

(1922) 10 MAD CK 0012
In the Madras High Court

Annadana Jadaya Gounder

APPELLANT

Vs

Konammal and Another

RESPONDENT

Date of Decision : 26-10-1922

Acts Referred:

Citation : AIR 1923 Mad 402 : 71 Ind. Cas. 533 : (1923) 17 LW 107

Hon'ble Judges : Ramesam, J; Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—This is an appeal by the first defendant against the decree of the District Judge of South Arcot in Original Suit No. 13 of 1916 on his file. The suit was Drought by the plaintiffs to recover

possession of the impartible estate known as Jadaya Goundar Jaghir, one of the bill Jaghirs on the Kalayan hills in South Arcot, and also the moveable and Immovable properties and outstandings described, in

Schedules B, C and D. The Jaghir is one of the estates included in the Schedule of the Madras Impartible Estates Act, II of 1904, and is thus made inalienable by the holder beyond his lifetime. The last bolder of the

Jaghir was one Naranappa Jadaya Goundar; the Jaghirdars ire given the honorific title of Jadaya Goundars. He died in 1914 leaving a Will, which is not now disputed, by which he bequeathed all his properties to the

second plaintiff. The first plaintiff is his mother and the heir-at-law to his separate properties, as he left no issue. The two plaintiffs sue jointly, the second plaintiff as the beneficiary under the Will and first plaintiff as

the heir-at-law in case the Will is found to be invalid. Clearly, the Will, is of no effect by reason of Madras Act II of 1904 to pass the Jaghir to the second plaintiff The District Judge gave a decree for the Jaghir to the

first plaintiff as the heir-at-law and to the second plaintiff for the properties in

the other schedules which he found to be self-acquisitions of Naranappa. Appeal No. 75 of 1921 is against that decree.

2. The first defendant himself had brought a suit, Original Suit No. 50 of 1916, against the first plaintiff and others to recover a house in Akkarapalayam in their possession which he claimed to be a part of the Jaghir

which, according to him, passed to him on the death of the last holder by the right of survivorship taken with the rule of lineal primogeniture. The District Judge held that the house was not part of the Jaghir, and

having already held in the connected suit Original Suit No. 13, of 1916, which was tried with this suit that he was not entitled to the Jaghir itself dismissed his suit. Appeal No. 76 of 1921 is against that decree.

3. The main question for decision is, who is entitled to succeed to the Jaghir on the death of the last holder That would depend upon whether the Jaghir in his hands was the joint family property of himself and the

defendant and others or his separate or self-acquired property. It is a well-settled proposition of law that the succession to an impartible estate is governed by the rule of survivorship if it is joint family property and

by the rule of inheritance to separate property if it is Separate property. That was so laid down in *Kaiama Natchiar v. Rajah of Shivagunga* 9 M.I.A. 539 : 2 W.R.P.C. 31 : 1 Suth P.C.J. 520 : 2 Sar P.C.J 25 19

E.R. 843 and has since been affirmed in several cases, the last one being the case in *Baijnath Prasad Singh v. Tej Bali Singh* 40 M.L.J. 387 (1921) M.W.N. 300 : 25 C.W.N. 564 : 2 P.L.T. 257 : 23 Bom. L.R. 654

: 29 M.L.T. 358 . In the present case there is no difficulty in choosing a single individual out of a class for the Jaghirship, for it is conceded that if the rule of survivorship applies, the 1st defendant is entitled as the

senior member of the senior line, whereas if the rule as to succession to the separate estate applies the 1st plaintiff, the mother, is entitled.

4. We have thus to address ourselves to the question whether on the evidence in this case the District Judge was light in holding that the Jaghir was the separate property of Naranappa, the last holder. A genealogical

table showing the relationship between the first defendant and Naranappa and others is attached to the judgment of the lower Court and has been accepted as correct by both parties. That shows that one

Lakshmanappa was the twenty-ninth Jaghirdar. We know that Lakshmanappa was succeeded in 1822 not by his eldest son Ramappa who was said to have been of weak mind, nor by his son Aannappa who was

born at the time but was a minor of 5 years of age, but by his second son

Annadana and the jaghir has continued in his junior line till now, that is, for four generations. What exactly happened in 1822 when the senior

line was set aside in favour of the junior line is not clear; nearly 100 years having elapsed there is naturally no direct evidence about it. We must gather what we can about it from the proceedings and the judgments of

the First Court and of the High Court in Original Suit No. 7 of 1875 brought by the widow of the 1st Jaghirdar as guardian of her minor son, Annadana, to recover the estate for him from Lakshmanappa of the senior

branch who had usurped it. The plaint and the written statement in it and the decree and the judgment of the First Court are marked together as Exhibit B, the judgment of the High Court as Exhibit C and the decree

as Exhibit D. In that suit the plaintiff Annadana succeeded in recovering the estate and he became the 32nd Jaghirdar. The judgment of the Trial Judge deals more with the question whether the then plaintiff's mother

was properly married and whether plaintiff was a legitimate child than with what happened in 1822, as he held as a point of law that Annadana, the 30th Jaghirdar, having succeeded to the estate his descendants had

a preferential claim to it. He has, however, made some remarks in his judgment which are in point. He says that ""the old father (the 29th Jaghirdar) yielded the title to him (the 30th man) before he himself died"" and

that the defendant there (who was of the senior branch) was the next heir according to the ordinary rule of succession if the plaintiff, the minor, was not a legitimate child."" The latter, however, is only an opinion of

the Judge and we cannot attach much weight to it.

5. In the judgment of the High Court something more appears as regards the point before us. Their Lordships say: ""We think the plaintiff's claim may be regarded as resting on family arrangement made in 1820 and

not challenged until the death of the minor plaintiff's father in 1866. Regarding the 29th Poligar who possessed the proprietary right in the property it was competent to him with the members of his family to alter the

succession by the arrangement referred to."" What exactly the arrangement was and what its scope was it is not possible to gather from the records. It was suggested for the respondents that what the 29th Poligar did

was to make a gift of the Jaghir to his second son before he died and the Jaghir was thus self-acquired property in his hands. Though according to the decision in *Sartaj Kuari v. Deoraj Kuari* 10 A. 272 : 6 Ind. Dec.

