
(1920) 03 MAD CK 0019
In the Madras High Court

Gurusami Pandiyan

APPELLANT

Vs

Sendatti Kalai Pandia Chinnathambiar and Others

RESPONDENT

Date of Decision : 12-03-1920

Acts Referred:

Oudh Estates Act, 1869 — Section 10

Citation : (1921) ILR (Mad) 1 : 61 Ind. Cas. 242 : (1920) 39 MLJ 529

Hon'ble Judges : John Wallis, C.J.;Krishnan, J

Bench : Full Bench

Judgement

John Wallis, C.J.—This in an appeal from the judgment of the Subordinate Judge of Tuticorin in two suits which were tried together. In the

first suit the plaintiff sued to recover the impartible estate of Sivagiri from the mother of the late zemindar who died unmarried in 1914, while in (he

second suit the plaintiff sued for a declaration that he was entitled to succeed as nearest reversioner on the death of the late zemindar's mother.

She died in 1916 while the suit was pending, and he was then brought on as the second defendant in the first suit and will be so referred to. The

tisimrar or grantee of the permanent sunnad died in 1819 and was succeeded by his daughter Virammal who died in 1835. She left two sons

Periadorai, who succeeded her and was the grandfather of the late zemindar, and Chinnadorai, who had two sons, the elder commonly known as

Periaswami who was the father of the plaintiff, and the younger, commonly known as Chinnaswamy who was the father of the 2nd defendant.

Chinnaswamy and his family resided at Veppangulam a village some twenty miles distant from Sivagiri in a house which appears to have belonged

to his father. In 1843 he received a later grant of lands and money in lieu of maintenance, and he and his family were allowed to occupy certain

pannai or home farm lands belonging to the zemindari at a favourable rent, and also received occasional allowances for the performance of the usual ceremonies in connection with births, deaths and marriages.

2. The late zemindar's mother, as 1st defendant in the main suit, did not rely solely on her title as preferential heir to the plaintiff, but also

questioned his legitimacy and put him to the proof that his father Periaswami was senior to the 2nd defendant's father Chinnaswami, and also that

the plaintiff himself was younger than the 2nd defendant.

[The learned Chief Justice then discusses the evidence as to plaintiff's legitimacy and concludes]

3. The appellant's case as to this part of the case is really hopeless, and the main issue of fact argued before us was as to whether the plaintiff had

proved that he was older than the second defendant as the Subordinate Judge has found. If the finding be correct the plaintiff is entitled to succeed

as the preferential heir in any view as to the line of succession to the zemindari. The plaintiff's case is that he was born before the death of his

grandfather Chinnadorai which admittedly took place between the months of October and December, 1871, while the 2nd defendant's case is that

the plaintiff was not born until December, 1875.

[The learned Chief Justice after discussing the evidence with regard to age concludes thus]

4. On the whole I am clearly of opinion that there is no sufficient reason for differing from the finding of the Subordinate Judge that the plaintiff is

proved to be the elder of the two

5. These findings are admittedly conclusive as to the plaintiffs' present right to the zemindari, but the question whether he is entitled to the income

of the estate as from the death of the late zemindar until the death of his mother some two years later, during which period the estate was in the

hands of a Receiver appointed in this suit, depends upon the question whether on the death of the late zemindar without male descendant the

zemindari devolved upon the plaintiff on the ground that the late zemindar and the plaintiff were members of a joint Hindu family in which the

plaintiff was the preferential heir, or devolved in the first instance upon the late zemindar's mother on the ground that, as the late zemindar at the

time of his death was divided from the plaintiffs family, she was entitled to

succeed as next heir to his separate property. In that case the plaintiff could only claim to succeed on the mother's death as next heir to the separate property of the zemindar. If the late zemindar was undivided from the plaintiff's family, then for the purposes of succession the estate must be treated as if it had been partible, and, as on a partition the plaintiff and his brothers would have represented their deceased father and taken his share, they must also be considered to represent him for the purposes of succession to the impartible zemindari, so as to entitle the plaintiff as the eldest among them to succeed to the zemindari to which their father would have succeeded if he had survived the late zemindar. This law of succession which may have had its origin in the theory of dormant co-parcenary on the part of the other members of the family is not affected by the decisions of the Privy Council beginning with *Sartaj Kurai v. Deoraj Kurai* ILR (1888) All. 272 and ending with the recent decision that the right of the other members of the family to maintenance must be rested entirely upon custom *Rama Rao v. Rajah of Pittapur* ILR (1918) M. 778 and was applied by the Privy Council in the very recent Case of *Tara Kumari v. Chaturbhuj Narayan Singh* ILR (1915) Cal. 1179. That in my opinion is a very important decision for our guidance, because it lays down that in determining which line of succession to follow the test is whether the last owner who left no male issue was or was not separated from the other members of the family, and expressly negatives the contention that, to let in the rule of succession as to separate estates, there must have been something in the nature of a partition of the impartible estate, or of an abandonment express or implied of the right to succeed to it as joint family property. As regards the first point, their Lordships observed that the claimants had no co-parcenary rights in the impartible estate, and no rights in that estate which entitled them to a partition of the impartible estate. As regards the second point, the result of the decision in my opinion is that the particular line of succession is incident to the status of the family, and depends entirely on whether the family is joint or has become separated. The earlier cases relied on for the respondent must be held to be merely applications of the rule laid down in this last case to the particular facts of those cases, and all we have to do so is to decide whether the late zemindar at the time of his death was joint with or separated from the plaintiff's family.

In this view of the law I cannot agree with the statement of the learned Subordinate Judge at the end of paragraph 134 of his judgment that it is not shown that "assuming that Periadorai and Chin-nadorai had a co-parcenary interest in the zemindari there was at any time a partition in respect of it between them". I think it must be taken that Chinnadorai never had any co-parcenary interest in the zemindari, and that all we have to decide is whether, Periadorai's branch to which the late zemindar belonged was divided at the time of his death from Chinnadora's branch.

6. When in 1835 Periadorai on the death of his mother succeeded to the zemindari, as the heir of his maternal grandfather the Istimrar zemindar, he was joint with his father and his brother Chinnadorai ; and, as, if the zemindari had been partible, the two brothers would have taken it as ancestral

property with rights of survivorship, as decided in The Jaggumpet Case-Venkayamma Garu v. Venkataramanayyam-ma Bahadur Garu 12 M.L.J.

299, I see no reason why Chinnadorai should not be considered for the purposes of succession to the zemindari to have been joint with Periadorai.

