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the invalidity is based upon the absence of express mention of the mother's sister's son (see Dattaka Mimamsa V. 18).

The rule of restriction is based as was the similar rule of Roman Law upon the principle that a man cannot adopt one with whose mother he could not legally have intermarried.

In 107 Cakala extends the express words by interpretation to the daughter's son and the son of the mother's sister. The two stronger cases are taken out of the rule as to Sudras by the express words of the text containing the restriction.

It would be contrary to legal logic to apply the restriction to the case not expressly mentioned. We are of opinion that the decree of the Subordinate Judge must be reversed and that of the Munsif restored.

[APPELLATE CIVIL JURISDICTION.]

Before SIR W. MORGAN, *Kt.*, C. J., and HOLLOWAY, J.

Regular Appeal No. 97 *of* 1875.

SINI THIRUVENGADATHIENGAR AND 6 OTHERS (2ND TO 8TH DEFENDANTS), APPELLANTS, *v.* SANGILIVEERAPPA PANDYA CHINNATHUMBIAR (PLAINTIFF), RESPONDENT.

1876. April 24.

Act VIII of 1859, *s.* 15.—*Suit for declaratory decree.*—*Slander of title.*

The issuing of proclamations and orders, by B, to the ryots of an estate, to pay rent to him, as rightful owner of the estate, application by him to the Collector to be registered as the owner, and other like acts of pretension to the title, and threats, on B's part, are not, in themselves, sufficient to entitle A, who is in possession and enjoyment of the estate as rightful owner, to a decree declaring him to be the rightful owner.

The plaintiff, who was Zamíndár of Shivagiri, brought the suit for a declaration that the right, title, and interest purchased by the 1st defendant, Subramania Moodeliar, at an auction sale for certain debts of the late Zamíndár of Shivagiri, extended to no more than the rents and profits due from the zemín to the plaintiff's father, the said deceased Zamíndár, up to the date of his death, and that the purchaser, the 1st defendant, had no right to the zemín; for an injunction to 1st defendant not to disturb the plaintiff's enjoyment of the same; and for such other relief as the Court might deem proper to grant under the circumstances of the case.

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The said Subramania Moodeliar, who was originally the sole defendant, subsequently to the filing of the plaint sold all his rights to certain persons, who were thereupon added as defendants 2nd to 8th.

Previous to the death, on 27th September 1873, of plaintiff's father, and predecessor as Zamíndár, the estate was under attachment for a number of judgment debts of the then Zamíndár, and all the revenues, after paying peishcush, and certain other expenses, were distributed amongst the decree-holders. On his father's death, the zamíndárí was made over to the plaintiff, on his petitioning therefor; but it was at the same time ordered that the ryots who owed arrears of rent up to the date of the late Zamíndár's death should pay, not to plaintiff, but into Court, or to the *ad interim* Receiver, for the benefit of the late Zamíndár's creditors. On the 25th February 1874 the right, title, and interest of the late Zamíndár were sold, and were knocked down to the 1st defendant. Delivery was made to him by the Court in the usual form under s. 264 of Act VIII of 1859, proclamation being made to the ryots that the right of the late Zamíndár rested in the 1st defendant. Not content, however, with this proclamation, 1st defendant issued proclamations of his own, which he sent into all the villages, and orders, which he sent to all the karnams of the villages, stating that he had purchased the whole zamíndárí, and that he was coming to distribute the pattás, and that all accounts should be submitted to him, and that the whole rents should be paid by the ryots only to his agent, and to no one else, at the peril of their having to make a second payment. He, furthermore, applied to the Collector to have his name entered in the office as Zamíndár of Shivagiri, stating that he had obtained in the Court auction the whole right as Zamíndár over the estate, and that he in future would pay the peishcush, and that he should hold the sanad.

The District Judge (of Tinnevelly) decided in plaintiff's favor, and gave him the declaratory decree (as well as the other relief) sought for.

Tarrant, Shephard, and *S. Subramaniem Iyer* for the appellants, the 2nd to 8th defendants.

The Advocate-General, V. Bhashyam Iyengar, and *Gopaliengar* and *Sitaramier* for the respondent, the plaintiff.

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The High Court gave the following judgments :—

THE CHIEF JUSTICE.—The Court stated orally, at the close of the argument, that the decree of the Lower Court must be reversed, on the ground that it was a declaratory decree given in a case in which no consequential relief could have been obtained, if such relief had been asked for. The plaintiff proved no actual injury and no apprehension of injury such as to justify a prayer to the Court for relief.

I will now give in writing my reasons for this judgment.

Whatever may have been the course of decisions on the words of the 15th section of the Code of Civil Procedure, the true construction of that clause and the effect to be given to it must be considered as now settled by the late decision in the case of Kathama Nauchiar *v.* Dorasinga Tever*.

It was there determined that a declaratory decree cannot be made unless there be a right to consequential relief capable of being had in the same Court, or in certain cases in some other Court.

