the 13th. Setupati and Seshivarna who assisted him in conquering Ramnad. This was not a partition among co-parceners but a transaction in the nature of a division of conquered territory among four chiefs who contributed to the overthrow of a common enemy. The Subordinate Judge is right in considering neither of these two divisions to be evidence of partibility or an incident of co-parcenary right as contemplated by the first issue.

15. It is then urged on behalf of the appellant that mere absence of partition during this period is no proof of impartibility and that in many cases there was but a single heir in existence when the inheritance passed from one Setupati to another.

16. [Here his Lordship set out the evidence on the point and went on].

17. The result is that there were four cases of competition between brothers, between 1605 and 1795 instead of five as considered by the Subordinate Judge. But I observe that 15th and 16th Setupatis were sons of sisters who succeeded one after the other as if Ramnad was impartible.

18. As regards the status of Setupatis and the nature of their estate, the conclusion at which the Subordinate Judge has arrived viz., that during this period the Zemindary was a Raj or principality, is irresistible. Muthukrishnappa Naik who

restored the Maravar dynasty in 1605 appointed the Setupati as the chief of Madura and Tinnovely Poligars. As already observed, the powers conferred upon Poligars were those of Provincial Military Chieftains, Chief Magistrates and Collectors. Though in common with other Poligars, Setupatis were originally liable to pay a tribute, yet the fifth Setupati rendered such signal service to Tirumala Naik when the Mysore army invaded Madura and placed him in imminent peril, that among the concessions made in appreciation of such service, the Naik Sovereign included exemption from payment of a tribute (Nelson's District Manual, Part 111, pp. 136 and 187). The position of Setupatis was generally that of Chief Poligar, but the 8th Setupati threw off his allegiance, defeated the Naik ruler in the battle that ensued, declared himself independent and assumed regal power. The Setupatis declared war, made peace, ceded territory, acquired new territory, often without any reference to the Naik Sovereign. They also maintained the state and pomp of a sovereign prince, they were called Rajas and their residence was designated 'palace.' They had their Dalavays or prime ministers, and they had their troops and coins of their own called Setupati coins. The Subordinate Judge fully sets out in paragraph 14 of his judgment the various sovereign powers and rights exercised by Sotupatis between 1659 and 1715 according to the letters of Jesuit Missionaries, and they leave no room for doubt that Ramnad was in the nature of a kingdom or Raj.

19. Here again, apart from historical evidence, there are several Exhibits which lead to the same conclusion. There are three copper-plate grants of land II, IIa, IIb, dated December 1599, August 1608, and October 1734, and in these the Setupatis who made the grants are described in terms which convey the impression that they were renowned Sovereign princes. Three more grants of an interest in pearl fishery at Tuticorin to certain temples are referred to in the Proceedings of Government marked as Exhibit XXI, and they show that in 1660, 1697 and 1725 the Setupatis were Sovereign princes, and in 1697 the Setupati was styled also the conqueror of Ceylon and Jaffna. Again, Exhibit XXVII is a letter from Annasami Setupati to the Collector in March 1818, wherein ho states that in 1757 Chella Tevar Setupati entered into a treaty with the Dutch and granted them permission to erect a factory and certain buildings at Ramnad. '

20. Again, the Collector of Tinnevely, writing in December 1790, says that 'the Raja of Ramnad, more attentive to his affairs than the Nabob's, compels the Dutch to this time to pay him an annual tribute and further exacts a custom for all their exports and imports.' Moreover, Exhibit XXX is a muchilika executed by the Dalavay or minister of Ramnad to the Raja in 1791 undertaking to discharge his duty with fidelity, and the duties therein specified imply that the Setupati even then exercised sovereign powers though he paid a tribute to the Nabob.

21. The foregoing is the historical and other evidence so far as it bears on the question of impartibility. It shows first, that as a feudatory estate, Ranmad was a military jaghire which is not partible, secondly, that as the principal of the southern Palayapats of Madura and Tinnevely, it was a principality in the nature of a Raj which is likewise impartible. It shows further, that at times it was a real kingdom which is not subject to the law of partition. In *Collector of Madura v. Mootoo Ramalinga* 12 M.I.A. 403 a Raj was held by the Judicial Committee to be impartible. In the *Nargantipalayam case*, *Naragunty Lutchmeedavamah v. Vengama Naidoo* 9 M.I.A. 66 a Palayapat was held by the Privy Council to be in the nature of a Raj or principality. It appears again that throughout the history of Ranmad extending over many centuries, there was no case of partition in recognition of coparcenary right. Although there are not many cases between 1605 and 1795 in which there was competition between brothers when the inheritance opened, yet the status of Setupatis as Rulers or principal Poligars, the nature of their estate as a Raj or principality or a Palayapat and the absence of partition throughout its history constitute together with such cases of competition as there are cogent evidence of impartibility. I may here refer to the case of *Thakur Durriao Sing v. Thakur Davi Sing* on which appellant's Counsel relies L.R. 1. IndAp 1 In that case, there was no doubt an absence of partition during six or seven generations, but there was no evidence of enjoyment by a single member of the family at a time, and the Privy Council held that the former without the latter was not proof of impartibility. The Lords of the Judicial Committee distinguished it from the case in which not only there was no division during six or seven generations, but there was also proof that the estate descended to a single heir as impartible property, during time period. In the case before us, there was not only no partition, but there was also descent to a single heir as an impartible estate for more than

18 generations, and these facts are sufficient to raise a presumption of unbroken family custom in favor of impartibility. There is also the further presumption in favor of impartibility arising from the character of Ramnad. as a Raj or principality.