182 he could have probably made a gift, Madras Act II of 1904 not having been yet passed, there is no evidence on which we can hold that the arrangement in

1820 or 1822 was in the nature of a gift. The most that

we can reasonably infer from the evidence is that here we have an arrangement similar to that in *Naragunty Lutchmeedavamah v. Vengama Naidoo* 1 Suth. P.C.J. 460 : 1 Sar P.C.J. 826 : 19 E.R. 666 and *Naraganti*

Achammagaru v. Venkatachalapati Nayanivaru 4 M. 250 : 1 Ind. Dec. 1010. The result of the arrangement was practically to substitute the junior line for the senior line to succeed, to the Poligarship but there is no

evidence of any further interference with the right of the senior line. It did not affect the Jaghir being held as joint family property and the right of survivorship subsisting in the senior branch as well as in the two junior

branches of the 30th Poligar's brothers. (See the pedigree). The possession of the second line being consistent with the joint family rights continuing, it cannot be treated as making the Jaghir the separate property of

the second line by adverse possession. The effect of that possession is no more than that of the arrangement itself The failure of Lakshmanappa of the first line in Original Suit No. 7 of 1875 did not result in any

separation either; the suit was decreed in favour of the minor of the second line only on the footing that the arrangement in 1820 was not a temporary one, as Lakshmanappa contended, but was effective in continuing

the Jaghirship in that line. Now, that that line has become extinct a new position has arisen and there is nothing in the two judgments to prevent the senior line from claiming the Jaghir now by survivorship.

6. In this connection reference may also be made to the entry in Inam Register, Exhibit III, where in column 19 the heirs of the 31st Jaghirdar are given and they include members of the lines senior and junior to the

then Jaghirdar's line. This is a strong indication that the joint family character of the Jaghir was not destroyed by what happened in 1820 or 1822.

7. The learned Vakil for the respondents then argued that the conduct of the parties showed that the two lines had become separate at some time or other and that the Jaghir was treated as the separate property of

Naranappa's line. As apparently this family had no other joint properties of any value except the Jaghir he could not point to any particular act of partition or division, and he, therefore, contended that it was sufficient

for his clients to show that Naranappa was divided in status from his cousins of the senior line. It is very doubtful if the owner of an impartible estate can get himself divided in status with reference to that estate by a

mere unilateral declaration so as to destroy the joint family right of succession by survivorship to it which the members have. It is not, however, necessary to

decide this question here, for we have no evidence of any such express declaration or of anything from which it could be inferred.

8. The learned Vakil for the respondents, then relied on the following circumstances as showing separation, viz.:

(1) The removal of the residence of the: Jaghirdars to Pottayam in 1872 and their continuance to live there ever after, whereas the other members of the family continued in the ancestral place of Chinha Tirupati;

(2) The absence of evidence to show that the senior line kept up any rights in the Jaghir;

(3) The absence of evidence of any application for help made by the members of the senior line to the Jaghirdar;

(4) The absence of any consciousness of the existence of a joint family when guardianship proceedings took place in 1901;

(5) Proof of the hostile attitude of the Senior line in the patta proceedings in 1898;

(6) Separate living and separate mess for 30 or 40 years;

(7) Proof of non-participation in the worship at Chinna Tirupati temple and in the annual Durbar held by the Jaghirdars;

(8) Absence of a single joint dealing of the senior line with the Jaghirdar, all dealings being separate; and

(9) The fact that the members of the Senior branch were treated just like any ordinary ryot with reference to collection of forest produce.

9. My learned brother has dealt with the evidence on these points at very great length and as I agree with his conclusions it is unnecessary to burden the record with a further discussion of the details of that evidence.

It is clear that even if all the above points are found in favour of the first plaintiff, it is insufficient to establish that the Jaghir had become the separate property of the last holder. The points Urged are all consistent with

the Jaghir continuing as the joint family property of the members of all the branches. Considerable reliance was placed by the respondents' Vakil on the ruling of the Privy Council in *Tara Kumari v. Chaturbhuj*

Narayan Singh 30 Ind. Cas. 833 : 22 C.L.J. 498 : (1915) M.W.N. 717 : 42 I.A. 192 and the recent ruling of this Court in *Gurusami Pandiyan v. Sendatti Kalai Pandia* 61 Ind. Cas. 242 : 44 M. 1 : (1920) M.W.N.

660 : following that case. It is true that the recent Privy Council case in *Baijnath Prasad Singh v. Tej Bali Singh* 60 Ind. Cas. 534 : 23 Bom. L.R. 654 : 29 M.L.T.

358 does not refer to the case in Tara Kumari v.

Chaturbhuj Narayan Singh 30 Ind. Cas. 833 :) and that case must still be treated as of authority. I am, therefore, inclined to think that to show that an impartible estate has become the separate property of the holder

it is not absolutely necessary to prove that there was some express division in which that property was involved or that the rights of others in it were abandoned. Each case has to be decided on its own facts. The

present case, however, is completely distinguishable from Tara Kumari v. Chaturbhuj Narayan Singh 30 Ind. Cas. 833 : 42 C. 1179 : 19 C.W.N. 1119 : and Gurusami Pandiyan v. Sendatti Kalai Pandia 61 Ind.

Cas. 242 : M.L.T. 365, as in both those cases the indications of the Zemindari being the separate estate of the last holder were much stronger. Furthermore, our decision in Gurusami Pandiyan v. Sendatti Kalai

Pandia 61 Ind. Cas. 242 : 44 M. 1 : 39 M.L.J. 529 : M.L.T. 365 is now in appeal before the Privy Council. Considering the whole of the evidence, I agree with my learned brother that it falls short of proving that

the joint family rights of the first defendant's line in the Jaghir were extinguished at any time. In the hands of Naranappa, the last holder, the Jaghir must be looked upon as joint family property and not as his separate

property and the finding on Issues Nos. 3 and 4 must be in favour of the first defendant. In this view Issue No. 5 requires no discussion, but I may add that I agree with my learned brother that the finding of the

District Judge on the "point is correct. Issue No. 2 was expressly given up and the other issues were not argued before us.

10. In the result, Appeal No. 75 of 1921 is allowed and the suit dismissed so far as the Jaghir is concerned and the rest of the appeal is dismissed; the first respondent will pay the appellant's costs in both Courts

calculated on the value of the Jaghir given in the suit. The appeal is wholly dismissed against the second respondent with costs payable by the appellant calculated on the relief claimed against him.

Ramesam, J.