Here I may say that I agree with the learned Subordinate Judge for the reasons given by him in rejecting the contention that Periadorai took the

zemindari as his separate property under the alleged will put forward by the defendants and that his mother was only given the right to manage. The

official correspondence on the Istimrar's death in 1819 refers to a will, but it is fairly clear from the correspondence and from the fact that the

daughter was recognized as owning the zemindari in her own right that it was not the will put forward by the defence with a view of showing that

the zemindari was the self acquisition of Periadorai and so descendible as his separate property.

7. In the year 1843, when Periadorai was old enough to be given possession of the estate which had been managed by his father, disputes arose

and were adjusted by an agreement. The Subordinate Judge has rejected the alleged agreement put forward for the defendants, Exhibit 44 (a), and

it is unnecessary to rely on it, as the terms of the agreement may be sufficiently gathered from the allegations and admissions of either side which

are recited in Exhibits O and 01, the judgment in the suit instituted by Chinnadorai for partition of the zemindari in 1848. The judgment of the first

Court states that the plaintiff Chinnadorai admitted that in 1843 he had accepted an allowance from the zemindar in lieu of all claims. In his grounds

of appeal in Exhibit 01 Chinnadorai stated it was not likely he would have remained satisfied with land amounting to 30 sangalies and 30

kottavarapadu yielding yearly revenue of only Rs. 200. To this the respondent replied that the evidence in the suit showed that the lands allotted to

the defendant for his support were capable of yielding a yearly Rs. 1,500, and that additional property valued at Rs. 21,300 had been given him.

The fact that Chinnadorai renounced all claims to the zemindari would not of course include a renunciation of his right to succeed as heir, according

to the law of succession to joint family property if the family was undivided when the succession opened. After 1843 Chinnadorai and his father

and family went to Jive at Veppangulam about 20 miles from Sivagiri in a family house or palace as it is styled which is said to have been the

property of the father. Then came the unsuccessful suit of 1848 for partition of the zemindari. It has been contended before us that the effect of

filing this suit was necessarily to effect a division in status between Chinna-dorai and his brother Periadurai. In view of some of the earlier cases

cited I do not propose to rely on this suit as evidence of division especially as there is other evidence sufficient to establish it. The lands allotted to

him were sold by him and his sons in course of time, and in 1871 when Periadurai had involved himself in difficulties and the zemindari was in the

hands of a Receiver who was seeking to raise money by the sale of the pannai or home-farm lands, it was reported that Chinnadorai and his family

were in the possession of some of these pannai lands as tenants at a favourable rent, and this arrangement was not disturbed. After Chinnadorai's

death at the close of 1871 his sons were left in possession of these lands, and during the minority of the late zemindar, as the rent paid by them was

in arrear, the Court of Wards decided to sue them for possession and arrears and a plaint was drawn up, Exhibit I, but was not filed. Again on the

death of Periaswami in 1899 the plaintiff and his brother were similarly left in possession of the lands then in their occupation. Their possession,

however, was that of tenants, and was exactly the same as that of their sister Virammal and her family to whom also pannai lands were let on

favorable terms. From Periadurai's death until the birth of the late zemindar in 1889 Chinnadorai's family were the next reversioners to the

zemindari ; a position they again occupied from his succession till his death. They were also very near relations whose claims on his bounty were

great. The numerous petitions which they presented to the zemindar for assistance on the occasion of family ceremonies sought his assistance as a matter of grace and were similar in terms to those presented by other persons such as their sister Virammal and by mere strangers in whom the zemindar took an interest. In my opinion the fact that the Chinnadorai's family were allowed to occupy pannai lands as tenants and were assisted on the occasion of family ceremonies by the zemindar is entitled to very little weight as evidence that they continued joint in estate with him. In Southern India the test whether the two branches continued joint in worship is inapplicable. On the other hand the fact that the two branches lived separately, though ordinarily inconclusive, is in my opinion entitled to considerable weight when the separate living had been going on for seventy years before suit and the existence of joint property at the end of the period is not shown. Ex. A series and the other documents referred to in paragraph 126 of the Subordinate Judge's judgment show that between 1872 and 1897 Periaswami and Chinnaswami freely alienated their properties without any reference to the zemindar. Ex. F which is a petition to the Collector, dated 17-4-72 by Periaswami alleges that the Veppangulam house had belonged to his father Chinnadorai and that he and the petitioner had been enjoying it for nearly 30 years without dispute and complained that Periadurai was attempting to interfere with his enjoyment and also with his endeavours to sell his father's lands in satisfaction of his debts. This is opposed to the theory that he and the zemindar were then joint in estate. On the other hand, the fact that Periadurai who had alienated all his estate and was then living on an allowance from the Court of Rs. 100 tried to assert a claim to the Veppangulam house is of very little weight in view of his desperate circumstances. Ex. MMMI is open to the same observation, and the fact that Periadurai had included the house in a mortgage of 1854, Ex. MMM, throws very little light on the state of the family in 1914. He died in 1873 and his son, who succeeded in recovering the zemindari from the alienees, seems to have raised no objection to Periaswami and his family dealing freely with their properties by the alienation in Ex. A and other series. Ex. XXVII shows that the Veppangulam house, or Periaswami's share in it, was sold in a suit on a mortgage executed by him and purchased for Rs. 251 by one Muthusubba Ayyar on 22-6-77 who appears from Ex. FFF to have been a

benamidar for the zemindar. That is a petition complaining that the Zemindar's servants had been resisted by Periaswami in taking possession on

the ground that delivery had not been given by the Court: probably the zemindar did not really want to evict his cousins and had only purchased the

property to prevent its getting into the hands of strangers. There does not seem to have been any allegation by the zemindar on that occasion that it

was not the separate property of Periaswami, the mortgagor. Also as stated by the Subordinate Judge in paragraph 30 of his judgment

Chinnaswami afterwards filed a suit against the benami purchaser and Periaswami for a half share of the Veppangulam house and succeeded. The

decree Ex. XXVII (d) states that the suit was brought to recover the scheduled properties which fell to the share of the plaintiff and are being

enjoyed by him, and the decree exempted specific portions of the property from the sale apparently as property which had already fallen to the

plaintiff on partition. Further the mortgages and sale-deeds executed by Periaswami after his father's death which are found in Ex. IV series such

as Ex. IV (p) and IV (q) and others point to a division by metes and bounds having taken place between Periaswami and Chinnaswami after their

father's death. This is in my opinion very strong evidence that they had already become separated in estate from the senior branch. I think the

transactions already referred to and the other transactions mentioned in paragraphs 126 to 128 of the Subordinate Judge's judgment are sufficient

to show that the two branches-were separate in status in 1914. In my opinion the branch of the late zemindar at the time of his death was divided

in status from the plaintiff's branch of the family, consequently the zemindari devolved according to the rule of inheritance applicable under the

Mitakshara law to separate property on his mother. As she left no female issue, the question whether the accumulations should be regarded as her

stridhanam is immaterial, and, even if so, they would devolve on her husband's heirs.