22. Before I pass on to the period subsequent to 1795, it is convenient to consider the arguments pressed upon us by appellant's Counsel in favor of partibility. It is urged that assuming that Ramnad was a Raj and an impartible estate until the time of Muthuramalinga, the 18th Setupati, he ceased to be a Raja in 1773, and since became a mere renter, and at all events, Ramnad was confiscated for his rebellion in 1795, and thereby ceased to be impartible. This brings under our consideration the events which transpired during the rule of the 18th Setupati, and in consequence of his rebellion. He was a child of two months when he succeeded his maternal uncle, Chella Tevar, in 1760, and his mother became Queen Regent. About this time one Vellaiya Servaikaran, who had been a very powerful Dalavay or Prime Minister at Ramnad for several years and taken the side of Chunda Saheb in the wars of the Carnatic, also died. His successor Thamotharam Pillai continued the hostilities with the Nabob, joined in the siege of Madura in 1763 and defeated in 1770, the Raja of Tanjore who espoused the cause of Mahomed Ali. In 1773, the late East India Company who assisted the Nabob sent a force into the Ramnad country under the command of General Joseph Smith who reduced it to submission and made the minor, Raja and his mother, the Queen Regent, State prisoners. The Ramnad country was then annexed to the Nabob's territory and since managed through renters for a period of seven years. In 1780, however, a rebellion broke out at Ramnad under the leadership of one Mappilla Tevan, a relative of the Setupati family, and on this occasion the entire population revolted against the Nabob. It was then deemed desirable at once to restore Muthuramalinga, then a prisoner at Trichinopoly, to the throne of his ancestors, and he was accordingly restored on his entering into a treaty of allegiance with the Nabob. The restored Setupati paid the a tribute of Rupees 1,75,000 to the Nabob, and in 1791 it was temporarily raised to 2,20,000 (Exhibit XXIX). In 1792, the late East India Company entered into a treaty with the Nabob, whereby the administration of Poligar peishcush was transferred by the latter to the former. In 1795, Muthuramalinga waa considered guilty of rebellion, and it was found necessary to depose him (Nelson, Parts III and IV, pp. 290 and 154). Upon these

facts it is not possible to attach weight to the appellant's contention. It is true that Ramnad was conquered in 1773, but it was restored in 1780. There is no evidence to show that what was restored was not the previous Palayapat, but a different estate. The imposition of a peishcush was not an incident incompatible with the Poliem tenure which carried with it the obligation to pay a tribute as already explained. Until his deposition Muthuramalinga was called Raja he had his own troops, and there is no trace of the curtailment of any of the sovereign powers which he had previously exercised. In this connection our attention is drawn to Exhibit M which purports to be an Inayatnama written by Nabob Wallaja to Muthuramalinga Setupati's sister, Mangaleswari Nachiyar, on the 27th Zil Haj month, Hejira 1209, corresponding to 15th July 1795. Alluding to Muthuramalinga's restoration in 1780, it states 'We pitied him whilst in captivity, took him into our favor under the impression that his confinement was a sufficient punishment, that he would no longer misbehave, but that he would act in conformity to our ordinances, delivered to him the Ramnad territory on lease and thereby raising his prestige, sent him. (back) in happiness.' After referring to his subsequent misbehaviour and removal from Ramnad, the Nabob goes on to state 'as we had great regard for you (Mangaleswari) we sent you to Ramnad and made it over to you.' It is argued that the terms 'delivered on lease' imply that the status of Muthuramalinga Setupati subsequent to his restoration was nothing more than that 'of a renter,' but I do not consider this argument tenable. The expression has reference to the obligation to pay a varying tribute or peishcush. How are we otherwise to account for his estate continuing to be a Palayapat, and his being treated as a Raja in Exhibits XXV, XXVIII and XXIX and for his exercising the powers of a Poligar as set forth in Exhibit XXXI? Again, in 1791, when the peishcush was raised to 2,20,000 Rupees, and the Collector was directed to make a settlement, the peishcush was termed 'Ramnad Raja's tribute' and the settlement contemplated was nothing more than the adjustment of the amount of the tribute which Muthuramalinga had to pay qua poligar. The real relation between him and the Nabob from 1780 to 1795 was, as shown conclusively by Article 3, Exhibit XLIV a, that of a poligar and his lord paramount as regulated by a treaty of allegiance between them.

