VENKATASUBBARAMÁYYA v. SURAYYA.

their Lordships were of opinion that the applicability of particular sections of the general statute of limitations must be determined by the nature of the thing sued for, and not by the status, race, character, or religion of the parties to the suit.

We are not now concerned with the nature of a toda giras haq. The present case relates to the office of karnam, or village accountant. It is an office in no way connected with the Hindu religion or usages; and, although it has almost invariably been held by Hindus of the accountant caste, that is merely due to their aptitude for the duties. There is nothing to prevent its being held by a Christian or a Muhammadan. Therefore, we see no reason why the expression "immovable property" in the present case should be construed by the light of ancient Hindu texts. The case of *Tammirazu Ramazogi* v. *Pantina Narsiah* (1) was not noticed by the Judicial Committee in their judgment just quoted, and certainly it was not overruled. We are therefore bound to follow it. We, therefore, think that the decree of the District Judge must be affirmed and this second appeal dismissed with costs.

Appeal dismissed.

PRIVY COUNCIL.

P.C.*
1880.
November 11.

PEDDA RA'MAPPA (DEFENDANT), v. BANGARI SE'SHAMMA (PLAINTIFF).

[On appeal from the High Court of Judicature at Madras.]

Hindu law of succession to an impartible inheritance among sons of different mothers—Primogeniture.

The principles on which is founded the Judgment in *Rámalakshmi Ammál* v. *Sivanantha Perumal Ammál* (2) as to the succession to an impartible inheritance apply with equal force whether the first-born son is born of a first married wife or of a wife afterwards married.

The text of *Manu*, chap. ix, v. 125, distinctly shows that among sons born of wives equal in their class, and without any other distinction, there can be no seniority in right of the mother. In v. 122 of the same chapter the words "but of

(1) 6 Mad. H.C. Rep., 301.

* *Present*:—Sir J. W. COLVILE, Sir M. E. SMITH, and Sir R. P. COLLIER.

(2) 14 Moo. I.A., 570.

a lower class," added by the gloss of *Culluca Bhatta* (1), are to be read as correctly inserted in the text.

Two wives of a Poligár of an impartible polliam having died before his marriage with a third and fourth wife it was contended that the third being in the position of a first married or "royal" wife, her son was entitled to succeed to his father in preference to an elder son born of the fourth. *Held* that the elder son, though born of the fourth wife, was entitled by primogeniture under the rule above referred to, and that it was, accordingly, immaterial to consider whether or not this third wife was in the position of a first married wife. What might be the effect of one wife being "of a lower class" than another was not in question.

APPEAL from a decree of the High Court of Madras (8th November 1877,) affirming a decree of the District Judge of North Arcot (29th March 1877).

The question raised by this appeal related to the right of succession as between the two surviving sons of Rámadásappa, the deceased Poligár of the Bangari Polliam in Chittúr, North Arcot, a polliam in the nature of a ráj and impartible. Rámadásappa left three sons, viz., Bangari Séshamma, his eldest, who had brought this suit and was now the respondent, born of his wife Venkatamma; and by another wife Subbamma, whom he married before Venkatamma, he left two other sons, viz., Chandrashekhara, who died before these proceedings, and Pedda Rámappa, the present appellant.

On the death of Rámadásappa in 1866 Chandrashekhara obtained possession of the polliam; and on his death, which occurred in 1876, Pedda Rámappa succeeded him. Bangari Seshamma then brought the suit which gave rise to this appeal, claiming the polliam in right of primogeniture. The defence of Pedda Rámappa was that, by the custom of the family, the sons of the "Pattabástri" or "Peddabárigu," the first or "royal" wife of Rámadásappa, were successively entitled to the polliam in preference to the elder son born of a junior wife. It was also alleged that Rámadásappa at the time of his marriage with Subbamma had promised that, according to this custom, her offspring should be his successor.

The District Judge having found, on the facts, against the alleged custom and arrangement, on which the defence rested, decreed the claim of Bangari Seshamma on the ground that, by

(1) Manava Dharma Sástra, or the Institutes of Manu, according to the gloss of Culluca Bhatta, translated by Sir William Jones.

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the general law, he was entitled as elder son. This decree, on appeal, was affirmed by the High Court.

Mr. *J. F. Leith*, Q.C., and Mr. *F. H. Bowring* appeared for the Appellant.

Mr. *J. D. Mayne* for the Respondent.

On the law relating to the order of succession among sons by different wives, the case for the appellant was argued, and reference was made to the following:—*Manu*, translated by Sir W. Jones, Chapter IX, vv. 122, 125 and 126; *Colebrooke*, Digest, Book V, Chapter I, Section II, v. 45; *Colebrooke*, Book IV, Section II, v. 51; *Raghoonath* v. *Hurrihur* (1); *Bhujangrao* v. *Malojirao* (2); *Rámalakshmi Ammál* v. *Sivanantha Perumal Sethurayar* (3); *Mayne*, Hindu Law and Usage, Section 461.