8. Assuming the law of succession to separate property to apply, the finding that the plaintiff is both the representative of the senior branch of his

family and the eldest of those who are equal in descent with himself from the common ancestor is sufficient in my view to establish his title to

succeed on the death of the late zemindar's mother. In the case of succession to separate property the ordinary rule that to the nearest in blood the

heritage belongs entitles the nearest in descent of whatever branch to succeed in preference to the other claimants. Achal Ram v. Udai Partab

Addeya Dat Singh ILR (1884) Cal. 511 , a decision of the Privy Council is an application of the same rule. This rule, however, affords no

assistance where, as here, the rival claimants are equal in descent. In that case the Privy Council has decided in Bhai Narindar Bahadur Singh v.

Achal Ram I.L.R(1893) . Cal. 649 which relates to the same impartible estate as the case just cited, that the person entitled to succeed as

preferential heir is the representative of the senior branch. The facts which gave rise to these two decisions may be briefly summarized. Under the

Outh Estates Act 1 of 1869 one Prithi Pal had been entered in the first and second of the lists prepared u/s 8 as a taluqdar under the Act whose

estates according to the custom of the family and before the 13th February, 1856, (the date of the meeting) ordinarily devolved on a single heir. It

was provided by Section 22 that such estates should be descendible in the line of succession prescribed in Sub-section 1 to 10 of Section 22, and

in default thereof under Sub-section (11) ""to such persons as would be entitled to succeed to the estate under the ordinary law to which persons of

the religion and tribe of such taluqdar or grantee, heir or legatee are subject."" Prithi Pal was succeeded by his widow who died in 1870. The estate

was then enjoyed by his daughter and her husband Achal Ram. After the daughter's death in 1870 Achal Ram retained possession and was first

sued by Udai Partab who was the representative of senior line but seventh in descent from the common ancestor. He was non-suited by the

judgment of the Privy Council in Achal Ram v. Udai Partab Addiya Dat Singh I.L.R(1884) . Cal. 511 on the ground that, though the estate was

recognized in accordance with previous family custom as impartible or descendible to a single heir, the single heir must be determined in the

circumstances with reference to the rule of Mitakshara as to the succession to separate property. If the succession opened at the death of the

widow in 1870 Harbaghat who was fifth in descent from the common ancestor was then living, and was the next heir, while if it opened at the

death of the daughter in 1870, there were then living Harbaghat's sons and other collaterals who were sixth in descent and so nearer than the

plaintiff. That case having decided that the succession was to the nearest in blood though belonging to a junior branch, Harbaghat's son Narindar

sued to recover the estate and contended un-successfully that the succession opened in 1870 on the death of the widow when his father Harbaghat was the nearest heir but it was held by the Privy Council that it opened on the death of the daughter in 1870, that then nearest collaterals included Harbaghat's son the plaintiff and his cousin Jubrag who were both sixth in descent from the ancestor. As between them the Privy Council held that the estate would go to Jubrag as he came of a branch senior to the plaintiff's branch. It no doubt may have been, and probably was, the case that Jubrag the other collateral not only came of the senior branch but was also older than the plaintiff. That consideration however was treated as immaterial. The Act there left the succession to the impartible estate in the event which happened to be governed by the ordinary law which included the custom of the family. As this custom did not include the rule of lineal primogeniture the ordinary Mitak-shara law of succession to separate property would appear to have been applied, and according to this law, as between collaterals equal in degree the representative of the senior branch was held to be the preferential heir. It was no doubt suggested by Muttuswami Ayyar, J. in *Muthavaduganadha Tevar v. Dora Singa Tevar* I.L.R.(1881) Mad. 290 that in such a case the eldest among the heirs of equal degree should be preferred on the ground that he would have a preferential right as regards ceremonies and also to the position of manager if the property had been joint. I agree however with the learned Sub-ordinate Judge that, so far as this Court is concerned, the question must be regarded as settled by superior authority. I may also add that in my opinion this rule is also superior in convenience, as, having regard to the conditions which prevail here, it is much easier to ascertain who is the senior representative of the senior branch than to ascertain which of a number of collaterals of equal degree was born first.

9. The only other question argued before us was as to which of the properties acquired by the 4th and 5th zemindars should be considered to have been incorporated in the zemindari and to pass with it to a single heir. The recent decision in *Rajendra Bahadur Sing v. Raghubans Kunwar* I.L.R.(1918) . All. 470 has been cited as deciding that a zemindar cannot incorporate any property in an impartible zemindari, but we think it is not authority for so extreme a proposition. The Crown in that case in the exercise of a right now recognized in the Crown Grants Act had made the

estate descendible in a particular manner, and it was held that the holder could not make the same rule applicable to properties acquired by him.

As regards estates of persons governed by the Mitakshara law where estates are by family custom impartible or descendible to a single heir it has

been repeatedly held that it is open to the owners if so minded to incorporate his self-acquisitions in the impartible zemindari, and this is expressly

stated in *Murtaza Husain Khan v. Muhammad Yasin Ali Khan* ILR (1916) All, 552 which was decided not very long before the case already

cited. I think we must overrule this contention. As to the properties which should be held to be incorporated in the zemindari, I agree with the

judgment of my learned brother and with the order proposed by him in both appeals.

Appeal No. 324. of 1918.

Krishnan, J.