23. Nor is there any foundation for the contention that Ramnad was confiscated on Muthuramalinga's deposition.

24. The Nabob and the East India Company then entered into a treaty regarding the mode in which Ramnad was to be dealt with, and this document which bears date 4th March 1795 is marked as Exhibit XLIV a. It shows distinctly that there was no confiscation at all and that none was intended either in 1795 or at any other time. Articles I to III are explicit on the point. The first article refers to Muthuramalinga's deposition and provides that 'a successor shall be appointed as soon as the person entitled to succeed him can be satisfactorily ascertained.' This contemplates continuance of succession to the estate in the Setupati family. The 2nd article provides that the Ramnad District be placed under the entire control of the Governor of Madras on the part of the East India Company for a period of three years, both with regard to the collection of revenue and to all acts of government and authority whatsoever. This again indicates that the penalty inflicted upon the Setupati's family for Muthuramalinga's rebellion was a suspension of its rights for three years and nothing more.

25. Article 3 runs in these terms: 'His Highness the Nabob in so doing shall be distinctly understood only to suspend for the period in question the rights which are acknowledged by treaty of allegiance and of submission of the Ramnad poligar to His Highness in all customary ceremonies.' This again disavows any intention to confiscate. Taking the three articles together it is clear that nothing more than a suspension of the rights of the family to the Government of Ramnad for three years was intended.

26. Again, Articles, 4, 6, 7 and 12 contemplated certain changes in the nature of the estate as administrative improvements. By Article 4, the peishcush was to be fixed in perpetuity ; by Article 6, the Sibbandi troops were to be kept up and paid out of the revenues for the purpose of preserving the peace of the country and assisting in the collection of revenue ; and by Article 7 the successor of the deposed poligar was not to be called on to furnish peons on any occasion. These provisions, no doubt, disclose an intention to commute the military or poliem tenure into a liability to pay a permanent peishcush and to change the status of

poligar into that of land-holder who is subject to payment of revenue. There is, however, no trace of an intention to create a new estate or to change any of the incidents which attached to the estate when it was as a Raj such as impartibility or a special mode of succession. The construction to be put on Articles 4 to 7 and 12 must be in subordination to the declared intention ; nor was the recognition of Mangaleswari as her brother's successor subject to any condition precedent.

27. I now pass on to the last period in the history of Ramnad, viz., from 1795 to the date of this suit. The first Setupati during this period was Mangaleswari Nachiar, the sister of the 18th Setupati, and the leading events in her time are, first her recognition by the Government as Muthuramalinga's successor under Article 1 of agreement XL1V a, secondly, the delivery of Ramnad. into her possession, and thirdly, the introduction of the permanent settlement and the issue of Istimrar sanad in her name. For the appellant, it is contended that on the true construction of Exhibit XLIV a, the estate granted to her was not the prior Palayapat, but a new estate which is partible as ordinary Hindu property ; but on the face of the document, this contention must fail. There is a declaration in terms that notwithstanding Muthuramalinga's deposition, the succession to the Palayapat was to be continued in the Setupati family according to its usage after a period of three years. There is the fact that both in 1795, when the Government declared the succession by Exhibit XLVIa in favor of Mangaleswari and in 1803 when Ramnad was restored to her possession it was a Palayapat, the permanent settlement not having then been introduced and the poliem or military tenure not having been commuted. It must also be borne in mind that the commutation of the military tenure then in contemplation cannot be taken to imply, contrary to the expressed intention, any alteration of other incidents which custom had impressed upon it either in regard to its impartibility or to its devolution. Special reliance is placed on Clause II of the agreement which forbids grant of land to any foreign nation without the consent of the Nabob, and it is suggested that this restriction operates to create a new estate. The fallacy in the appellant's suggestion consists in ignoring the fact that the paramount power may impose, and the feudatory may accept, obligations in the interests of good Government, especially in matters touching relations with foreign nations, and yet the estate of the latter may continue to be the same as before in all other respects. As pointed out in the

Nuzvid case, the test is this: was it the intention of the Government to restore Ramnad to Mangaleswari as it existed prior to Muthuramalinga's deposition, or to create a new estate and not simply to change the tenant by the exercise of a ris major L.R. 7 IA 491 The declaration that succession was to be continued, and, that there was to be no confiscation of the estate but only suspension of the rights of the family for three years is conclusive on the question of intention.