Their Lordships' Judgment was delivered by

Sir MONTAGUE E. SMITH.—This appeal arises in an action brought by Bangari Seshamma against his half-brother Pedda Ramappa, to recover possession of the important polliam of Bangari. Several points, which resulted in issues in the Courts below, have been disposed of in a manner which does not render them the subjects of appeal. The facts which relate to the question which alone has been argued before their Lordships are few. It appears that Ramadasappa was the Poligar of this polliam. It had been for several centuries in his family, had been resumed by the Government, and had been restored to him, but nothing turns on that resumption and restoration. Ramadasappa married four wives; the first two wives died, without issue, before his marriage with his third and fourth wives. The marriage with Subbamma, his third wife, and with Venkatamma, his fourth wife, took place on the same day. There is now no dispute that the marriage with Subbamma was prior in point of time. The appellant, Pedda Ramappa, is the son of the third wife; the respondent, Seshamma, is the son of the fourth wife, Venkatamma, but was born before his half-brother Ramappa. Ramappa had an elder brother of the whole blood, Chandrasekhara, also junior to Seshamma, who, upon his father's death in 1866, was put by the Government into possession of the polliam.

(1) 7 S.D.A. Rep., 126 (146).
(2) 5 Bom. H.C. Reps., A.C.J., 161.
(3) 14 Moo. I.A., 570.

He died in the year 1876, having retained possession during his lifetime. Upon his death, Ramappa, the appellant, was put into possession, and thereupon the present action was brought by Seshamma. It is only necessary to mention Chandrasekhara in order to account for the possession between the death of Ramadasappa, the father, and the bringing of the action. It is conceded that this possession is not material to the question which arises in this case, that question being whether the respondent, who was the first-born son of Ramadasappa, though by the fourth wife, is entitled to succeed to the father's estate in preference to the appellant, who was born afterwards, his mother being the third and senior wife, and being, it was contended, in the same position as a first married wife, by reason of the two former wives having died before her marriage.

The general question as to the right of succession in the case of sons born of different wives was decided by this Committee in the case of *Rámalakshmi Ammál* v. *Sivanantha Perumal Sethurayar* (1). It was there held that the elder born son, though of the junior wife, was entitled to succeed in preference to the younger son born of the elder wife. In that case, however, the question as to the right of a son born of a first married wife did not arise, for there the mothers were both junior wives, and the first married wife was living at the time of the marriages of the two wives whose sons were disputing the inheritance. In the present case, the first two wives having died before the marriage of the third and fourth wives, it is contended that the third wife is in the position of a first or royal wife, and that her son is entitled to succeed in preference to elder-born sons of junior wives. Undoubtedly that question was left open by the decision of their Lordships in the case of Ramalakshmi Ammál. (1) In that case it had been admitted, or was supposed to have been admitted, that in the case of a royal wife the rule might be different from what it would be in the case of wives who were all junior to her. Their Lordships had not to consider that question, and did not think it right to prejudice the decision of it by any premature determination; in fact, the point was not argued. The High Court of Madras, from which the appeal came, and in which the admission had been made, had also declined to decide the point.

(1) 14 Moo. I.A., 570.

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Their Lordships have felt some doubt whether they are now called upon to decide this question, for in the Court below the claim of the defendant was rested not upon the general Hindu law, but upon a special family custom. The fact that his case was so rested implies an admission that he and his advisers did not consider that by the general Hindu law he was entitled to succeed. The custom was found against him, and he did not, on his appeal to the High Court, insist, as one of his grounds of appeal, that by the general law he was entitled, his grounds of appeal being directed only to the other points which had arisen in the case, and to an allegation that the custom ought to have been found in his favor. Their Lordships, however, have allowed the point to be argued, and are prepared to determine it.

The preference which has been given to the first-born son over his brothers, irrespective of the priority of the marriages of their mothers, mainly depends upon the religious rules which guide the Hindu community. It is said in the Judgment in the case of *Rámalakshmi Ammál,* (1) "One great rule of religion binding upon every Hindu is the duty of having a son, not only for the sake of the spiritual benefits he obtains for himself by his birth, but because he thereby discharges the pious debt he owes to his ancestors, and as a consequence naturally flowing from this law the first-born son is throughout the books of authority treated as pre-eminent amongst his brothers, and held to be entitled to many special privileges." The principle deduced from the rules above mentioned, and the reasons upon which their Lordships' Judgment in the former appeal are founded, apply with equal force to the first-born son of his father, whether born of a first married wife or of a junior wife; and it certainly lies upon the appellant to show some explicit authority to establish the distinction for which he contends.