10. This is an appeal from the decree of the Subordinate Judge of Tuticorin in Original Suit No. 27 of 1914 brought by the plaintiff Sendatti Kalai

Pandya Chinnathambiyar claiming for himself the zemindari of Sivagiri which is an ancient impartible estate in the District of Tinnevely included in

the schedule to the Madras Impartible Estates (Act II of 1904). The suit was originally brought against Rani Gnanamani Nachiar, the mother of the

last zemindar Ramalinga, who took possession of the zemindari on his death. But as she died on 23rd November," 1916 when the suit was

pending in the Lower Court it became unnecessary to decide who the preferential heir to the zemindari was as between her and the plaintiff to

settle the claim to the zemindari. On her death the dispute about the succession to the zemindari became one between the plaintiff and Gurusami

Pandyan who was added to the record of this suit as the 2nd defendant. He had already brought a suit himself, Original Suit No. 48 of 1914, in the

same Court admitting the right of the Rani and claiming to be the next reversioner entitled to succeed to the zemindari on her death. Two suits were

tried together by consent of parties and appeal from the decree in the second suit is also before us as Appeal No. 325 of 1918. The first and main

question for our decision in this appeal is whether the plaintiff or the 2nd defendant is the man entitled to succeed to the zemindari now.

11. The pedigree of the family attached to the plaint is accepted as correct,

before us except as regards the ages of certain persons mentioned in it.

It may however be noted as a correction that Nos. 35 and 36 were the wives of No. 25 and not his daughters. As stated in this pedigree,

Ramalinga No. 39 was the fifth and last zemindar. He died in Madras in 1914 leaving no issue and no male heirs in his own line and it is to him that

succession has now to be traced. He was the son of Sangili Veerappa, the 4th zemindar (No. 25) who was himself the son of Varaguna Rama

Pandya the 3rd zemindar (No. 13) who was ordinarily known as Periyadorai and who will be referred to hereafter by that name. He had a

younger brother also, a Varaguna Rama Pandya but known ordinarily as Chinnadorai under which name he will also be referred to. He had two

sons Sendatti Kalai Pandiyan (No. 26) ordinarily known as Periyasami and Varaguna Rama Sendatti Kalia (No. 28) ordinarily known as

Chinnasami besides a daughter Veerammai Nachiar No. 27. Plaintiff (No. 42) is admittedly the eldest son of Periyasami and the 2nd defendant

(No. 50) is the eldest son of Chinnasami. It will be seen therefore that as grand children of Ramalinga's grandfather's brother, they stand in the

same degree of relationship or agnateship to the last zemindar. But as only one man can succeed to this impartible zemindar we have to decide who

the preferential heir of the two is. The plaintiff contends that he is to be preferred because he belongs to the senior line, his father being older than

2nd defendant's father and further more that as between himself and the 2nd defendant he is also the senior in age. The 2nd defendant admitted

that plaintiff's father was senior to his father though at one stage of the case he disputed it ; but he contended that the plaintiff was an illegitimate

son of his father being born of an adulterous connection between his parents and as such he was not entitled to succeed at all, and also that even if

plaintiff were a legitimate son of his father, he the 2nd defendant was the senior in age to him and that seniority in age and not seniority of the line

was the deciding factor in the choice of the heir to the zemindari in the circumstances of this case.

12. On these pleas the first question we have to settle is the question of fact whether the plaintiff is the legitimate son of his father or the illegitimate

offspring of an adulterous connection as alleged against him.

[The learned judge then discusses the evidence as to plaintiff's legitimacy and

concludes.]

13. Accepting the plaintiff's evidence on the point before us as more reliable I concur with the Subordinate Judge in finding that the plaintiff is the legitimate son of his father.

14. Taking that finding it follows that plaintiff and 2nd defendant are persons who stand in an equal degree of relationship to the last zemindar from

whom descent has now to be traced for the zemindari. It was laid down by their Lordships of the Privy Council so early as in the Sivaganga case

Katama Natchiar v. The Rajah of Shivaganga (1863) 9 M.L.I. A 543 that in the case of impartible estates in the absence of a special custom

governing the succession to it, the rule of succession must be taken to be that of the ordinary Hindu Law by which the parties are governed with

such modifications only as flow from the impartible character of the Estate. This rule was followed in Rama Lakshmi Animal v. Sivanantha Perumal

Sethurayar (1872) 14 M.J. A. 570 and has been accepted ever since. There is no special custom alleged in the present case and we have thus to

turn to the Mitakshara Law by which the parties are governed for the rule of succession. Under that law there is a different line of succession for

ancestral property and for separate or self-acquired property and accordingly the same difference must arise with regard to succession to

impartible estates also. To apply the rules of succession to impartible property one must treat it for a moment as ordinary partible property and see

to whom it would pass as such. If it passes to a single individual he or she would be the person entitled to the zemindari. But if it passed to two or

more as equally entitled to it further rules have to be applied to determine which one of them should be selected as the zemindar as only one person

can be the zemindar at a time. If the zemindari is property in which the right of survivorship subsists it would pass like ordinary joint family property

by the rule of survivorship and when there are more persons than one coming within that rule it will as was held in Naraganti Achammagaru v.

Venkatchalapathi Nayanivaru I.L.R.(1882) . Mad. 250 pass to the nearest coparcener of the senior line and not to the coparcener nearest in blood

to the propositus. This view was approved of by the Privy Council in the Udayarpalayam Case (1905) 28 M. 508. and must be treated as settled.

The rule is based on the recognized principle of representation of the father on

his death by his sons in taking joint family property. If this rule of succession by survivorship applied to the present case it is conceded that the plaintiff will be the preferential heir as the eldest son of Periasami whose line is the senior line. In fact he would have excluded the Rani also. At the early stages of this case both the Rani and the 2nd defendant had denied the seniority of Periasami to Chinnasami and the first issue was framed on that plea. But the contention was subsequently given up by the 2nd defendant and the seniority of Periasami's line was admitted.

15. If on the other hand the zemindari is taken to be the separate property of the last zemindar as I find later in this judgment the Mitakshara rule of succession to separate or self-acquired property will apply, and on the death of the last zemindar, the Rani would take the estate first, as his mother, there being no nearer heirs and on her death it must pass to this zemindar's nearest reversioners under the rule that the nearest in blood excludes the more remote. But as both plaintiff and 2nd defendant fall in the category of nearest in blood a further rule has to be applied to choose between them. Plaintiff contends that that rule is the rule of seniority of line whereas the 2nd defendant maintains that the seniority of age is the proper rule for it.

16. Before however deciding this question it will be convenient to consider whether the plaintiff or the 2nd defendant is in fact the senior in age for each claims to be senior to the other. The Subordinate Judge has held that plaintiff was the senior and I am on the whole inclined to agree with him though the evidence is not so full and satisfactory on this point as on the first question dealt with.

[The learned judge then discusses the evidence as to age and concludes.]