28. The next contention is that the mode in which that intention was executed is proof that a new estate was created and granted, it must be pointed out here that from March 1795 when the treaty was made to April 1803 when the Sannad D was issued, the East India Company never altered, nor thought of altering, its original intention. The mere selection of Mangaleswari Nachiyar, Muthuramalinga's sister, as his successor in preference to his daughter was intended not to create a new estate as alleged for appellant but only to change the tenant on considerations of policy. The facts relating to Mangaleswari's selection as Muthuramalinga's successors are these. On Muthuramalinga's deposition, Mangaleswari addressed a memorial to the Governor at Madras in which she asserted that the succession to the Zemindari was in the female line and vested in her in preference to Muthuramalinga on the demise of her elder sister (Exhibit XLII). This was on the 18th February 1795, and thereupon, Government called upon her to make good her pretensions (Exhibit XLV) and directed the Collector of the Poligar Peishcush at Madura, Mr. Powney, to ascertain who was the next heir according to the usage of the Setupati family and whether succession to Ramnad was in the female line (Exhibit XLII). Mangaleswari's case was that the Ramnad Raj always vested in the senior female of the family for the time being, and that the several Setupatis who ruled over Ramnad were managers selected by their sisters for the administration of the country on their behalf (Exhibit L). This statement on her part which contradicts the previous history of the family was probably due to a desire to make it appear that her claim was not under Muthuramalinga, the rebel, but that it was superior to his, and traceable to family usage (see her second memorial of 27th March 1795).

29. [Here His Lordship set out the manner in which the Collector of the District ascertained the custom of the family regarding devolution and went on:--]

From the best available data, I have ventured to give my opinion on the succession. At the same time, I hope your Lordship (Governor of Madras) will forgive me for offering my sentiments on it, which from motives of policy and expediency ought, in my humble opinion, to be declared in favour of the Poligar's sister; for it has been an immemorial custom here that the sister should have been consulted and her consent obtained previous to the Poligar's daughter ; this was not done and the Maravars, I have learnt, would feel much repugnance in consequence to acknowledge the child's husband as Setupati,--the sister from her age will not probably have issue, the daughter and her husband are minors. According to the custom of this country the daughter ought to have been placed under the care of her aunt, and if this were now done, there would be no further dispute upon the point.' The Board of Revenue observed that 'they were desirous of preserving a due regard to the claims of those persons whose pretensions were the most prominent without divesting themselves entirely of motives of political expediency which seemed to require some attention in the final arrangement of the succession. That aware of the objections either to suffer the Nabob or the Collector of the Poligar peishcush to determine a question of this nature, their concurrence upon the present occasion, though perhaps upon different principles, entitled their opinion to the favorable consideration of the Board, and as it would be extremely difficult, if not impossible, satisfactorily to justify a contrary opinion, acquiescence in their decision appeared to be the most eligible line to be pursued. 'With respect to political expediency they said, 'it is of importance! to prevent the deposed Poligar from having any influence whatsoever in the country or from holding out an idea of the probability of his return to the Government, and it is of great consequence that the other Poligars to the southward, whose refractory dispositions have so frequently disturbed the peace of their several districts, should be deterred from the commission of similar offences by an apprehension of the ruin in which they may be involved.

30. That 'under the impression of all these circumstances, the Board came to the determination of nominating the sister of the deposed poligar to the succession and also resolved to place his daughter under her charge without touching upon the question of her future expectations to succeed to the Government--expectations however, which might reasonably be entertained from the little

probability of her aunt's pregnancy' (XLVIa). The Government accordingly declared the succession in favor of Mangaleswari, and directed the Collector to place the infant daughter of the deposed poligar under her charge. While communicating their decision to the Collector, the Government remarked as follows;--'This arrangement has been communicated to the sister (of the deposed poligar) who has been directed to address herself to you on all further occasions. You will therefore take the necessary measures for putting the daughter of the deposed poligar under the charge of her aunt, and as this measure is adopted chiefly upon your assurance that it will give satisfaction to all parties and is calculated to secure the tranquillity of the country, you will be vigilant to prevent abuse of the confidence which is thus placed in her; and in case of your apprehending danger or ill usage to the child from her aunt, you will lose no time in taking the most effectual means for removing her from the power of her aunt' (XLVIII). The Government also communicated their decision to Mangaleswari and said that in compliance with the usage of Ramnad, they resolved to place the daughter of the late poligar under her charge, that 'the tenderness of . her age had no less claim upon her humanity than her nearness of kindred upon her natural affection; and as she employed the confidence which is now placed in her to the pre-servation of her (child's person) and the improvement of her mind, so she would merit approbation, of Government or be liable to their severest displeasure.' (XLVII). The Government also communicated their decision to the Nabob, and on the 23rd October 1795, Mangaleswari thanked the Government for 're-establishing her in the office of the poligar of Ramnad and professing adequately to realize the solicitude of Government for the welfare of ' her niece,' assured them that she would consider the child as 'her own child' and use her with infinite love' (Exhibit L).