The argument at the Bar has been rested solely upon some texts in *Manu,* and those texts their Lordships think not only do not support the view contended for by the learned Counsel for the appellant, but are rather opposed to it. The material ones are few. The first to which it is necessary to refer is in Chapter 9, Section 106: "By the eldest, at the moment of his birth, the

(1) 14 Moo. I.A., 570.

father having begotten a son discharges the debt to his own progenitors; the eldest son, therefore, ought, before partition, to manage the whole patrimony." This text simply says "by the eldest" without further description, and it states that the father having begotten him has discharged his debt to his own progenitors. Then the 107th is: "That son alone by whose birth he discharges his duty, and through whom he obtains immortality, was begotten from a sense of duty; all the rest are considered by the wise as begotten from love of pleasure." That section certainly does not help the contention on the part of the defendant, because in the present case, when Seshamma was begotten, the father had no other son, and his duty was unfulfilled. Two other sections were referred to, which are more immediately applicable to the question under discussion. The 122nd section is, "A younger son being born of a first married wife after an elder son had been born of a wife last married, *but of a lower class*, it may be a doubt in that case how the division shall be made." The words printed in italics are found in Sir William Jones' translation. The words "but of a lower class" are no doubt inserted by a commentator and are not in the original text which had come down. If the text were read without those words, undoubtedly that and the following sections, 123 and 124, would give some support to the argument of the defendant. But their Lordships think that the interpolation of the commentator cannot be disregarded. The early versions of the Laws of Manu are very ancient, and it might be doing great mischief to construe the words of the original text literally, unaided by the gloss which has been put upon them by writers and commentators of authority, whose interpretation has been received as authentic. The authority of the commentator who is responsible for the interpolated words is vouched by Sir William Jones in the preface to his translation. He says: "At length appeared *Culluca Bhatta*, who, after a painful course of study and the collation of numerous manuscripts, produced a work of which it may perhaps be said very truly that it is the shortest yet the most luminous, the least ostentatious yet the most learned, deepest yet the most agreeable, commentary ever composed on any author, ancient or modern." Sir William Jones, himself a great Oriental lawyer and scholar, says that he had almost implicitly followed the text and interpret-

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ation of *Culluca Bhatta,* and had printed his gloss in italics. It is impossible to have higher authority for an explanation of a text. Then the text as interpreted is merely this, that a younger son being born of a first married wife after an elder son had been born of a wife last married, but of a lower class, in that state of things it might be a doubt how the division should be made. Subsequent sections would seem to show that in that case *Manu* thought the son of the first married wife should have the larger share of partible property. If the interpretation is received, then the very expression "but of a lower class" leads to the implication that if the wives were of the same class the distribution would be equal; and Section 125 is to that effect :—"As between sons born of wives equal in their class and without any other distinction there can be no seniority in right of the mother, but the seniority ordained by law is according to the birth." That is a distinct text, and the effect of it would only be uncertain if Section 122 were read without the words added by the commentator. It is not contended that in the present case the wives are not of the same class; and their Lordships do not determine what would be the proper rule of succession where the wives are of a different class or caste. The question does not arise.

The only other authority which has been referred to is one which certainly does not support the defendant's case, if it does not establish that of the plaintiff. It is the case of *Rajah Rughoonath Singh* v. *Rajah Hurrihur Singh* (1). The marginal note correctly states what the case decides: "In the case of an estate in Manbhoom, in the jurisdiction of the Governor-General's agent at Hazaribaugh, it was held that the succession is vested in the eldest son of the deceased Rájah born of any of his wives in preference to the eldest son of the paát or first Ráni." It would seem that that case was decided not upon the general Hindu law, but upon the law prevailing in Manbhoom, and that there was no custom to the contrary. The Judges who formed the majority of the Court in their Judgment say, "The ordinary course of succession is certainly shown by the evidence to be that stated by the plaintiff"—that is, the order stated in the marginal note. "To establish a contrary practice so as to

(1) 7 S.D.A. Reps., 126.

assume the force of family custom requires the strongest evidence." Therefore the ordinary course of succession in the district of Manbhoom was in accordance with what their Lordships find to be the general Hindu law.

The question really comes to this: although it was not necessary to decide in the former case before this Board what was the right of a son of a first married wife, yet the principles upon which their Lordships held that the first-born was entitled to succeed apply equally to a son of such wife and sons of other wives; and that being so, it lay upon the defendant to show some positive rule of Hindu law, supported either by ancient text or modern decision, to the contrary effect. Their Lordships think that no sufficient authority for such a rule has been produced. They would observe that the reasons on which the precedence and privileges of the first wife over her co-wives are founded are scarcely pertinent to the succession of sons to their father, which is governed by other considerations, as already explained.

The ground on which this appeal has been decided renders it, of course, immaterial to consider whether the third wife, who was not married until after the deaths of the two former wives, stood in the position of a first married wife.

On the whole, their Lordships are of opinion that the Courts below, who concurred in their Judgments, have come to a correct conclusion, and they will therefore humbly advise Her Majesty to affirm the judgment appealed from and to dismiss this appeal with costs.

Solicitors for the Appellant: Messrs. *Gregory, Rowcliffes* and *Rawle.*

Solicitors for the Respondent: Messrs. *Burton, Yeates,* and *Hart.*