If, therefore, the case stated is one in which no relief could be given, if asked for, the Court should make no decree declaring rights. Further, I agree that no such decree should be made unless the relief capable of being given is consequential relief. The mere fact that some infringement of the proprietary right or title may have taken place, which, under certain conditions, might confer a right of suit for damages, is not enough to support a suit of this description.

The defendant in the suit is a creditor of the late Zamíndár of Shevagiri. His debt was not a charge on the estate, but he became a purchaser at a sale held in execution of money decrees of the rights and interests of the deceased Zamíndâr.

This purchase was subsequent to the succession to the estate of the plaintiff in the suit, who is the son of the late proprietor, and it has been considered, I think rightly, that at the utmost the purchaser acquired only the right to certain arrears of rent and no present interest in the estate.

The plaintiff is in full possession of the estate. He states in his plaint that (in December 1873) the whole of the zemin has been completely in the enjoyment of the plaintiff." Being then

* I. L. R. 2. I. A. 169 ; S. C. 15. Beng. L. R. 83.

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unable to ask for relief in respect of his possession, he states the following as the ground of his suit: "By reason of the purchase at the above auction, the defendant has denied the right of the plaintiff to enjoy the zamín, and asserted that he himself is entitled to all the rights to the zamín; and by issuing orders to the Karnams and other officers and the ryots of the zemindary, and by publishing certain proclamations, has done acts calculated to affect the rights of plaintiff prejudicially, and to molest his peaceable enjoyment of the zemin."

"*The cause of action* is the issuing of orders and proclamations by the defendant on the 31st October and 21st November 1874 in opposition to the plaintiff's rights."

Nothing was proved against the defendant beyond the issue of orders to the Karnams and notices to the ryots. These orders were by the plaintiff's directions disregarded by the karnams, who continued to collect the rents in the usual way. As to the notices or proclamations to ryots, it is stated in the Lower Court's judgment that the plaintiff's witnesses proved "that to some extent a few ryots took advantage of his adverse claims, and, under color of the defendant's proclamations, either refused to take their puttás or withheld their rents."

Some of the ryots, it may be, took occasion to add this to other pretexts for refusing to pay rents and to accept puttas. This is the most that can be shown to result from the defendant's proceedings. His "brave and big words" clearly imposed on no one —not on the Courts, the Collector, the Zamíndár, or the karnams as the Judge himself finds—nor in fact on the ryots themselves.

It comes to this that the defendant has in various ways made and published vain assertions of his alleged right by purchase. I think upon the authority of the case cited (*the Rajah of Pachete's case*)* that from such assertions no right of suit like the present can arise. The suggestion that relief cancelling the proceedings (that is the orders and proclamat[illegible] of the defendant is capable of being had is disposed of [illegible] authority. The cancellation of deeds, agreements, and [illegible]ten instruments which may be vexatiously or improp[illegible] is directed by Courts of Equity, but I am not aware [illegible]ief of the

*Raja Nilmony Singh Deo Bahadoor v. Kalee Churn Bhuttach[illegible]e. 14. Beng. L. R. 382.

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kind suggested, *viz.*, the cancelling of written notices, &c., is ever given.

As to the suggestion that relief by damages might be obtained, I think, even on the assumption that, in some possible view, the defendant may be liable to a suit for damages at the instance of the plaintiff, that this right to damages would not constitute a right to relief within the meaning of the section.

MR. JUSTICE HOLLOWAY.—I gave my reasons fully at the hearing, and will only express my great satisfaction that I have remained long enough in the Court to see the limitation, for which I gave my voice many years ago, at last put upon those declaratory decrees.

Decree of Lower Court reversed.

PRIVY COUNCIL.

Before Sir James W. Colvile, Sir Barnes Peacock, Sir Montague E. Smith, and Sir Robert P. Collier.

On appeal from the High Court of Judicature at Madras.

SRI VIRADA PRATAPA RAGHUNADA DEO (DEFENDANT) *v.* SRI BROZO KISHORO PATTA DEO (PLAINTIFF).

1876. Jan. 11 to 15 and 25. Mar. 24.

Hindu widow—Undivided family—Authority to adopt.

According to the law prevalent in the Drávida country, a Hindu widow, without having her husband's express permission, may, if duly authorised by his kindred, adopt a son to him.

The Collector of Madura v. *Moottoo Ramalinga Sathupathy* (1) referred to and approved.

Semble, in the case of an undivided family the requisite authority to adopt must be sought within that family, and cannot be given by a single separated and remote kinsman.

Speculations founded on the assumption that the law of adoption now prevalent in Madras is a substitute for the old and obsolete practice of raising up seed to a husband by actual procreation are inadmissible as a ground of judicial decision.

THIS was an appeal from a judgment and decree of the High Court of Madras (2), dated the 13th March 1873, reversing a decree of the Civil Judge of Berhampore, dated the 23rd December 1871.

1. 12 Moore's I. A. 397.

2. Reported, 7 Mad. H. C. Rep. 301.