31. These are the materials upon which an opinion has to be formed on the question whether the recognition of Mangaleswari as the successor of Muthuramalinga operated as the grant of a new estate. It appears to me that the Subordinate Judge was perfectly right in answering the question, in the negative. By the Mitakshara Law, Muthuramalinga's wives, and after them, his minor daughter, were his lawful heirs, and by the ascertained usage of the family, his minor daughter's minor husband was the lawful poligar in her right. But the

immediate recognition of her claim was deemed incompatible with considerations of policy which required that the late poligar's influence should cease for ever at Ramnad and that no impression should prevail that his restoration was probable. In the exercise of sovereign powers which go beyond the municipal law and on considerations of policy, the Government diverted the succession from, his minor daughter in favor of his sister and placed the former under the care of the latter in the hope that the daughter might in future probably succeed her aunt who was then without issue and who from her age was not likely thereafter to have a sou. So far as the supersession of the minor daughter is concerned, the act of Government was all act of state but it was accompanied by an arrangement regarding the guardianship of the minor which, it was believed, might lead to her adoption by her aunt as her heir at a time when political exigencies which barred her immediate recognition as Muthuramalinga's successor might have passed away. I see no reason whatever to hold that there was either a re-grant or grant of a new estate or anything more than the change of the tenant. A re-grant implies previous extinction of the property which the Setupati family had in the subject of the grant but in the case before us, there never was an intention to extinguish, such property as contradistinguished from that of Muthuramalinga. Nor was any new estate created and granted, for Mangaleswari was recognized to be the late Poligar's successor to the 'palyapat' and the permanent settlement was not introduced and the commutation of the poliem tenures did not take place till 1803. Though it was then no doubt in contemplation to commute the military tenure and to fix the peishcush in perpetuity, yet no other incident of the family custom was intended to be touched. There is no trace of an intention, as in the Nuzvid case, to put an end to the old estate and substitute new estates in its place. The appellant's Counsel here draws our attention to exhibit M, copy of the Inayatnama from the Nabob, to which reference has been made. There is no proof of its authenticity except that the original was produced by Annasami Setupati in O.S. No. 3 of 1813 as appears from the endorsements on that document. It is not referred to by Mangaleswari in her memorial, but assuming that it is authentic, it cannot be said to constitute the foundation for Mangaleswari's title. The real foundation of her title is the declaration of the succession in her favor by the British Government acting under the agreement between it and the Nabob in

1795. If any such Inayatnama existed, it must be construed not as a new grant, but as an expression of a desire favorably to consider her claim in continuing the succession in the family. It is then said that although the succession was formally declared in favor of Mangaleswari in 1795, yet the estate was not placed in her possession for eight years and until she executed the undertaking or Muchilika marked as Exhibit LIV. I fail, however, to see how these circumstances disclose a change of the original intention. The East India Company only professed to manage Ramnad under Article 2 of their treaty with the Nabob. It is then urged that the prolongation of the management to eight years was another material departure from it. What was the declared reason for such departure? This appears sufficiently from the Collector, Mr. Lushington's letter of the 20th August 1799 (Exhibit XLIX). In reporting upon a petition from Mangaleswari, he said that it was expedient to make choice of a fit time for restoring the Ranee to her acknowledged hereditary rights. He added 'In your (Board of Revenue) address of the 27th March 1798, your Board observed, The Ramnad country being under the Company's management, such arrangements may be introduced for the future regulation of it and for commuting the service for a money payment when delivered over to the appointed successor as the general determination of Government on this subject may authorize.' That so great a proof of moderation and of attention to individual claims as her re-instatement, would establish the confidence of the Sivaganga Servaigar and of the Tinnevely western poligars at a time when it has become necessary to adopt decisive measures against those to the eastward and to create a new system for the future government of the poligar countries, will doubtless occur to your Board as well as that the condition of the restoration of this province might be made an example for the whole. The good understanding of the Ranee would cheerfully yield to whatever system, of measures may be determined upon, particularly to the commutation of the military service for a money payment and to such further increase of peish-cush as the revenues of the country can afford.' In this letter the Collector also alluded to the two years of drought which scourged that sterile country. It is then clear that the delay in delivery of possession to Mangaleswari was owing to a desire to obtain a thorough insight into the resources of the Ramnad country in view to fixing the peishcush in perpetuity and. to introduce measures conducive to good government such as the commutation of

the military tenure for a money payment. There is, however, no ground for saying that the succession to the Estate was not continued as intended with all its customary incidents save as to the alteration in the line of heirs and in the nature of the Estate as a Raj or an Estate of military tenure (Exhibits LII, LIV and LVI).