11. The suit, out of which this appeal arises, was filed by two plaintiffs to recover certain properties described in Schedules A, B, C and D attached to the plaint. Of these, the property described in Schedule A is the

Jadaya Goundan Jaghir in the South Arcot District, which has been declared to be impartible by Madras Act II of 1904 (vide Schedule to the Act). The second plaintiff claimed the properties as the devisee under

the Will of the last Jaghirdar, Narayanappa, who died on 17th August 1914. The first plaintiff claimed, in the alternative, the heir of Narayanappa The District Judge of South Arcot gave a decree to the first plaintiff

for the Jaghir and to the second plaintiff for the properties in Schedules B, C and D. The first defendant (who will be referred to hereafter as the defendant, being the only contesting defendant) appeals. The appeal

has not been pressed so far as the properties decreed to the second plaintiff are concerned. (Vide 6th, 9th and 10th Issues). It has been argued only in respect of the Jaghir which was decreed to the first plaintiff,

who will hereafter be referred to as the plaintiff.

12. The plaintiff is the mother of the last Jaghirdar, Narayanappa, and the defendant is his cousin. The following genealogical tree shows the parties and a few other relations, some of whom have figured in the suit as

witnesses:

LAKSHMANAPPA I,

(29th Jhaghirdar)

_____ | _____

| | | |

Ramappa, Annadana I, Vengappa. Konappa,

| 1820--1860, |

| (30th Jaghirdar) Jadayappa,

| | (R. No. 7).

| Lakshmanappa II,

| 1860--1866,

| (31st Jaghirdar)

| |

| Annadana II,

| (32nd Jaghirdar)

| 1866-1901

| (R. No. 1.)

| M. Konammal

| |

| Narayanappa,
| (1901--1914).

|_____

_____|_____

| | |

Kannappa, Lakshmanappa, Muthiyappa, |

| (R. 2.) |

Lakshmanappa, |

(R. No. 3.) |

|_____ |

_____|_____ |

| | |

Tirumalappa, Kanappa |

| (D.W. No. 2.) |

| |

_____|_____ |

| | | |

Annadana, Muthnsamy, Perumal, |

(defendant). (alive). (alive). |

_____|

_____|_____

| | | |

Konappa, Ramappa. Lakshma Vadamalai,

(Hill Munsif, (R. No. 5). nappa, (P.W. No. 8)

alive R. No. 4). (R. No 6)

13. The common ancestor in the above pedigree, Lakshmanappa I, died in 1822, leaving four sons, of whom the eldest was Ramappa and the second was Annadana I. Annadana I held the Jaghir from 1820 up to

his death in 1860, when he was succeeded by his son, Lakshmanappa II, who held it till 1866, when he died leaving a minor son Annadana II. It appears that Lakshmanappa, grandson of Ramappa, managed the

property as the guardian of Annadana II till the end of 1871 but usurped the estate in 1872. A suit was filed by the mother of the minor as his next friend to recover the possession of the estate (Original Suit No. 7 of

1875). It was decreed by the Judge of the Small Cause Court at Cuddalore in November 1876 and the decree was affirmed in appeal (Regular Appeal No. 116 of 1876) by the High Court (Sir Walter Morgan,

C.J., and Kindersley, J.) on 7th May, 1877. Annadana II held the estate till his death in 1901, when he was succeeded by his son, Narayanappa, whose death in 1914 has given rise to the present litigation. The

defendant, claiming to be the person on whom the estate has devolved by survivorship on the ground that, though impartible and capable of being held only by a single person at a time, it was still the joint family

property of the family, took possession of the estate and even gone through the ceremony of installation (vide paragraph 98 of the Judge's judgment). The plaintiff, on the other hand, contends that it was the

separate and absolute property" of the several holders of the estate who held it since 1820, (Vide paragraph 11 of the plaint). This is the most important point in the case. Before dealing with it, I will dispose of the

other points in the case to clear the ground.

14. The learned Vakil for the appellant has expressly stated before us that he does not press the technical objection which is the subject of the 2nd Issue. He made no reference to the 1st, 7th and 8th Issues. The

only Issues pressed before us are the 3rd, 4th and 5th. So far as the 5th Issue, which raises the existence or a custom by which women are disqualified from holding the Palayam, is concerned, I agree with the

learned Judge's finding that no such custom has been made out. I agree with his reasons as given in paragraphs 96 to 108 of his judgment. In the first place, it does not appear that the practice of prostration before a

Jaghirdar at the annual Pongal (January 14th) darbar has anything to do with spiritual Headship. There has been no instance within living memory in which the succession in the direct male line has failed. Again, it

cannot be said that the ceremony of installation, when the Ur Goundan places a mark on the forehead of the Jaghirdar (if a male), confers the title on the Jaghirdar. The same remarks apply to the functions of a

Jaghirdar at the annual festival in the month of Peratasi (October to November) for the Idol in the temple of Chinna Thirupathi. If women cannot perform these functions, either they may not be performed at all or will

be done through a deputy. Anyhow, the matter has no bearing on the right to the

estate.

15. There remain the 3rd and 4th Issues for Consideration. Before examining the law and facts on these Issues, it is necessary to describe the nature of the estate and of its people, so that the facts in the evidence

may be understood in their proper setting. This estate, like four other similar estates, is situated in the Kalrayan Hills, three of the estates (including the one now in question) being in the portion of the hills which are in

the South Arcot District and the other two being in the Chinna Kalrayan Hills which are in the neighbouring District of Salem. The suit estate is divided into four Nads (or sub-divisions) containing 40 villages, the

population of which was 10 009 in the census of 1901. ""But the villages are merely fortuitous collections of huts with no definite boundaries and containing in several instances less than a dozen persons and the

number of them has varied considerably at different times and in different reports. In charge of each Nad is a Mooppan who collects the revenue and corresponds to the Revenue Inspector of Government villages,

and whose post is hereditary. Every village has a headman called the Goundan or Moneygar and a menial servant known as the Kangany. The Nattan has peons called Natusevagars.

