

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pedda Amani and another v. the Zemindar of Marungapuri, from the High Court of Judicature at Madras; delivered 14th January, 1874.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships are of opinion that there is no ground for interfering with the decision of the High Court at Madras upon the issue of legitimacy. They think there is sufficient evidence that the second defendant was the legitimate brother of the deceased Poligar. There is some express evidence as to the marriage having taken place, and there is no doubt whatever that the lady, the mother of the second defendant, was taken to the palace of his father for the purpose of being married. It may be taken as a fact that the marriage was interrupted, but there is evidence from which it may be presumed that, notwithstanding that interruption, a marriage did take place between the father and mother of the second defendant prior to his birth.

In the document put in by the defendant, No. 15, at page 35, which is called a deposition, but which appears to be more in the nature of a petition or urzee, as it is called, made by the deceased Zemindar, the half-brother of the defendant, on the 15th of May, 1854, shortly after the death of their father, he says: "Ere this I have reported to the Taluq, as also to the Huzur, the circumstances of the death of my father, Muthoovera Puchaya Naiker, which occurred on the 25th April of this year. Of the six

wives married by my father, the first, Ahkamani, being issueless, and I being the son of the second wife, and eldest son, my father, while alive, in the presence of all the people, invested me with the pattam, according to the right of succession in our family, and the custom prevailing among our caste, and delivered to me all the insignia of the pattam, consisting of weapons, &c. I pray, therefore, that the sanction of the Government may be obtained, declaring me entitled to the said Zemindary." Then he says:—  
 "From the genealogical tree now presented to the Sircar, showing the particulars of the descendants of the said Zemindars from the time of the settlement, and which bears the signature of myself and others, the names and descendants of my ancestors, and other particulars can be ascertained." In the genealogical tree which accompanied that document (page 41) the lady, the mother of the second Defendant, is described as the fifth wife of his father. The first wife of his father is Akammani, and then comes Appammai as the fifth wife—that is the mother of the present second Defendant—and then the present second Defendant himself is mentioned as her son, "Kenja Kishna Muthu Vira Puchya Naiker, three years old." If it be taken as a fact that the boy was then three years old, that would make his birth about May or June 1851, to which date we shall have presently to allude.

In addition to the last-mentioned document there is one at page 47 (No. 44 in the printed record), which is a petition of the late zemindar, dated the 21st January, 1862. He there says: "My deceased father, who was the late zemindar, has left but two sons, viz., myself and my younger brother." Then he says in another part: "The said Ovalappanayakan is the son of the whore Kantimate, and is a tenant under me in Marungapury." Therefore he puts the second defendant in that document as his brother and Ovalapana as a bastard. This is a document in which he requested the Court "that the statement made by the said Ovalappana to the effect that he is the son of my father may be set aside, and that the petition presented to the same effect may also be rejected." Therefore he treats the second Defendant in this suit as being his brother in a petition in which he wished to have the statement of another person that he was

his brother set aside. Then at page 19 of the Record there is a document No. 13 made by the late Poligar, in which he says: "As I am suffering much from a boil on my back, and as I do not expect to live long, I have, according to the custom of our caste, caused my younger step-brother (meaning half-brother) Runga Kristna Muttuveera Puchaya Naiker, aged fifteen years, to be invested with the pattam, there being no son to me, and appointed my cousin Meilaramain a manager, to continue till the boy shall come of age to manage the affairs of the zemindary according to usage. I pray, therefore, that your Honour will on this ground be pleased to consider my said younger brother as myself and treat him with the same amount of kindness as you have showed me hitherto." Then there is a document, No. 14, which is a Petition signed by the present Plaintiff in which she declares the second Defendant in this suit to be the present zemindar and the younger brother of the deceased zemindar. Further, there is a very important document at page 21, a statement made by the three widows of the late zemindar, in which they say that the second Defendant, "whom we now wish to get invested with the puttam, is the son of Kammamani, the legally married wife of our father-in-law." The said "Kammamani is now alive; the said Ammal (lady) also lives jointly with us." Is it likely that the wives would have allowed the lady to live with them if she had not been married?

The next document, No. 16 on the Record, is an official report of the Tehsilda to the acting Collector of Trichinopoly, dated the 27th July, 1864. He says: "I have received the Order No. 108, directing me to inquire into and report upon certain circumstances relating to the demise of Terumalai Puchaya Naiker, zemindar of Marungapuri, attached to this taluk. In obedience to the said Order I proceeded to Marungapuri immediately, and, in the presence of Kristna Row, the Sub-Magistrate of that division, caused the three widows of the deceased zemindar to remain behind the screen, and caused also a confidential woman to see them, and took down the statement given by them, and having received their signatures and those of the witnesses therein, I have inclosed the said statement herein." So that this statement, in which they say that the lady was the



legally married wife of their father-in-law, was taken in the presence, not only of the attesting witnesses, but also of the Sub-Magistrate and Tehsildar.

Now, it is said that the document signed by the late zemindar just before his death, and the document which was signed by the three widows, of whom one is the Plaintiff, was obtained through the instrumentality of the cousin, who is said to have been appointed as the agent of the second Defendant. But there is no evidence whatever given in the cause to show that the deceased zemindar was imposed upon by the cousin, or that any undue influence was exercised over him to get him to make that statement, nor is there any evidence to show that the statement which he made was not made with the full understanding of what he was then stating.