32. It is here noteworthy that Mangaleswari was placed in possession before the Sanad was issued and that the Muchilika referred to (Exhibit LIV) evidences no change in the original intention of Government as embodied in the agreement of 1795. Exhibits LII and LV and LVI which explain the terms on which the Ranee was placed in possession lead to the same conclusion. In the Nuzvidcase 7. I.A. 49 their Lordships of the Privy Council distinguished it from the Hunmpore case, reported at 12 Moore's Indian Appeals, 35. They said, in the Hunsapore case, the Estate whilst in the hands of the Government had never been broken up, and it was held to be the intention of the Government to restore the Zemindary as it existed before the confiscation, and the transaction was not so much the creation of a new tenure as the change of the tenant by the exercise of a vis major. There the Estate was transferred in its entirety, but in this [Nuzvid) case, the Estate was divided into two distinct Zamindaris and a new Sanad granted allowing the same to be alienated in part or in whole and making it inheritable by a person, his heirs and assigns for ever, that person being one who had never held an Estate descendible to his eldest male heir. The case now before us is wholly dissimilar to the Nuzvid case, and much stronger than the Hunsapore case. Ramnad was not broken up whilst in the hands of the British Government, nor were any new Zemindaris carved out of it; it was restored in its entirety to Mangaleswari. in the Hunsapore case there was at least a confiscation and a re-grant but in the case before us, there was continuance of the succession to the old estate with a distinct avowal that the interruption to the succession was not to last for more than three years. Again, Ramnad was an ancient and impartible Raj, and it was not a new estate which as to its origin is referable to the Istimrar Sanad.

33. It is said that Ramnad ceased to be impartible because it was permanently settled and a Sanad (Exhibit D) was issued to Mangaleswari. I cannot accede to the proposition that all ancient, impartible Zemindaries become partible, when they are permanently settled and a Sanad is issued by reason of the permanent

settlement, and of the issue of a Sanad notwithstanding the previous and the subsequent custom of the family in favor of impartibility. The proposition is at manifest variance with the course of decisions of all the Courts including the Privy Council on the subject. As pointed out by Mr. Mayne, two principles govern the question. The first is that when an impartible Raj has been even confiscated and then granted out again to a member of the same family, the presumption is that it is granted Avith its customary incidents of which the most prominent are impartibility and descent by primogeniture. The 2nd is that the presumption may be rebutted by showing that the mode of dealing with the Raj after its confiscation and the mode of its re-grant are consistent only with the intention that it should possess in future the ordinary incidents of partible property. The question is, therefore, one of the intention of the Government and that intention was, in the case of Ramnad, that there should be an unbroken succession to, the old estate of Ramnad. The issue of an Istimrar Sanad as evidencing permanent settlement concluded with an already recognized Poligar and with her consent is immaterial as it recognized a pre-existing estate as in the Sivaganga Case, I.L.R. 3 M. 296 Two more arguments are addressed to us by the learned Counsel for the appellant in connection with Mangaleswari's succession, and it is convenient to notice them here in passing. The first is that there is no evidence to show when Mangaleswari's elder sister died, and the learned pleader for the respondents is unable to refer us to any evidence, on that point. But the fact that Mangaleswari stated in her petition that she was entitled to the estate on the demise of her elder sister, and the absence, of any claim on the part of that sister during the enquiry held by the Collector with reference to that petition raises a presumption that the elder sister was then dead. Again, it is clear that the selection of Mangaleswari as Muthuramalinga's successor was an Act of State based in part on considerations of political expediency, and I do not see how this statement is material to the question now under consideration except, as observed by the Subordinate fudge, as evidence of consciousness on her part that the estate was impartible and that seniority of birth was a ground of preference. The other argument viz., that there is no evidence to show that the East India Company paid Mangaleswari the net profits of the estate for the period it continued in management beyond three years from 1795 is not relevant to the question of partibility. Assuming that the late East

India Company did not account to Mangaleswari for excess profits, this would only show that the suspension for three years contemplated by the agreement of 1795 practically enured for eight years, and I fail to see how it discloses an intention to make the Zemindary partible.

34. Passing on to the period, subsequent to the permanent settlement, I observe that there have been six cases of succession as shown below, and there has been no instance of partition.

35. [Here was set out the genealogical tree showing the devolution since the Sunnad and the judgment went on].

36. The Istimirar Zemindar adopted in 1803 one Annasami, a distant Dayadi of her deceased husband and made a Will in 1807 constituting him heir to the Zemindary. By this act she excluded from succession her brother's daughter whom the Government had placed under her charge while declaring the succession to Muthuramalinga, in her favor, in the hope that ultimately; the niece might expect to succeed the aunt who, from her age, was not likely to have male issue. The circumstances under which the niece was excluded are set forth in Exhibit C (100), and the result was the institution of O.S. No. 3 of 1813 on Mangaleswari's death in August 1812. In that, suit, Sivagami Nachiar claimed the Zemindary on the ground that her father, the hereditary poligar, was deposed in 1798 by the British Government on considerations of political expediency and. that the Zemindary was confided thereupon to the management of Mangaleswari and she herself was committed to her charge with an acknowledgment on the part of the British Government of her right to the succession and with strict injunctions that she, Sivagami, should be treated with kindness and educated in a manner suitable to her rank and expectations. Annasami, the adopted son, relied on his adoption and contended that when Muthuramalinga was deposed and Mangaleswari was declared his successor, all his right was transferred to and vested in the latter. The Provincial Court decreed the claim and held that Sivagami Nachiar was Muthuramalinga's legal heir and that no Act of Government consequent on his arrest and imprisonment had declared the succession in his issue forfeited. On appeal, however, both the Sadr Court and the Privy Council concurred in holding