16. The hill villages are never surveyed. Only five of the villages of the suit Jaghir are situated on the low grounds below the hills. On the hills, the revenue is raised in a curiously primitive and patriarchal manner which

is perhaps without a parallel in any other part of the Presidency outside the Agencies of the three Northern Districts. A large part of it is derived from such old fashioned imposts as plough taxes and poll taxes. The

poll tax is levied at Rs. 2 per annum for every married couple and annas eight for each widower or bachelor above the age of ten years. Women are exempt. There is also a tax of 12 annas on each plough, on

payment of which a man is allowed to cultivate as much land as he likes. Other contributions levied are two annas from each married, and anna one from each unmarried, man towards the celebration of the festival at

the Chinna Thirupathi temple: the same amounts towards the Poligar's expenses for Pongal; annas two and a half for Road-cess and (in the Jadaya Goundan hills) annas two for Ghee for the Poligar. Miscellaneous

payments to the Poligar include subscriptions to the cost of weddings and funerals in his family and a fee (of Rs. 3 to Rs. 5) for permission to contract a marriage. Moreover, menial services in his house are

performed for nothing by his subjects, men coming for a week or so at a time

and hewing his wood and drawing his water.

17. Other considerable items in the revenue are the receipt from timber and forest produce and from monopolies. The monopoly income is derived by leasing to some merchant of the plains the right to buy the

cultivators' grain at a fixed price below the market rate. The ryots are obliged to sell this man certain kinds of produce at these fixed rates.

18. The cultivation on the hills is either permanent or shifting. The former is carried on the level tops of the hills, which have long been cleared of practically all their growth; and the latter on the wooded slopes, the

jungle being cleared and burnt, the ground ploughed, and the seed sown broadcast. After one or two crops have been thus taken off it, the land is left fallow for a time until the growth has re-established itself, when

the process is repeated." (South Arcot Gazetteer, pages 329-333).

19. The Vakil for the respondent expressly stated before us that he would put his case of "absolute and separate property" in two ways in the alternative. (1) His branch and the defendant's branch became divided in

1820, when his ancestor Annadana I obtained it, and ever since both branches have been separate. (2) Even if the family did not become divided in 1820 they became divided in 1872. In either case, he relies on the

conduct of the family since 1872 as evidence of separation. In the first case, he also relies on the fact that the junior branch has superseded the senior branch in 1820, as evidence of hostile or adverse possession

since that date.

20. It is necessary, therefore, to examine the events that happened in 1820 and to properly estimate their legal significance. In paragraph 11 of his judgment, the District Judge stated: "It is common ground that the

eldest, Ramappa, was passed over in the succession for the reason that he was a parson of weak mind. Amiadana appears to have succeeded about the year 1820, in the lifetime of his father, as the 30th Poligar.

Apparently, this statement was based On similar statements in Exhibits B and C. In the judgment of Mr. (afterwards Mr. Justice) Parker, in paragraph 9, he states: "It appears indeed that the old father yielded the

title to him in 1820 before he himself died." Again in the judgment of the High Court (Exhibit G) we have got the following passage: "In the judgment of the Court below it is stated, and the document No. 360 among

the printed papers supports this view, that his father in his old age had relinquished to him the title and that this happened in 1820 some time before

the father died. It is admitted that the eldest son, Ramappa, was a person of weak mind, and that his son, Kannappa, then born, was an infant of tender years. We think it may be gathered from the evidence that by an arrangement between the Poligar and the adult members of his family the Palayatm was transferred to his son Annadana and also that intimation of this was given to the Revenue Officials and was recorded by them." Again, in the next paragraph they say; "We think that the

plaintiff's claim may be regarded as resting on family arrangement made in 1820 and not challenged until the death of the minor plaintiff's father in 1866. Regarding the 29th Poligar Lakshmanappa Jadaya Goundan

as in effect possessed the proprietary right in the property, it was competent to him with the members of his family to alter the succession by the arrangement referred to." Their Lordships then proceed to find that the

arrangement was not temporary but permanent so that the senior line had lost its right to hold the estate so long as the junior line has not failed.

21. The two sets of cases (1) *Naragunty Lutchmeedavamah v. Vengama Naidoo* 9 M.I.A. 66 : 1 W.R.P.C. 30 : 1 Suth. P.C.J. 460 : 1 Sar P.C.J. 826 : 19 E.R. 666 and *Naraganti Achammagaru v.*

Venkatachalappati Nayanivaru 4 M. 250 : a case approved of by Lord Macnaughten in *Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar* (Udayarpalayam Case)

32 I.A. 261 : 15 J. 312 : 28 M. 508 : 8 Sar. P.C.J. 855 by Lord Hobhouse impliedly in *Myttuvaduganadha Tevar v. Periasami Tevar* 6 M.L.J. 149 and by Lord Dunedin in *Baijnath Prasad Singh v. Tej Baij Singh*

60 Ind. Cas. : 534 : 19 A.L.J. 317 : 9 M.L.T. 358 and (2) *Stree Rajah Yanumula Venkayamah v. Stree Rdjah Yanumula Boochia Venkondora* 103 M.I.A. 333 : 20 E.R. 576 and *Gavuridevamma Garu v.*

Ramandora Gdru 6 M.H.C.R. 93 show that when a line in the family holding an impartible estate has been superseded by another, this may be consistent with the former still continuing to be part of the joint family

along with the latter, the only result of the supersession being that the headship of the family to use Lord Dunedin's language in *Baijnath Prasad Singh v. Tej Bali Singh* 60 Ind. Cas. : 534 : 2 M.L.T. 358 (P.C.)

including the right to hold the estate will be in the superseding line, and the superseded line will be relegated to a subordinate position. In the first set of decisions, the history of the family can be easily seen with the

help of the following pedigree there being a printing mistake in the pedigree given in the margin of page 251 of 4 Madras in *Naraganti Achammagaru v.*

Venkatachalapati Nayanivaru 1 Ind. Dec. 1010:

Table 2

ANANTAPPA.(1)

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| |

Vengamma, (2) Krishnappa, (3)

| |

Veakatachalapati, Vengaamma, (4)

| |

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| | |

Venkatappa, (5). Anantappa, (6) |

| |

Vengamma, (7) |

| |

| |

| |

adopted |

| |

| |

Venkatappa, (8) |

widow |

Lakshmiddevamma. |

| | | |

Krishnappa, Muddu- Kuppi, (9) Gopal,

| krishnama, | (respondent

Ramasami | in the appeals

| Vengamma in 4 Mad.

Venkatachalapati, (10) 250).