In the 2nd paragraph of the plaint the Plaintiff, the eldest widow, says:—"On the day preceding his death,"—that is, the death of the late zemindar,—"he made an arrangement constituting me as his heir to the said zemindary, and directing that the two junior widows, named Peddammani and Chinnammani, should remain under my protection; that Terumalai Puchaya Naiker, a cousin of the deceased, should, on my behalf and under my orders, have the management; and that after my death the said widows should enjoy the estate successively." No document to that effect has been proved, nor has any evidence been given of the truth of the statement. Then, in the fifth paragraph it is stated:—"On making proper inquiries I ascertained that during the time I and the others were sunk in sorrow on account of our husband's death, Terumalai Poochaya Naiker, the cousin aforesaid, who I believed was managing the affairs of the zemindary on my behalf, according to my husband's directions, had, in collusion with Kedara Moodely Navanitha Krishnama Pillay, at a time when my other servants in the Palace were under his control, concealed my husband's arrangements, and the real urzee he (husband) addressed to the Collector; that he had represented to the Collector, the Tahsildar, and others, that my late husband installed as zemindar the minor,"—that is, the second Defendant—"who has no connection whatever with the zemindary, and that he, my husband, had addressed an urzee to the

Collector, appointing him, the cousin, as manager for the said minor; and that he had conducted certain proceedings by which the zemindary has been placed under the management of the Court of Wards on behalf of the said minor." Now, there is no proof whatever of that allegation. We have, therefore, the admission of the late zemindar that the second Defendant was his brother, and we have also the admission of the Plaintiff, and the other widows of the deceased zemindar, that the second Defendant was the son of the lawfully married wife of his father.

Now then, what evidence has been given to disprove that fact? It is said that the marriage was to have taken place in the month of Avani. The lady it is proved was carried to the Palace for the purpose of being married, and she has given her own evidence in the case, and has sworn to the fact of a marriage having taken place. There is no evidence whatever to show that her parents ever complained that she had not been married, or that she was detained in the Palace by the deceased Poligar against her will, or that he had taken her there under pretence of marrying her and had then refused to do so. No evidence of that sort has been given, and if the case were true that he had not married the lady, one would expect that some evidence would have been given to show that the father and mother of the lady had complained of the manner in which their daughter had been treated, and that they had been deceived in allowing her to go to the Palace, under the pretence that she was to be married.

It is said that the Defendant's evidence is disproved by the fact of some of the witnesses of the Plaintiff showing that no marriage did take place, and also by the evidence of the Defendant's witnesses in which they state that the marriage took place in the month of Avani. Great reliance is placed upon the witness whose evidence is at page 225, and also is stated to be the Priest of the family. But although he is now the Priest, and states that he is the Priest he was not the Priest at the time when this marriage took place. He could only have been 18 years of age at that time. He gave his evidence in the year 1871, and he then stated he was 38 years of age. That would make him about 18 at this



time, and he says that the marriage was celebrated in the month of Avani of 1850. Now, their Lordships do not think that the marriage did take place at that time, but the witness was speaking merely from memory, and the fact of his stating that it was in the month of Avani does not necessarily prove that the marriage did not take place at any other time. The next witness says that the marriage took place only on the day fixed in the first instance, but this witness, who was not the Priest of the family but merely a cultivator, gives evidence that the marriage did take place, and he says it took place only on the day fixed in the first instance. If he is supposed not to have made a mistake, but to have wilfully stated that the marriage actually took place on the day originally fixed, for the purpose of making the child appear to be legitimate, and to have stated that falsely, then he may be disbelieved altogether; but you are not to take his evidence, and say that because he states that the marriage took place only on the day fixed, in the first instance, when it is proved by other evidence that it did not take place on that day, that he has proved that the marriage did not take place at all in the face of the admission and conduct of the Plaintiff and of the other Widows and of the statement of the deceased Poligar, that the Defendant was his legitimate half-brother. Their Lordships are of opinion that there is sufficient evidence of the legitimacy, and that there is no sufficient evidence on the other side to rebut it or to show that a marriage did not take place, or that, a marriage having taken place, it took place after the birth of the child.

That being so, their Lordships think that the High Court came to a correct conclusion that a marriage did take place between the father and mother of the child prior to its birth; and, assuming that the High Court are correct in finding that the child, although born after marriage, was pro-created or begotten before the marriage took place, their Lordships are of opinion that that Court came to a right conclusion, in point of law, that the child was legitimate.

The point of illegitimacy being established by proof that the pro-creation was before marriage had never suggested itself even to the learned Counsel

for the Appellant at the time of the trial, nor does it appear, from the authorities cited, to have been distinctly laid down that, according to Hindoo law, in order to render a child legitimate, the procreation as well as the birth must take place after marriage. That would be a most inconvenient doctrine. If it is the law, that law must be administered. Their Lordships, however, do not think that it is the Hindoo law. They are of opinion that the Hindoo law is the same in that respect as the English law.

Under these circumstances, their Lordships are of opinion that the High Court came to a correct conclusion in finding that the Defendant had made out that he was the legitimate half-brother of the deceased Poligar; and that, being members of an undivided family, the polliem descended to him.

That disposes of the Cause: for, if the Defendant is the heir of the deceased Poligar, the widow can have no claim. The Decree of the High Court was correct, and her suit must be dismissed.

Their Lordships will, therefore, humbly recommend Her Majesty that the judgment of the High Court be affirmed, and the widow's Appeal dismissed with costs.