that the Istimirar Sanad was the foundation of title to the Zemindary, that she, Mangaleswari was, competent to adopt and did adopt Annasami Setupati, and that the decision of the Provincial Court could not be supported. This litigation lasted from 1813 to 1828, and during its pendency, Annasami Setupati died and his senior widow Muthuvirayi Nachiyar continued the appeal. Here it is argued that the Sanad, being declared to be the basis of title to the Zemindary, the grant to Mangaleswari must be treated to have been a fresh grant. The answer to it is that no doubt the line of succession in the Setupati family was diverted from Muthuramalinga to his sister from motives of policy but that for the reasons already mentioned what was continued to her by an Act of State was the hereditary right of succession which had vested in the Setupati family and which had never been forfeited. The ground of appellate decision was that in 1813 succession could be claimed only from Mangaleswari the previous Zemindarni and not from her predecessor, the deposed Poligar. It was doubtless an Act of State which raised Mangaleswari to the status of Zemindarni, but that act transferred the succession to her unconditionally as the representative of the Setupati family thereby constituting her into a fresh stock of descent. There is nothing to support the contention that the Appellate Court held that the estate which Mangaleswari took was a new estate in the sense that it was partible and distinct from the impartible estate which her predecessors had owned. The appellant's Counsel overlooks the fact that when a Raj or principality belongs to a particular family and has, at the same time, a political character, the latter is liable to be detached from it without changing the incidents which appertain to the former by custom.

* * * * *

37. Although there was but one instance subsequent to 1808 of several co-heirs succeeding one after the other, yet as pointed out by the Subordinate Judge, there has throughout been a general consciousness, that the Setupati is the representative of what was once a ruling family, that succession in that family is governed by family custom, and that only one member holds the Zemindari at a time. In 1818, Annasami Setupati referred to Setupatis having exercised Sovereign powers, in order to account for the interest which he claimed in the pearl fishery at Tuticorin (Exhibit XXVII). Upon his death, there was an enquiry in

1820, as to the custom of succession in the family (See Exhibit LIX series) and the replies to the enquiry premise a competition among several sons born of different wives and give the Zemindari only to one of them. In 1840, the Board of Revenue represented to Government that Mangaleswari, the eldest daughter of Ramaswami Setupati was his heir, not by Hindu Law, but by the special custom of the family (Exhibit LXI).

38. Again, in 1856 an enquiry was made as to the custom of the family in regard to succession and the rights of son-in-law in particular (LVLII and LVIIIa). In 1855, Muthuchella Tevan, brother of the senior widow of Annasami Setupati, claimed the Zemindari terming it 'Raj' (Exhibit B). In 1857 the Board observed that it was the reigning Raja that had the title of Setupati. In 1832 the various marks of insignia held by the relations of the Raja, which are in all probability the relics of a time when the Setupati was a, ruling prince and the fountain of honor are described in Exhibits XXXV and XXXVA. In 1863 the Government referred to the Setupati family as one of the few reigning families in Southern India (Exhibit XXXJ.X). Moreover, the Istimrar Zamindari herself claimed the Zemindari only in succession to her elder sister (Exhibit XLII). In Original Suits 14 and 188 of 1850 the late Zemindar described the estate as being in the nature of a Raj (12 M.I.A. 422). Thus, the history of the family subsequent to 1803 discloses that the estate which was impartible as a Raj or military jaghiro prior to the permanent settlement has since continued to be an impartible Zemindari.

39. I may here mention that the Zemindari of Sivaganga and the estate of Padamattur which have been judicially determined to be impartible are offshoots of Ramnad. The Raj at Puducotta is likewise another offshoot. It is but reasonable to presume that when the offshoots are impartible the parent stock is likewise impartible.

40. As to the oral evidence for appellant on the subject of partibility, the Subordinate Judge has considered it not trustworthy, and his finding upon it is not questioned on appeal.

41. In conclusion, the evidence on the subject of impartibility may thus be summarized.

1. Throughout its history, prior to 1605 extending over many centuries, Ramnad was always a feudatory estate and at times a real kingdom.
2. From 1605 to 1803, it was always the principal of the seventy-two southern palayapats. The 8th Setupati threw off his allegiance and assumed regal power, and in his time it was a real kingdom.
3. Throughout its history, Hamnad was never the subject of a partition in recognition of co-parcenary right.
4. Whenever there was a plurality of heirs, it is only one that owned the estate. There were six such instances since 1605.
5. The Raj at Pudukotta, the Zemindary of Sivaganga, and the estate of Padamattur are all the offshoots of Ramnad, and they are impartible.
6. From the date of the permanent settlement, as before it, there is a general consciousness that Ramnad is impartible.