(appellant, in one M. Achamma.

of the appeals in (appellant in another

4 Mad. 250). appeal of 4 Mad. 250).

22. The figures attached to the names indicate the order in which the Polliem was held. The following points appear in the history of the case:

(1) The elder line was superseded by the younger line after the second Poligar's death.

(2) The younger line was again superseded by the elder line after the fourth Poligar's death.

(3) When Kuppi sued Venkatappa (8th Poligar) in Original Suit No. 24 of 1831, the latter pleaded, among other pleas, a *jus tertii*, that even if the adoption on which he relied was not true, the title of Kuppi's elder

brothers to succeed to the 7th Poligar (Vengamma) was better than Kuppi's, on the footing that both branches were members of an undivided family. Kuppi replied that his elder brothers renounced their right of

succession in his favour. Kuppi failed in this suit.

(4) On 8th Poligar's death, Kuppi sued his widow Lakshmiddevamma. The suit was based on the footing of an undivided, family comprising both branches. He succeeded in the High Court and the Judicial

Committee. *Naragunty Luchadavamach v. Vengama Naidu* 9 M.I.A. 66 : 1 W.R.P.C. 30 : 1 Suth. P.C.J. 460 : 1 Sar P.C.J. 826 : 19 E.R. 666. It is noteworthy that the two branches continued joint even after a

litigation between them (as mentioned in the preceding paragraph).

(5) In the actual litigations which were the subject of *Naraganti Achammagaru v. Venkatachalapati Nayanivara* 4 M. 250 : 1 Ind. Dec. 1010, the effect of the renunciation by the elder brothers of Kuppi had to be

considered, At page 260 their lordships say: ""When in 1831 he re-commenced proceedings, the Palayani was in the hands of a person who established title as a member of a family, and, consequently, those

proceedings failed. There was neither hostile possession nor a recovery. When Kuppi Naidu again asserted his claim, the Palayam was in the possession of a widow whose possession was to this extent hostile to the

family that she denied any right in the members as co-parceners with her husband."" Again at page 261: ""Therein he maintained that in virtue of a family

arrangement he was to be the successor of Vengamma, the 7th

Poligar. He claimed, therefore, to occupy the same position which had been occupied by the 7th Poligar--a position consistent with the enjoyment by the other members of the family of their coparcenary interests in

the estate represented by their enjoyment of maintenance and possibility of succession. All that it was necessary his brothers should abandon to entitle him to the position was their preferential right to the immediate

enjoyment of the dignity of Palaiyagar and actual possession of the estate. looking to the claim advanced by Kuppi Naidu and supported by his son, there is no evidence of any more extensive abandonment of their

rights by the elder brothers of Kuppi Naidu, unless it be found 1 in the Karars executed by two of them." Again: "We find no evidence to show that Kuppi Naidu or his son, who obtained the estate as the joint

property of the family, at any time asserted a title to the Palayam as their separate property in virtue of the litigation in which they were engaged," At page 263 : "So construed, the instrument is very far from being a

disavowal of all right to the Palayam property as a coparcenary estate. Krishnappa intended, no more than that he should stand in the same relation to Kuppi Naidu as that in which he would have stood, to the son of

the Severn Poligar, had a son been born to that Poligar. In favour of Kuppi Naidu, but in favour of no other person, Krishnappa consented pro hac vice to postpone his claim to occupy the dignity and estate of the

Poligar. If, by the custom obtaining in the family, the dignity and estate passed from father to son, in assenting to the succession of Kuppi Naidu, Krishnappa must be taken to have assented also to the devolution of

the Palayam to the lineal descendants of Kuppi Naidu; but, unless a construction is placed on the terms of the Karar, of which they do not naturally admit, it cannot be held that he intended to renounce all claim on

the part of himself and his heirs to the succession, if it opened by reason of the extinction of the line of Kuppi Naidu * * * * *.

23. The conduct of Krishnappa and his descendants is not inconsistent with the construction we have placed on that instrument. Until the line of Kuppi Naidu was extinct, Krishnappa and his descendants had no

occasion to re-assert their claims, and, when that event occurred, a claim was immediately preferred on behalf of the appellant." At page 264 referring to Periasami v. Periasami (Padamatur case) 5 I.A. 61 : 1 M.

312 : 1 Ind. Dec. 208 they say: "The decision in the Padamatur case, which the Judge has regarded as governing this case, proceeds on a renunciation differing

widely in its terms from those of the Karar of July 1st,

1831, and executed under circumstances altogether dissimilar, Muthu Vaduganatha Tevar, who conceived he would succeed to a large Zemindari, renounced for himself and his offspring all interest in the small and

dependent Palayam of Padamatur, and undertook the payment of all debts contracted by him as Palayagar, thus manifesting an intention to separate himself and his descendants completely from the Palayam.

24. The above quotations from *Naraganti Achammagaru v. Venkatachalapati Nayanivaru* 4 M. 250 show that (1) when the individuals of a line renounce their right to an impartible estate and those of another take,

by a family arrangement, the persons who take the estate by the arrangement do so by an act not hostile in the sense that the members of the former line cease to be members of the joint family but hostile only to the

extent that as long as the latter line lasts, the members of the former line cannot claim it. When it fails, the members of the former line or other lines of the family can claim the estate by survivorship against a female

heir, (claiming by succession strictly so-called) unless the renunciation amounted to a "complete separation" or a "more extensive abandonment." (2) A litigation as to the right to hold the Zemindari between two such

lines does not necessarily effect such a "complete separation." This follows from the decision in *Naraganty Lutchmeedavamah v. Vengama Naidoo* 9 M.I.A. 66 :: 19 E.R. 666 and *Naraganti Achammagaru v.*

Venkatachalapati Nayanivaru 1 Ind. Dec. 1010.

25. The cases as *Stree Rajah Yanumula Venkayamah v. Stree Rajah Yanumula Boochia Vankondora* 2 Suth. P.C.J. 302 : 2 Sar. P.C.J. 546 : 20 E.R. 576 and *Gavuridevamma Garu v. Ramandora Garu* 6

M.H.C.R. 93 relate to the Totapalli estate. The following pedigree (taken from *Gavuridevamma Garu v. Ramandora Garu* 6 M.H.C.R. 93 gives the history of the family.