17. In these circumstances I am inclined to think that the Subordinate Judge's finding is right that plaintiff is the senior in age to the defendant and I accept it. On this finding plaintiff must be held to be the proper heir now to the zemindari in preference to the 2nd defendant whether the rule of seniority of line or of seniority of age be applied.

18. I may here observe that it was argued by the plaintiff's vakil that even if his client was not the senior in age and even if we take the zemindari to have been the separate property of the last Zemindar his client would still be entitled to succeed as the representative of the senior line. In other

words he contended that the rule of seniority of line applied where there were two or more reversioners of different lines but of equal degree of relationship to the last holder of the impartible estate from whom descent has to be traced, competing for the ""zemindari. He has relied for this contention on the ruling of the Privy Council in Bhai Narindar Bahadur Singh v. Achal Ram 20 1.A. 77 and that case clearly supports him. Though the impartible estate in that case was one to which the Oudh Estates Act applied the successor to the last holder had to be found according to Clause 11 of Section 22 of that act and not according to any of the previous clauses, and under that clause the ordinary Hindu Law of collateral succession had to be applied. Lord Hobhouse who delivered the judgment of the Board says ""It may be, and it has so happened in this case, that the heir according to lineal primogeniture is more remote in degree from the ancestor than other collaterals, or other persons in the line of heirship. If so, the degree prevails over the line according to the classification under the Act ; though if two collaterals, or persons in the line of heirship, are equal in degree then, as the property can only go to one, recourse must be had to the seniority of line to find out which that one is."" His Lordship again says "" But Jubraj comes of a branch senior to the branch of the plaintiff ; and therefore if the estate can only go to one, it will go to that one who represents the senior branch."" The pedigree of the family is given in the case in Achal Ram v. Udai Pattab Addiya Dat Singh ILR (1884) Cal. 511 and the decision in that case read with the decision in Bhai Narindar Bahadur Singh v. Achal Ram 20 1.A. 77 shows clearly that in a case of collateral succession though the rule of seniority of line is not applicable in the first instance but the ordinary Mitakshara rule of nearness in blood applies, the former rule applies for the choice of one from among those equal in degree. The ruling in Bhai Narindar Bahadur Singh v. Achal Ram 20 1.A. 77 thus seems to cover the exact position in the case that we are considering and following it the plaintiff should be declared to be the preferential heir irrespective of any question of seniority in age even if the succession is a collateral one. The learned vakil for the appellant tried to distinguish this case from the present case on the ground that it was decided on some question of custom or on some admission of the plaintiff that Jubraj was the preferential heir if the succession was held to open only on the daughter's death. But there does not seem to be any basis in the

Judgment of their Lordships for these contentions nor does it appear that their Lordships were deducing the rule from anything in the Act or from

anything peculiar to the estate in suit. He also drew our attention to the Judgment of Muthusami Aiyar J. in *Muthuvaduga Natha Tevar v. Dora*

Singha Tevar I.L.R.(1881) Mad. 290. and particularly to the learned judge's observations on page 327. But in that case the dispute was between

daughter's sons of the last male holder and it was as between them that the rule of seniority of age was applied. That case is not in point here and

we are relieved from the necessity of discussing on general principles of Hindu Law what rule of preference should be applied between collaterals

of equal degree but of different lines as we have the high authority of the Privy Council to prefer the senior line. In this view even if the finding that

the plaintiff is the senior in age turns out to be incorrect he must still be held to be the rightful zemindar now as he is admittedly of the senior line.

19. The next question we have to consider is whether the items of properties included in issues 16 and 17 claimed by 2nd defendant to be partible

property and not part of the zemindari are really so are not. Issue 16 refers to acquisitions said to have been made by Sangili Veerappa the 4th

Zemindar and issue 17 to those of Ramalinga the 5th and last zemindar respectively. The Subordinate Judge found some to be zemin properties

and the rest to be partible properties and both sides have appealed against the finding in so far as it is against them, the respondents 1, 4 and 5

appealing by way of memoranda of objections.

20. Before considering this question in detail it is necessary to notice an argument advanced by the learned Advocate-General for the appellant that

it is not legally competent to a Zemindar to add new properties to his estate as he will thereby be changing the line of descent with reference to

them to a single heir, a power which it is contended, he is not possessed of. For this argument reliance was placed in the observations of the Privy

Council in *Rajindra Bahadur Singh v. Raghubans kunwar* ILR (1918) All 470 where their Lordships quote and agree with the opinion of Sir

Edward Chamier as Judicial Commissioner of Oudh where he says "'I take it that is settled law that a subject cannot make his property descendible

in a manner not recognized by the ordinary law and that he cannot subject it to a rule of descent such as is contained in the primogeniture sanad

granted to Girvvar Singh. If this is so, it appears to me to follow that Balbhadder Singh could not by express declaration, still less by mere volition, whether actual or presumed, subject property acquired by him to the rule of succession entered in the primogeniture sanad granted to Girwar Singh." That case, it seems to me, has really no bearing on the case before us. It related to a taluk in Oudh claimed under a special grant by the Crown with a condition of lineal primogeniture imposed on it by the Crown at the time of the grant. Though the estate was registered under list 2 of Section 10 of the Oudh Estates Act it did not previously descend according to any family custom of primogeniture. The validity of the grant was considered by the Privy Council in Sheo Singh v. Raghubans Kunwar, (1905) L.R. 27 All. 634 and it appears clear from that judgment that the Crown was imposing for the first time a new line of descent by lineal primogeniture. An addition to that estate will make the special line of descent apply to it. The circumstances of the present case are however entirely different. We have here an ancient zemindari which descends according to the ordinary Mitakshara law with only the modification necessary to select a single heir out of a class of heirs when that contingency arises, also derived from that law. When a zemindar adds further property to his Zemin all that he can be said to do is to impose on it a condition of impartiality which he is competent to do. I do not think he can be said to impose thereby a new line of descent on the property different from that of the ordinary law. It is not uncommon for provident zemindars in South India to aggrandise their estate by new additions of property and the only question to be decided in such cases is to find out whether it was intended by the acquirer to incorporate them with the original estate. That has been laid down in several rulings. See Lakshmipati v. Kandasami ILR (1892) Mad. 54, Ramasami Kamaya Naick v. Sundara Lingasami Kamaya Naik I.L.R.(1894) . Mad. 422, Parbati Kumari Debi v. Jagadis Chander Dhabal (1902) 29 I.A. 82 and Janki Prasad Singh v. Dwarka Prasad Singh I.L.R.(1913) All. 391 the last two being rulings of the Privy Council. In the last case their Lordships expressly say on page 408 "As has been pointed out by this Board in the case of Parbati Kumari Debi v. Jagadis Chander Dhabal (1902) 29 I.A. 82 the question whether properties acquired by an owner become part of the ancestral estate for the purpose of his estate depends on his intention to incorporate the acquisitions with

the original estate."" Following these rulings the legal argument addressed to us on the point must I think be overruled and we must consider on the

evidence how far the intention to incorporate is made out with reference to the various disputed properties.

