

“carefully preserve it, or else commit it to the family ;” and in the *Smeriti Chundriká*, Chapter IX, Section ii, page 10, we find a text of Nárada: “What has been given by an affectionate husband to his wife, she may consume as she pleases when he is dead, or may give it away excepting immovable property.” The text of Vyása at the outset of the same chapter gives the general rule: “What has been given to a woman by her husband she may consume as she pleases.” In this Presidency a woman’s power to alienate her *strídhnam* has been held to be subject to the limitation already noticed in respect of immovable property given to her by her husband; but I am not aware of any authority for saying that as a widow she may not purchase immovable property with her own *strídhnam*, and dispose of it by will.

I therefore agree that the suit ought to be dismissed with costs.

Suit dismissed.

1877.
August 10.

VENKATA
RA'MA RAU
v.
VENKATA
SUBIYA RAO.

APPELLATE CIVIL.

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

RYALL, APPELLANT, v. SHERMAN, RESPONDENT (1).

1877.
March 16.

Adjournment—Dismissal of Suit—Act VIII of 1859, sec. 148.

In a suit issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal. On that date plaintiff did not appear and the suit was dismissed under section 148 of Act VIII of 1859. *Held*, that as this was not a case which had been adjourned in favor of either party to enable him to “produce his proofs or cause the attendance of his witnesses” the order was not one which could properly be made.

THIS appeal arose out of a suit, No. 10 of 1875, brought by Albert Ryall against F. Sherman.

T. Ráma Rau and *R. Baláji Rau* for the Appellant.

There was no appearance for the Respondent.

The facts are sufficiently stated in the following

JUDGMENT:—Issues had been settled and the hearing of the

(1) Civil Miscellaneous Regular Appeal No. 28 of 1877, against the order of F. M. Kindersley, Acting District Judge of Coimbatore, dated 21st July 1876.

1877.
March 16.

RYALL
v.
SHERMAN.

suit was adjourned to a fixed date for final disposal. On the date so fixed, the plaintiff did not appear and the Judge disposed of the suit under section 148, dismissing it for default.

On an application to the Acting District Judge, Mr. Horsfall, to set aside the order dismissing the suit, the District Judge, on the 21st July 1876, refused the application on the ground that the order was not passed under section 119 but under section 148 of the Civil Procedure Code. Petition for review of this order was presented to the District Judge, Mr. Kindersley, but he held that the order passed under section 148 was, properly viewed, an order under section 119, and that the proper course was to apply (as petitioner had done without effect) to the Acting District Judge to have it set aside.

Appeal is now made from the order of the Acting District Judge of the 21st July 1876.

This was not a case which had been adjourned in favor of either party to enable him "to produce his proofs or cause the attendance of his witnesses," and the order, therefore, is not one which could properly have been made under section 148. The suit came on on the date to which, after settlement of issues, it had been adjourned under section 145, in the ordinary way for final disposal.

In such a case the Court might proceed under section 147 and section 114 to dismiss the suit for default of appearance by plaintiff.

The application of plaintiff to set aside this order was thus properly made under section 119, and the order of Mr. Horsfall was incorrect. We shall set aside his order, and direct that the District Judge do replace the application, Civil Miscellaneous Petition No. 168 of 1876, on his file and proceed to dispose of it.

In each of the cases *Comalammal v. Rungasami Iyengar* (1) and *Rungasami Mudaliar v. Sirangan* (2) the suit had been adjourned on the special application of one of the parties, who was not ready with his evidence on the adjourned date. The cases fell, therefore, within section 148.

(1) 4 Mad. H. C. Rep. 56.

(2) 4 Mad. H. C. Rep. 254.