YENUMULA BAPANDORA.

|

| | | |

Pedda Rajandora Jaggappadora Chinna

Malludoa | | Malludora

| Venkandora | |

Venkandora | | Bapandora

| | |

Malludora Mallapa- Jaggappa- Ayyappa

| dora. dora dora

Lachandora | |

| | Mallappadora(5) |

Malludora | |

| | | | |

| | |

| |-----| |

| Rajandora(4). Two brothers. |

| |

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| |

|-----| |

| | |

who renounced. Ramandora |

(plaintiff in 6 |

M.H.C.R. 93). |

|

|-----

|

|-----|-----|

Bapandora(6) Jagappadora Malludora

| | |

4 sons. | Peda Venkandora

| |

|-----| Buchi

Ayyappadora. Chinna Venkandora(9)

Bapandora (respondent in
(7) 13 M.I.A. 333).

| m. Gowri-

| devamma,(appellant

| in 6 M.H.C.R. 93).

|-----|-----|

Joggappadora (8) Buchi Bapandor.

m. Venkayamma,

appellant in 13 M.I.A. 333).

25. It is unnecessary to refer to the facts in great detail. It is only important to note that (i) the 5th Mansabdar (Mallappa) fell out with his overlord having joined the people called "Desastulu" and caused much

disturbance. Thereupon Bapandora (6) offered his services to turn out the said Mallappadora and, accordingly, drove him out and took possession of the estate as 6th Mansabdar. Here is a distinctly hostile act. It

was held that Bapandora, the 6th Mansabdar, took possession of the estate for the undivided family and that when the 8th Mansabdar, Jaggappa died, Buchi Venkandora (9) took the estate by survivorship against

Venkayamma, the widow of Jaggappa. (2) The decision of the Judicial Committee was followed and the principle therein again applied by the High Court in Gavuridevamma Garu v. Ramandora Garu 6 M.H.C.R.

93 when the 9th Mansabdar died leaving a widow, Gouridevamma, and the plaintiff who belonged to the eldest line (superseded for a long time) got it by survivorship against the widow. It is significant that the

common ancestor of the propositus and the claimant was their ancestor in the sixth line of ascent.

26. The learned Vakil for the respondent conceded with reference to the above groups of cases that the supersession of one line by another may be consistent with either the continuance of the joint family, only an

abandonment of the headship of the family or the right to hold the estate being intended, or (2) a more extensive abandonment involving complete separation between the two lines, but he argued that the latter view is

the prima facie view and the burden of proving that all that happened is the former alternative is on those who allege it. Assuming that this contention is correct and without deciding a rule of burden of proof, no

question of burden of proof arises where all the facts are known. In the present case, the High Court found in 1877 upon the evidence, that the supersession of the senior line was by a family arrangement due to the

weak intellect of Ramappa and the infancy of his son. It is true that possession of the junior line since 1820 was adverse to the senior line in the sense that so long as Annadana I had male descendants, Ramappa's

descendants could not claim the estate. This conclusion of the Courts in 1877 is perfectly consistent with the law as expounded in *Naraganti Achammagaru v. Venkatachalapati Nayanivaru* 1 Ind. Dec. 1010. The

Courts did not decide that the succession of Annadana was adverse in the larger sense so as to effect a separation between the two lines. Such a point did not then arise and the Courts could then express no opinion

on it.

27. It is not possible in 1920 to get evidence of what happened in 1820 and the view of the High Court in 1877 (fifty years earlier) is the view from which one would start. But there are other indications in the record

that this is the correct view and the consciousness of the members of the family after 1820 was that the joint family continued. This Jaghir was enfranchised by the Inam Commissioner in 1867. The proceedings

before the Inam Commissioner consist of a statement by the holder of the Inam (generally described in the proceedings as the Inam Statement) and of a Register (known as the Inam Register) prepared by the

Commissioner. These proceedings were described by the Judicial Committee of the Privy Council in *Arunachettam Chetty v. Venkatachalapathi Guruswamigal* 53 Ind. Cas. 288 : 43 M. 253 : 22 Bom. L.R. 457

as a great act of State and in this Presidency are valuable as throwing important light on the titles to Inams. The judgment of Mr. Parker in the suit of 1875 shows that a genealogical table filed before the Inam

Commissioner and the endorsement given by him were exhibited before him in that suit (Exhibits I and D). In the present case, the Inam Register is filed as Exhibit III. The heading of column 19 is ""surviving heirs of

the present incumbent."" The "present incumbent" in it was Lakshmanappa II in the pedigree. Seven persons are shown as heirs in this column. I have shown all these seven in the pedigree with the sign R-1, R-2, etc.,

opposite to their names. The first one is the son of Lakshmanappa II, the seventh is in a line younger than the incumbent's heir. The other five (2 to 6) all belong to the senior line of Ramappa. In what sense could

these be "heirs" except on the footing that all the members are members of an

undivided family? It is noticeable that no female (such as the wife or wives of the incumbent), who would be heirs if the second branch

was separate was mentioned in the column 19. Again, in Mr. Parker's judgment paragraph 8, dealing with the question of the legitimacy of Annadana II (raised in that case) he says: ""If plaintiff's minor son was not

legitimate, defendant was the next heir according to the ordinary rule of succession."" This can be only on the footing that he was not divided from the junior branch. It is significant that in the plaint of that case (vide

Exhibit B) though the defendant was described as a, ""distant gnati of my husband"" he was not alleged to be separate or divided. It may also be observed that, when Ramappa was superseded by Annadana, there

were two younger brothers. If, as contended by the learned Vakil for the respondent, the supersession amounted to a separation, what is the exact nature of the separation--is it that Annadana and his line became

separate from the third and fourth brothers as well? If so, why should it be so? What act of renunciation on their part or act of hostility against them resulted in their separation? Their position is exactly that of Gopal

(last brother of Kuppi), in the pedigree of Naraganti Achammagaru v. Venkatachalapati Nayanivaru 4 M. 250 : whose claim was held by the High Court to be better than Achamma's, though it did not prevail against

Venkatachalapati descendant of the eldest brother of Kuppi. If it is contended that only the elder line became separate, this involves, the position that Annadana's holding was on behalf of the whole joint family--

exactly like Bapandora's action in Stree Rajah Yanumula Venkayamah v. Stree Rajah Yanumula Boochia Venkandora 103 M.I.A. 333 : 2 Suth. P.C.J. 302 : the object of the transaction being to substitute one head

for another and not to separate any line or lines of the family. On this part of the case my conclusion is that by the supersession of the senior line in 1820, it did not become separate but continued to the part of, the

undivided family. This seems to be, the conclusion of the learned District Judge at the end of paragraph 47. In paragraph 48 also he observes that nothing certain can be said about the relations of the two branches in

those early days. Prima facie they were undivided and it is for ""them who allege separation to prove it.

