

The defendants preferred a Special Appeal on the ground, among others, that upon the allegations stated in the plaint a suit for a declaratory decree ought not to be entertained.

Mr. *Shepherd* for the Special Appellants.

Mr. *Michell* for the Special Respondent.

The Court (Sir W. MORGAN, C. J., and INNES, J.) delivered the following

JUDGMENT:—We reserved judgment in this case because we felt doubts as to whether it was one in which a declaration could properly be granted. Plaintiff sought not merely for a declaration of title but also for relief in the shape of the transfer of registry to his name.

This the Lower Appellate Court was unable to grant, the Revenue Authority not being a party to the suit. The facts are all found in favor of plaintiff's contention. We think plaintiff should have the declaration, as it will enable him to go to the Collector for substantial relief in the shape of registration in his name. We shall dismiss the Special Appeal with costs.

*Appeal dismissed.*

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## APPELLATE CIVIL.

*Before Sir W. Morgan, C.J., and Mr. Justice Innes.*

SUBBAIYAR (DEFENDANT) APPELLANT, v. KRISTNAIYAR AND ANOTHER (PLAINTIFFS) RESPONDENTS. (1)

*Slander—Co-plaintiff—Act VIII of 1859, Section 73.*

Plaintiff sued defendant for damages for slander of plaintiff's sister. The Court, regarding the suit as defective for want of parties, made plaintiff's sister a co-plaintiff under Section 73 of Act VIII of 1859. *Held* that the defect was one not to be remedied under that section; and that, as there was no right of suit in the plaintiff, the suit should have been dismissed.

THE plaintiff alleged that the defendant as plaintiff had brought a suit against the present plaintiff charging him with malversation of certain funds of an endowment in his management, and that at the hearing of that suit the present defendant used grossly indecent language (set out in the plaint) to plaintiff concerning

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(1) Second Appeal No. 195 of 1878, against the decree of A. Annusami, Subordinate Judge of Tinnevely, dated 9th November 1877, confirming the decree of the District Munsif of Ambasamudrum, dated 29th December 1876.

1878.  
March 8.

CHANDU  
v.  
CHATHU  
NAMBIAR.

1878.  
April 8.

1878.  
 April 8.  
 SUBBAIYAR  
 v.  
 KRISHNAIYAR.

his sister. Plaintiff, therefore, sought to recover Rupees 500 damages for loss of reputation caused by the false, abusive and defamatory statements made by the defendant concerning plaintiff's sister. The defendant pleaded that the plaintiff had used equally offensive language concerning his (defendant's) sister. The District Munsif at the settlement of issues included the plaintiff's sister as second plaintiff under Section 73 of the Civil Procedure Code of 1859, and at the final hearing gave judgment for plaintiffs with Rupees 350 damages.

On appeal the Subordinate Judge confirmed the decree of the First Court.

Defendant preferred a second appeal on the ground that the first plaintiff, who alone commenced the suit, having no right of action, his suit ought to have been dismissed, and the District Munsif erred in joining the second plaintiff as a party to the suit.

*V. Bhashyam A'yiyangar* for the appellant.

*Mr. Shaw* for the respondents.

The Court (Sir W. MORGAN, C. J., and INNES, J.) delivered the following

JUDGMENT :—Whether, by the law of British India, the abusive language used by the defendant in this case was of itself actionable, we are not called upon to decide.

If it was, the Court, in assessing damages, should not have failed to notice so material a circumstance as this, that it was used by one to whom the plaintiff himself had just applied language hardly less offensive.

The decrees must be reversed on another ground.

Assuming that a suit is maintainable, the right of suit resides in Vencata Subbi Ammal, of whom the words were spoken. Vencata Subbi Ammal is the sister of the plaintiff. As the suit proceeded, she was made a co-plaintiff by an order of the Court made under Section 73 of the Civil Procedure Code; that is to say, the Court, regarding the suit as defective for want of parties, made the order. But the defect was one not to be remedied under that section: when there is no right of suit in the plaintiff, the suit should be dismissed.

The introduction under Section 73 of another person as plaintiff cannot cure this defect. Here the case was tried and a

decree for damages pronounced in favor of both the plaintiffs on the record. Such a decree does not admit of execution. We shall allow this appeal. The decrees will be reversed with costs.

1878.  
April 8.

SUBBAIYAR  
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KRISHNAIYAR.

*Suit dismissed.*

## APPELLATE CIVIL.

*Before Sir W. Morgan, C.J., and Mr. Justice Kindersley.*

KUMARASAMI NADAN (2ND DEFENDANT) APPELLANT, v. PALA NAGAPPA CHETTI (PLAINTIFF) RESPONDENT. (1)

1878.  
April 11.

*Hindu family—Managing member—Authority—Act IX of 1871, sec. 20—Agent.*

The relation of the managing member of a Hindu family to his coparceners does not necessarily imply an authority upon his part to keep alive, as against his coparceners, a liability which would otherwise become barred. The words of Section 20 of Act IX of 1871 must be construed strictly, and the manager of a Hindu family, as such, is not an agent "generally or specially authorized" by his coparceners for the purpose mentioned in that section.

THE plaintiff in this suit lent the first defendant Rupees 1,500 on 20th November 1869, and obtained a bond in his favor, stipulating for repayment after two months with interest at 12 per cent., and if payment were not then made, interest to be paid at 24 per cent. The money was borrowed to enable first defendant to carry on an abkari contract. The first defendant was the managing member of a Hindu family, the other defendants, three in number, being the junior members. On the 5th January 1873 the first defendant made an endorsement on the bond, acknowledging a payment of Rupees 10 and promising to pay the balance with interest at 12 per cent. in two instalments, viz., on 30th December 1873 and 30th December 1874. This was not done, and the plaintiff brought the present suit against the first defendant and his coparceners for the amount. The Court of First Instance decreed for plaintiff against the first defendant alone, holding that Explanation 2, Section 20 of Act IX of 1871 applied to the case.

On appeal by the plaintiff, the District Judge referred the issue to the First Court whether the transactions (bond and

(1) Second Appeal No. 725 of 1877 against the decree of A. C. Burnell, District Judge of Tanjore, dated 12th September 1877, modifying the decree of the Subordinate Court at Negapatam, dated 20th July 1876.