42. What is urged against the foregoing evidence is as follows:

- I. On the death of the third Setupati there was a partition. The answer is that it is not referable to coparcenary right.
- II. In 1773, Ramnad was conquered by the Nabob of the Carnatic and became part of his territory. The answer is that he restored it to the 18th Setupati in 1780.
- III. Since 1780 and at all events from 1792, the status of the Setupati was more that of a renter. The answer is, that the imposition of a peishcush in 1780 and the raising of it under the East India Company's management are not incidents incompatible with the poliem tenure which, in the case of Ramnad, was finally commuted only in 1803.
- IV. In the Inayatnama M, the Nabob spoke of having delivered Ramnad to Muthuramalinga on lease, and this shows, that what was restored in 1780 was not the Raj. The answer is, that the Nabob used the term loosely to indicate the obligation to pay a peishcush which he was at liberty to raise, and that the real,

relation as formally stated by the Nabob in Exhibit XLIVa was that of a poligar subject to the payment of a tribute to him.

V. When the 18th Setupati was deposed Ramnad was confiscated. The answer is that there was no confiscation in fact or in law, and that an intention to confiscate was expressly disavowed in Exhibit XLIVa.

VI. The estate granted to Mangaleswari Nachiar was a new estate. The answer is that her succession was acknowledged to the palayapat before it ceased to be such.

VII. The mere issue of Istiirar Sanad rendered Ramnad partible. The answer is that this is not sound, and where impartibility has been impressed upon the estate by antecedent family custom, the presumption is that the estate was granted with the customary incidents.

VIII. The continuance of the management of the East India Company for eight years and the absence of evidence to show that Government accounted to Mangaleswari for five years' profits imply a change of intention. The explanation is that the inference is incorrect and that it is contradicted by the Collector Mr. Lushington's letter and the subsequent delivery of Ramnad into Mangaleswari Nachiar's possession.

IX. The taking of Muchilika XLIV shows that the grant was conditional and not absolute as before. The explanation is that Mangaleswari's right of succession to the palayapat was recognized in 1795, and that the imposing of certain obligations in the interest of good government and public tranquility by the paramount power upon the poligar with his or her consent, does not destroy the original incidents of the estate in other respects.

X. The decision in the suit of 1818 that the Sanad is the foundation of title to the Zemindary is proof that a new estate was granted. The answer is, that Mangaleswari's right to succeed to the palayapat was recognized in 1795, while the sanad was issued only in 1803, and that the real effect of the decision is that a new claimant in 1813 must trace his or her title from the Istimrar Zemindar and not

from her predecessor, the deposed poligar.

XI. The number of instances in which there was competition between brothers and yet there was no partition is small. The answer is that there are no instances to the contrary and that the absence of partition from ancient times, the character of the estate as a Raj or principality constitute together with the general consciousness of impartibility, cogent evidence in its favor.

43. After carefully considering the whole evidence and all that can be urged against it, I have no hesitation in adopting the conclusion, of the Subordinate Judge that the Zemindary of Ramnad is an impartible estate.

* * * * *

44. The 3rd issue relates to Sirathettu, Pannai and Kolkrayam properties. The appellant did not specify them though he was directed to do so by the Subordinate Judge at the instance of the respondent.

45. Nor did he produce any evidence on the subject. It is not possible to grant him any relief save as to items which are mentioned in paragraph 7 of the written statements to have been acquired by the late Zemindar. But it is not denied that items 1 to 13 were sold for arrears of peishcush which accrued due during the lifetime of the late Poligar and bought for the respondent with the Zemin funds. The appellant has not set aside the revenue sales; nor has he shown that it was his father's wish or there was a special custom that this description of property should not pass with the Zemindary. As acquirer the late Zemindar was at liberty to alienate the Pannais and Kolkrayams at his pleasure but as their acquisition is in the nature of an enlargement of the Zemindars's interest in Zemin lands, the presumption is in the absence of any disposition on his part or of special custom, that on his death they were intended to be incorporated with the Zemindary. I think the Subordinate Judge has properly decided the 3rd issue against the appellant.

46. As for the 4th issue which relates to moveable properties in existence at the date of the late Zemindar's death, it is not denied that respondent purchased them with Zemin funds at revenue sales held for the arrears of peishcush which

appellant did not seek to set aside. They were liable to be sold for these arrears which constituted a debt due by the father. The only question is whether the selection for sale of moveable property in which the respondent was entitled to a share whilst the father's debt was payable both j out of it and the Zemindary should operate to deprive him of his share therein. The father's debts are payable as between his sons out of his whole property, and it is therefore only just that the impartible Zemindary and the moveable property which not being regalia is partible, should contribute in proportion to their value to the discharge of those debts, but the appellant has not set aside the revenue sales or sued to do so within six months from the date on which he attained his majority.

47. The result is that the appeal fails on all points and is dismissed with costs.

Best, J.

48. I concur.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com