28. If there was no separation in 1820, was there a separation in 1872 or afterwards as shown by the conduct of the family? Before discussing the evidence bearing on this part of the case, I will first refer to

decisions dealing with the nature of an impartible estate and as to how one

branch can get an exclusive right to it or one branch can completely lose its right in respect of it.

29. Following the elaborate discussion of these cases by Lord Dunedin in *Baijnath Prasad Singh v. Tej Bali Singh* 60 Ind. Cas. 534 : : , the cases maybe now grouped into four heads.

(a). Cases up to and prior to *Sartaj Kuari v. Deoraj Kuari* 10 A. 272 : 15 I.A. 51 : 5 Sar. P.C.J. 139

(1) *Katama Natchiar v. Rajah of Shivagunga (Sivaganga case)* 1 Suth P.C.J. 520 : 2 Sar P.C.J 25 19 E.R. 843.

(2) *Stree Rajah Yanumula Venkayamah v. Stree Rajah Yanumula Boochia Venkondra* 103 M.I.A. 333 : 2 Suth. P.C.J. 302 : 2 Sar. P.C.J. 546 and *Govuridevamma Garu v. Ramandora Garu* 6 M.H.C.R. 93

(Totapalli cases)(discussed by me above).

(3) *Maharanee Heeranath Koer v. Baboo Burm Narain Singh* 9 B.L.R. 274 : 17 W.R. 316.

(4) *Chintamun Singh v. Nowlukho Konwari* 3 Snth. P.C.J. 204 : 1, Ind. Dec. (N.S.) not discussed by lord Dunedin.

(5) *Periasami v. Periasami (Padaniqtur case)* 5 I.A. 61 : 2 C.L.R. 81 : 3 Sar. P.C.J. 795 .

(6) *Doorga Persad Singh v. Dqorga Konwari* 3 Sar. P.C.J. 827 : 2 Ind. Jur. 650 2 Ind. Dec.121.

(7) *Vadrevu Ranganayakamma v. Vaduvu Bulli Ramaiya* 5 C.L.R. 439. (This decision of the Judicial Committee is discussed in Mayne's Hindu Law, section. 542, but referred to in all former editions as unreported)

(not discussed by Lord Dung-din).

(8) *Naraganti Palan cases Naraganti Achammagaru v. Venkatachalapati Nayanivaru* 4 M. 250 and *Naragunty Lutchmeedavamah v. Vengama Naidoo* 9 M.I.A. 66 : 1 Suth. P.C.J. 460 (discussed by me above).

(9) *Rajah Rup Singh v. Rani Baisni* 7 A. 1 : 3 Ind. Dec. 902 (P.C.).

(b). *Sana) Kuari v. Deoraj Kuari* (V and the cases following its line of thought

(1) *Sartaj Kuari v. Deoraj Kuari* 12 Ind Jur. 213 : 6 Ind. Dec. 182).

(2) *Sri Raja Rao Venkata Surya Mahipati Rama Krishna Rao v. Court of Wards (First Pittapur case)* 26 I.A. 83 : 22 M. 383 .

(3) *Gangadhara Rama Rao v. Rajah of Pittapur (Second Pittapur case)* 47 Ind. Cas. 354 : 45 I.A. 148 : 23 C.W.N. 173 : .

(4) Maharajah of Jeypore v. Vikrama Deo Garu (Jeypore case) 52 Ind. Cas. 333 : 24 C.W.N. 226 : . Following Gangadhara Rama Rao v. Rajah of Pittapur (Second Pittapur case) 47 Ind. Cas. 354 : 35 M.L.J.

392 : 24 M.L.T. 276 (not discussed by Lord Dunedin).

(5) Bishen Parkash Narayan Singh v. Maharani Janki Kore (Bettia case) 62 Ind. Cas. 289 : 24 M.W.N. 857 : referred to as unreported by Lord Dunedin in Baijnath Prasad Singh v. Tej Bali Singh 60 Ind. Cas. :

534 : 19 A.L.J. 317 : 29 M.L.T. 358 .

(c) Cases after Sartaj Kuari v. Deoraj Kuari 6 Ind. Dec. 182 (P.C.) but keeping up the old line of thought except as to alienation.

(1) Jogendro Bhupati Hurrochundra Mahapatra v. Nityanand Man Singh 17 I.A. 128 :.

(2) Ram Nundun Singh v. Janki Koer 29 I.A. 178 : 29 C. 828 :8 Sar. P.C.J. 251.

(3) Kachi Kaliyana Rengappa Kalakka Thola Udayar v. Kachi Yuva Rengappa Kalakka Thola Udayar (Udayarpalayam case) 32 I.A. 261 : 1 C.L.J. 2231 .

(4) Muttuvaduganadha Tevar v. Periasami Tewar 23 I.A. 128 : 19 M. 451 : 6 M.L.J. 149 : .

(5) Parbati Kunwar v. Chandarpal Kunwar 4 Ind. Cas. 25 A.L.J. 767 : .

(6) Tara Kumari v. Chaturbhuj Narayan Singh 30 Ind. Cas. 833 : 42 I.A. 192 .

(d) (1) Baijnath Prasad Singh v. Tej Bali Singh 60 Ind. Cas. 534 : 23 Bom. L.R. 654 29 M.L.T. 358 (P.C.).