21. With regard to properties included in issue 17 and declared by the Subordinate Judge to be partible no serious attempt was made before us to

dispute the finding as regards properties outside the zemindari. There is no proof that they were incorporated by Ramalinga with the Zemin. In fact

the power of attorney Ex. XIV (a) which he executed points the other way as observed by the Subordinate Judge The finding with reference to

them must therefore be accepted. But the finding as to the other items included in issue 16 and items in issue 17 has been strongly contested.

22. The 1st item which is plaint Schedule III, item I, is the Sivagiri palace itself with its site and attached buildings, where the zemindars have been

residing all along. It is in fact the official residence of the zemindar at his head quarters. It was brought to sale in execution of the decree in O.S.

No. 1 of 1867 against the then zemindar and was purchased by a Chetty and was taken possession of by him in 1874. In 1882 Sangili Veera the

next zemindar bought it back from the Chetty by Ex. V. He used it till his death for his zemindari palace and his son used it similarly after him. In

these circumstances I agree with the Subordinate Judge that the proper inference is that it was made part of the zemin estate. In fact that Ex. V

recites that the vendee is given rights of sale, gift and alienation in the property seems to me to be immaterial, as such a statement would usually be

made by the vendor in any conveyance.

23. The next item, Schedule III item 2, is the Teppakulam (or tank) and the adjacent buildings. They seem to stand on the same footing as the

palace as the Subordinate Judge remarks: they are near the palace and were used by the zemindars and were never let out. They were purchased

under 12(a) and 12(6) in 1877 for Rs. 38-14-0 and Rs. 18. Being neighbouring properties which have not been separately enjoyed they may, I

think, be reasonably treated as appurtenant to the palace itself.

24. The 3rd item, plaint Schedule III item 40, is a bungalow in Courtallam, a neighbouring Hill sanitarium, was purchased in 1877 under Ex. XII

(h). It is altogether out-side the zemin limits. There is nothing in the sale-deed

to indicate that it was intended to be used as a hill residence of the zemindar for the time being and there is no evidence that it was generally or exclusively used by the zemindar; in fact it was let to strangers when the Court of Wards was in management. There does not seem to be any point of difference between this property and the bungalows purchased by the 5th zemindar in Courtallam and in Ootacamund another hill Station, except that it was purchased by the father Sangili. We have held the latter to be partible property and I think we must consistently hold the former also to be property of the same kind.

25. The next items, plaint Schedule III items 42, 44 and 45, are a bungalow in Sankaranainarkoil and another in Srivilliputtur with another small building there. These are the headquarter stations of the two Taluks in which the zemindar's property lies and the Zemindar and his officials have been using them when going to transact zemindari business as they have often to do. They have not been let out or used for any other purpose. In these circumstances I am inclined to agree with the Subordinate Judge that though these properties are outside the zemindari limits they should nevertheless be held to have been acquired for zemin purposes and made part of the zemin estate for its use.

26. The next items are items 43, 47 and 48 of plaint Schedule III. They are all outside the zemin boundaries. The burden is therefore on the plaintiff to show that they were incorporated with the zemindari. There is no evidence when they were acquired and in the case of items 43 and 47 there is nothing to show that they were incorporated into the zemindari or used for zemin purposes. As regards item 48, there is however, Ex. UU, which seems to show that that item was used for zemin purposes so long ago as 1885. That item, I think, may therefore be reasonably considered to have been incorporated with the zemindari but not the others which will therefore be treated as partible property.

27. The next items are items 6, 15, 20, 22 and 30 referred to by Subordinate Judge in paragraphs 142 and the end of 149 of his judgment. He held them to be partible properties. They are all within the zemin limits and being additions to the zemindari property must be held to have been acquired for the zamindari on the view stated below regarding the next items.

28. The next items are those in plaint Schedule IV (a) to IV q; they are pannai

lands or lands under the cultivation of the zemindar himself. They are of 3 classes, Nanjai lands and topes or garden lands purchased by the zemindar and other lands obtained when commuting the rents of some of the estate lands into money. They are all within the zemindari limits and are all properties which were already in the holding of the zemindar or over which the zemindar had melwaram rights. What was subsequently acquired by the zemindar was only the Kudivaram rights in them. I agree with the Subordinate Judge that in the absence of clear evidence that they were dealt with as the zamindar's private property they must be held to be part of the zemin. The cases referred to by the Subordinate judge Lakshmipati v. Kandasami ILR (1892) Mad. 54 Ramasami Kamayya Naik v. Sundaralingasami Kannayya Naik I.L.R(1894) . M. 422 Sarabjit Partap Bahadur Sahi v. Indarjit Partap Bahadur Sahi I.L.R(1904) . All. 203 The Udayar Palayam Case ILR (1905) M. 508 and Visvanathasami Nayakar v. Kama-luammal (1915) M.W.N 968 support his conclusion. The properties were zemin properties to start with and the subsequent acquisitions only resulted in an enlargement of the zemin rights in them. As the new rights acquired were not kept separate they must be taken to have passed as part of the zemindari. It was pointed out that in some of the documents of purchase it is expressly mentioned that the purchase was for the zemindari and it was argued that we must therefore assume that in cases where such express recitals do not occur the rights purchased were intended to be kept separate as the acquirer's private property. I do not think that it is a valid argument for even in cases falling in the latter class there are several lands in which the rights obtained by purchase are not claimed to be private property. I therefore agree that all the lands in Schs. IV (a) to IV (q) are part of the zemin estate.

29. The next, items those in Schedule V b to V g are ayan patta lands in Government villages, belonging to the zemindar. They are ryotwari lands outside the Zamin limits and so they could not have been part of the original zemindari. Plaintiff must therefore prove that they were incorporated with the zemindari. There is, it is true, no evidence when they were acquired but that will not justify us in treating them as part of the zemin. I think in the absence of proof they must be regarded as partible properties and not part of the zemindari. Item in Schedule V a was allowed as partible

property and it was not argued to be impartible property.

30. It follows then that the Subordinate Judge's finding on this part of the case must be accepted except as to the house in Courtallam items 43,

47, 6, 15, 20, 22 and 30 and the ayan patta lands which I think should all be included among the partible properties.

31. It may be noticed here that issues 18 to 22 were admittedly not tried in the lower court as persons other than those who are parties to the suit

are interested in them. The title to the properties included in them was left to be settled in a future suit. The decree should accordingly be modified

on the point.

32. The next question to be dealt with is whether the award of past profits to the plaintiff from the assets of the 1st defendant is correct. The

amount is large. It is strongly contended that the 1st defendant was the rightful zemindari during her lifetime and that therefore she was not bound

to account for any profits. If she was the rightful zemindari the accumulated income of the zemindari during her lifetime which was collected and

paid into Court by the Receiver will be her absolute property; and on her death only a 6th share in it will go to the plaintiff as one of her 6 heirs.

The decision of this question depends on whether the zemindari should be looked upon as the separate property of the last zemindar in which

plaintiff had no right of succession by survivorship or whether it was one in which he had such a right. If it is the latter it is conceded that the plaintiff

will be entitled to the whole of the profits as he would have excluded the Rani in the succession as I have already pointed out. If it is the former it is

equally conceded that plaintiff would be entitled only to a 1/6th share in the money. We have therefore to decide in this connection the question

above stated which it was found to be unnecessary to decide in connection with the succession to the zemindari itself as the Rani died during the

trial.

33. It was claimed by the respondent's vakil that as Peria-dorai succeeded to the zemindari as the daughter's son of the Istimrar zemindar No. 10

in the plaint pedigree his undivided brother Chinnadorai obtained at the same time a right of succession by survivorship in it according to the ruling

of the Privy Council in The Jaggampet case-Venkayamma Garu v. Venkataramanayamma Bahadur Garu ILR (1902) Mad. 678, read with the

Shiva-ganga case (1868) 9 M.I.A. p. 543 . and that that right has descended to his grandson the plaintiff and is still subsisting. The first answer

given by the 2nd defendant to this contention was that Periadurai took the zemindari not as the heir but as the whole legatee under the will of the

old zemindar, Ex. 21 and thus his brother got no interest in it at all.

34. The Subordinate Judge has held this will to be a spurious document and I think he is right. It has a most suspicious appearance as remarked by

the Subordinate Judge looking very much as if it had been recently written upon old paper. The stamp paper on which it is written is no doubt of the

year 1819 as the stamp on it shows but the writing appears quite fresh. It is however well known that old unused stamp papers are procurable in

this country. But is often difficult to obtain the correct stamp and hence the importance of the point made by the Subordinate Judge that the stamp

on Ex. 21 was not the right stamp. Taken with this suspicious appearance of the document, the fact that though it purports to be a document of

1819 it was not produced in any proceedings before a Court or before any officer till it was brought into Court during the trial of this suit is very

damaging to its genuineness. There were several occasions when if it existed, it should and would have been produced, particularly in the suit by

Chinna-durai against his brother Periadurai for the partition of the zemindari in 1848 Ex. O and Ol. The explanation given that the zemindar was

probably ignorant of the existence of this will seems to be quite incredible. The learned Advocate-General for the appellant referred to Ex. 9

whose genuineness is admitted, as supporting Ex. 21. Ex. 9 merely shows that the then zemindar left a will but it by no means follows that it was

Ex. 21. In fact the language used about Viram-mal's rights and the absence of all reference to Periadurai's rights in it make it very unlikely that the

will mentioned in it was Ex. 21. For these and other reasons stated in great detail by the Subordinate Judge which I accept, I think that it is quite

unsafe to act on Ex. 21 as a genuine document and that we must leave it out of consideration.

35. The position then is that Periadurai succeeded to his maternal grandfather's estate as his daughter's son. If it were partible property we are

bound to hold on the authority of the Jaggampet case that he and his undivided brother Chinnadorai would have taken the property jointly with the

rights of survivorship between them; and applying the rule in The Shivaganga case (1863) 9 M.L.A. 589 . Chinnadorai would have had a right to

succeed by survivorship if Periadorai had died before him without male issue and undivided from him. It was however argued that this ruling which

was given with reference to partible property should not be extended to an impartible estate because it is said there is coparcenary in such

property. No doubt an impartible estate is the holder's separate property which he can deal with as he likes except in so far as he is restrained by

statute law such as the Madras Impartible Estates Act. That is the effect of the rulings of the Privy Council in Sartaj Kuari v. Deoraj Kuari ILR

(1888) All. 272 and Sri Raja Rao Venkatasurya Mahipati Ramakrishna Rao Bahadur v. The Court of Wards 9 M.L.J. Sup. 1 and Tara Kumari v.

Chaturbhuj Narayan Singh ILR (1915) Cal. 1179 Even a right of maintenance does not exist except by custom. See Rama Rao v. Rajah of

Pittapur 35 M.L.J. 392 decided recently by the Privy Council. Nevertheless these considerations do not affect the point before us as the rule of

succession to an impartible estate has to be deduced not from the existence of any real coparcenary in that estate but from a notional coparcenary

treating it for the purpose as partible property.

36. Mr. Justice Miller, has explained the position very clearly in his judgment in Viswanathaswami Naicker v. Kamulu Am-mal (1915) 24 M.L.J.

271 and I accept his statement of the law on the point. It thus follows that Chinnadorai had a right at one time to succeed to the zemindari by

survivorship excluding the widow and other female heirs. That however is not the question we have to decide. It is at best only a step in the

argument for the appellant. The question before us is whether as between plaintiff and the last zemindar, Ramalinga, there was any rights of

survivorship. We must therefore consider the effect of the subsequent events proved in the case.

37. Periadorai was a member of a joint family consisting of himself, his brother, his father and his uncle, which owned some little ancestral

property. Periadorai succeeded to the zemindari in 1835 but his father acting under Ex. (Xm) looked after it for him for some years. About 1842

Periadorai wished to assume management and it seems to have led to quarrels between him and his father and others. It would appear from Ex. X

that the Collector intervened in 1843 to settle the dispute and we find in Ex. N series that the zemindar was put in possession of the zemindari in

1844 and his father separated from him and went away to live in Veppangulam. See Ex. K. In 1848 Chinnadorai brought a suit against the

zemindar for partition and delivery of a half share in the zemindari and in a certain house and other personal property of the zemindar. The

zemindar pleaded in defence impartibility and also an agreement of 1843 by which he alleged his brother gave up all his claims against the estate.