(2) Shiva Prasad Singh v. Beni Madhab Chowhury 70 Ind Cas. 24 : 4 P.L.T. 6, applies Baijnath Prasad Singh v. Tej Bali Singh 60 Ind. Cas. 534

30. I may say that in making the above classification I have omitted (1) cases under the Dayabhaga Law such as the Neeikisto Deb Burmono v. Beerchunder Thakur [Tipperah case] 12 M.I.A. 523 Lord Dunedin

explains this case on the ground that it was on the Dayabhaga Law in Baijnath Prasad Singh v. Tej Bali Singh 60 Ind. Cas. 534 : 29 M.L.T. 358 (P.C.): (2) Cases like Rajah Suraneni Venkata Gopala Narasimha

Row Bahadoor v. Rajah Suraneni Lakhshma Venkama Row 13 M.I.A. 113 : 12 W.R. P.C. 40 : 20 E.P. 494 and Sri Raja Viravara Thodhramal Rajyd Lakhshmi Devi Garu v. Sri Raja Viravara Thodhramal Surya

Narayana Dhatrazu 24 I.A. 118 : 20 M. 118 : 7 Sar. P.C.J. 185 : 7 Ind. Dec. (N.S) 182, as they relate to partible Zemindaris and they were discussed by Lord Dunedin in Baijnath Prasad Singh v. Tej Bali Singh

60 Ind. Cas.: 534 : 29 M.L.T. 358 (P.C.). I will refer to the latter again on the

question of separation. Prior to the Second Pittapur case 47 Ind. Cas. 354 : 20 Bom. L.R. 1056 : 23 C.W.N. 173 , which was

supposed to negative any rights to maintenance on the part of junior members of a Zemindari (except a brother) even if never divided from the Zemindar, the line of thought of the (a) and (c) groups of cases was

followed by the Madras High Court in awarding maintenance to junior members of the family (when not separated or divided) even when somewhat or very remote: (1) Visvanathaswamy Naicker v. Kamu Animal

21 Ind. Cas. 724 : 24 M.L.J. 271 (Bodinayakanur), (2) Abhinana Puma Priya v. Ami Rangasawmy 15 Ind. Cas. 412 : 12 M.L.T. 245 (Ami Jaghir), (3) Vencatachella Reddiar v. Vencatachella Reddiar 4 Ind. Cas.

302 where argument exactly similar to that which was supposed to be the second ground of decision in the Second Pittapur case 47 Ind. Cas. 354 : 45 I.A. 148 : (1918) M.W.N. 922 was rejected by the High

Court.

31. I have placed the case of Baijnath Prasad. Singh v. Tej Bali Singh 60 Ind. Cas. 534 : 19 A.L.J. 317 : 33 C.L.J. 35 in a separate category, as it must be admitted that the impression created in India by the

Second Pittapur case 47 Ind. Cas. 354 : 45 I.A. 148 and the Bettia case 62 Ind. Cas. 289 : 24 M.W.N. 857 , that in an impartible estate on co-parcenary exists--this is the argument of the appellant's Counsel

before the Judicial Committee in Baijnath Prasad Singh v. Tej Singh Bali 60 Ind. Cas. : 534 : 19 A.L.J. 317 : 33 C.L.J. 388 : 40 M.L.J. 387 : (P.C.)---even for purposes of succession and maintenance, has been

removed and the angle of vision in (a) and (b) group of cases is restored. At the time the District Judge decided the present case, Baijnath Prasad Singh v. Tej Bali Singh 60 Ind. Cas. 45 : 2 P.L.T. 257 : 29 M.L.T.

358 had not been decided.

32. The effect of the decisions is that (1) if an impartible estate is the joint property of a family, the junior members have a right in it which, however unreal it may be for the purposes of actual enjoyment and

preventing alienation, is still real and gives a chance of succession by survivorship. (2) The cases of Sartaj Kuari v. Deoraj Kuari 10 A. 272 : 15 I.A. 51 : 5 Sar. P.C.J. 139 : 12 Ind Jur. 213 : , which has stood "too

long to be now touched," and Rama Krishna Rao v. Court of Wards [First Pittapur case] 26 I.A. 83 : 22 M. 383 : 8 Ind. Dec. 276 (P.C.) must be confined to alienation, and cases (3), (4) and (5) in (ft) group may

be ignored. The First Pittapur case 26 I.A. 83 :1 Bom. L.R. 277 : resulted in the Madras Presidency in special legislation in Madras Act II of 1904 which prohibits alienation so as to affect a successor.

33. Is it to be said, then, that an impartible Zemindary can never be the separate property of its holder and can never descend to a Hindu female by heirship (as opposed to survivorship)? The answer is "no," for an

impartible Zemindari (1) may be the self-acquired property of a particular member and, therefore, his separate property, as in the Sivaganga case 9 M.I.A. 539 or (2) might be renounced by a member of the family,

as in the Padamaiur case 5 I.A. 61 : 1 M. 312 , so that he becomes completely separate from other members of the family quoad that, property, or (3) might be wholly allotted to a member in a family partition

dealing with it and. other properties of the family, as in the case in Vadrevu Ranganayakamma v. Vedrevu Bulli Ramaiya 5 C.L.R. 439. I do not claim to exhaust the modes in which it may become the separate

property of a member. These only illustrate the principle that the right to it may be renounced by members of the family becoming separate in some manner known to law--by actual partition or otherwise--provided

the transaction, either expressly or impliedly, was meant to give up the chance of succession to the impartible property. I do not mean it should make special reference to the impartible property. It may be specially

with reference to it or generally with reference to all the property of the family so as to include the impartible property of the family. It may be inferred from conduct, provided the intention to separate covers the

impartible property also. Examples of such general separation occur in Tara Kumari v. Chaturbhuj Narayan Singh 30 Ind. Cas. 833 : 42 C. 1179 : (1915) M.W.N. 717 : 42 I.A. 192 (P.C.) and Gurusami Pandiyar

v. Sendatti Kalai Pandia 39 M.L.J. 529 : (1920) M.W.N. 660 : a decision of the Madras High Court before Baijnath Prasad Singh v. Tej Bali Singh 60 Ind. Cas.40 : 29 M.L.T. 358 , which is now under appeal to

the Privy Council. This involves the position that members of a family may be divided, as to the partible properties and undivided as to the impartible estate. That members of a family may be divided as to some

properties and undivided as to others was decided in Muthusami Mudaliar v. Nallakulantha Mudaliar 18 M. 418 . Such a state of things is inevitable in the case of a family having an impartible estate as one of its

possessions. The presumption that, if there is some division, the status of the family should be regarded as divided unless the contrary is shown, i.e., that some properties were reserved as the joint family properties,

in respect of which the undivided status continues, must be very weak in the case of a joint, family with an impartible estate as one of its possessions. This is illustrated by the case in Mallikarjuna Prasada Nayadu v.

Durga Prasada Nayadu 24 M 147 The brothers of the Zemindar of Devarakota {alias Challapalli) sued him for partition. As to the Zemindari, they failed on the ground that it was impartible Mallikarjana v. Durga <