Ex. O is the judgment in that suit, Ex. 01, the judgment on appeal. A stamped agreement of 1843 was filed in the case, see item (1) in the list of

defendant's documents. The trial Court held that the plaintiff had accepted by that agreement ""a specific allowance from the defendant in full of all

claims"" and rejected his claim to a share in the personal property on that ground. See paragraph 6 of Ex. O. In the appeal Chinnadorai referred to

the agreement and said that the words ""no right whatever to the zemindari"" were subsequently added to the document after he had signed it and the

agreement itself was extorted from him. The Appellate Court however confirmed the judgment of the first court holding that it was ""very much in

accordance with the facts and law of the case.

38. Ex. 44 (a) is now produced by the 2nd defendant as the correct copy of the agreement of 1843 filed in that suit. The Subordinate Judge holds

that it is not proved. But whether this copy is properly proved or not it is clear from the recitals in Exs. O and 01 that there was an agreement

executed by Chinnadorai in 1843 by which he renounced all his claims to the zemindari and the zemindar's personal property in return for an

allowance agreed to be given to him. It is sufficient for this case to find that there was such an agreement as above stated.

39. At this time Chinnadorai was living in Veppangulam palace. After his father's death we find him alienating ancestral properties without any

reference to Periadurai. Some of the properties alienated belonged to his uncle who had also "died ; they were in the uncle's patta ; see Exs. IV

(a) and IV (b). Exs. IV (c), IV (d) IV (f), and IV (g) are similar alienations of other ancestral properties. He was also making acquisitions

separately for himself. See paragraph 126 of the Subordinate Judge's Judgment where the documents are all collected. After his time we find his

sons Periaswami and Chinnaswami living separately from each other and holding separate pattas and selling properties separately, see Ex. A series

; this would indicate that probably they became divided between themselves.

40. The Veppangulam palace which was used as the residence of Chinnadorai and his branch and which is now admitted to be a part of the

paternal estate was, it is true, included by Periadorai in a mortgage executed by him in 1854. Ex. MMM. But for some reason this attempt to claim

the property failed, for we find in 1877 the property sold in Court-auction for Periaswami's debt, when his brother Chinnaswami filed a suit and

got his half share in it released-see Exs. 27 and 27 (d). No claim was made by the zemindar to a share as he would have done if it was his joint

family property in which he had a share. On the other hand what he did was to buy it as Periaswami's property through his agent Muthusubbier :

see Ex. 27 (a). Exs. MMM 1 and MMM 2 referred to by the Subordinate Judge merely show that the zemindar was helping Chinnaswami to

repair the building and the wall. As regards the paternal ancestral properties therefore except by the inclusion of Veppangulam in Periadorai's

mortgage in 1854 there is no evidence whatever of any interference by Periadorai or his descendants with them or of any joint dealings with

reference to them.

41. No doubt as stated by the Subordinate Judge in paragraphs 130 and 131 of his judgment where all the documents are mentioned there were

maintenance grants made of Chinnadorai and his descendants from the zemindari and when they were temporarily resumed grain was given in

substitution. The zemindar also gave occasional grants of timber, fuel, paddy and money. All these however seem to have been made out of grace

as some of the documents expressly say. They were made not only to the male members but also to the ladies of the family showing that they were

not made in recognition of any right of coparcenary. We may also take it that the members of the zemindar's family and his brother's family were

exchanging visits from time to time as the Subordinate Judge finds in paragraph 132.

42. The question then is whether on this evidence we should find that the two branches were divided or remained undivided. Though there is no

proof of a formal partition I consider that the long course of separate living and

separate dealing with properties by each branch and the absence of proof of any joint dealings at all regarding them coupled with the fact that Periaswami and Chinnaswami, the sons, apparently also became divided between themselves are strong evidence in support of a finding of complete separation, between the two branches of Ramalinga and of the plaintiff.

The way in which Veppangulam palace was dealt with in 1877 as referred to by me earlier is very significant in this connection. There was also admittedly separation in food and in worship. But as there was no commensality from the very first as regards worship, separateness of worship may not count for much. But I think there is enough evidence to justify a finding of separation, at any rate in status and as regards all partible properties. It may be that, the zemindar's branch being very well off did not care to claim any rights in this small paternal ancestral property they had. But that does not really affect the question. It was then argued that whatever the position may be with reference to the general partible properties of the family the separation regarding them cannot affect the interest of the plaintiff and his branch in the zemindari property, in other words that the right they originally had to succeed by survivorship is still subsisting, as the zemindari was not the subject matter of any of the transactions from which division has been inferred. The Subordinate Judge has accepted this argument. But I am unable to adopt his conclusion.

43. I may dispose of, first, the argument that the maintenance grants made from time to time from the zemindari assets to Chinnadorai and his descendants have expressly kept alive their right of succession. That junior members have no right of maintenance by law in the zemindari is now settled by the decision of the Privy Council in *Rama Rao v. Raja of Pittapur* 35 M.L.J. 392 confirming the decision of this Court in the Pittapur case 28 M.L.J. 624. It has not been shown that in this zemindari there is any customary right to maintenance. It must therefore be taken that the maintenance grants in this case were not made in recognition of any rights but were made as matters of grace ; and they cannot therefore be relied on as keeping alive any right of succession. I am unable to agree with the Subordinate judge's view that it was necessary to show that there was an express division ""as regards the zemindari itself "" to affect plaintiff's right to succeed by survivorship. That position I think cannot now be

maintained after the recent ruling of the Privy Council in *Tarakumari v. Chaturbhy Narain Singh* ILR 42 Oal. 1179. The Subordinate Judge has in

my opinion not properly appreciated the effect of that ruling. In that case their Lordships overruled the contention that an express abandonment of

the right to succeed or a partition directly affecting the impartible estate was necessary to put an end to the right of succession by survivorship in

the zemindari and to let the widow come in. Their Lordships held that a complete separation in worship, in food and in estate was proved in the

case generally and not particularly with respect to the impartible estate and gave effect to that finding by preferring the widow's rights to succeed.

They point out that the Thakur's brother Bhupat and his son had at no time any coparcenary rights in the impartible estate in the hands of the

Thakur. The case in *Laliteshwar Singh v. Rameshwar Singh* ILR (1909) Cal. 481 in which it was held that as regards an impartible raj there could

be no separation in estate as there was nothing on which such separation could operate as the interest of junior members