APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Busteed.

1877. *November* 12.

VÉDAVALLI (PLAINTIFF) APPELLANT *v.* NÁRÁYANA (DEFENDANT) RESPONDENT.*

Widow—Administration—Burthen of proof.

Suit between a widow claiming administration to the estate and effects of her deceased husband as his only legal personal representative, and a caveator claiming the whole family property as an undivided second cousin of the deceased and sole surviving member of the family. The widow asserted a division and that the whole property of the deceased had been self-acquired by his father. The court of first instance found against division and against self-acquisition, laying the burthen of proof of each question entirely on the party asserting the facts. On appeal it was contended for the Appellant (the plaintiff) that the *onus* on plaintiff was sufficiently discharged when it was shown that the two branches of the family were trading separately, and that certain items of property were acquired in the names of members of the branch of the family to which plaintiff's husband belonged; that then it rested with the other side to show that there were joint funds from which the purchases could have been made.

Held, in accordance with the view of the Judicial Committee of the Privy Council in *Dhurm Das Pandey* v. *Mussumat Soondri Dibiah* (1) and the observations of Couch, C.J., in *Faruck Chunder Totadar* v. *Joodhesteer Chunder Koondoo* (2) that such a contention could not be maintained.

THIS was an appeal from the decree of Mr. Justice Kindersley, made in Original Testamentary Suit No. 7 of 1876.

K. Perumál Chetty died at Madras on the 24th July 1876 intestate and without issue, and his widow K. Védavalli Ammál claiming to be the only legal personal representative of the deceased, presented a petition to the High Court on the 29th July 1876, praying that letters of administration might be granted to her. On the 7th August 1876 K. Náráyana Chetti lodged a caveat and filed an affidavit claiming the whole family property as an undivided second cousin of the deceased and sole surviving member of the family. In her answering affidavit the widow asserted that the father of the deceased and the father of the caveator were divided in interest, and that the whole of the property left by her deceased

* Appeal No. 5 of 1877, against the decree of Mr. Justice Kindersley, dated 10th January 1877.

(1) 3 Moo. I.A., 229; 5 W.R.P.C., 39.

(2) 19 W. R., 198.

1877.

VE'DAVALLI v. NÁRÁYANA.

husband was the self-acquisition of his father. The following issues were framed:—

1. Whether the caveator was, at the death of K. Perumál Chetti deceased, an undivided member of the family of the said deceased and of the caveator? If so
2. Whether the property left by the deceased was part of the property of the undivided family of the deceased and of the caveator?
3. Whether the plaintiff is entitled to administration to the estate of the deceased?

The suit came on for final disposal before Mr. Justice Kindersley, who found for the caveator on all the issues. In the course of his judgment he made the following remarks:—"I will first deal with the question whether the petitioner's late husband, Perumál, was divided in interest from the caveator. The *onus* of proving division is of course on the petitioner, who asserts it. . . . . For all these reasons it appears to me that no separation of interest has been made out.

The next question for determination is whether the property in question was acquired by the father of the deceased without the assistance of ancestral funds. And here again it is for the party affirming this proposition to prove it. Looking at all the circumstances of the case, I do not think that the petitioner has proved that the property was acquired by the father of the deceased without the aid of ancestral funds." "The petitioner therefore is entitled only to maintenance, and is therefore not entitled to administration. Her petition must therefore be dismissed with costs."

The plaintiff appealed on the following grounds:—

1. That the First Court ought under the circumstances to have found in favor of a division, and that the defendant at the death of K. Perumál Chetti deceased, was a divided member of the family of the deceased and the defendant.
2. That the First Court ought to have found that the property left by the deceased was no part of the property of the undivided family of the deceased and the defendant.
3. That the plaintiff was entitled to administration to the estate of the deceased.

Mr. *Miller*, Mr. *Johnstone*, and Mr. *Handley* for the Appellant.

The *Advocate-General* (Mr. *O'Sullivan*) for the Respondent.

The judgment of the Court was delivered by

INNES, J.—I think this appeal should be dismissed. It was scarcely contended that there was not abundant evidence to show that the family of the caveator and of deceased Perumál was a joint Hindu family, although for some years Dévarájulu, in Perumál's branch, and Rungasháyi, in that of the caveator, had traded separately.

There was credible evidence of their living and messing together, of their performing their ceremonies in common, of their celebrating marriages together, of their jointly instituting suits, and of Perumál undertaking to pay certain debts of Rungasháyi and of the caveator. Letters also showed that Perumál defended himself in 1874 against charges of extravagance by the caveator.

They also joined in conveyances. As to this our attention was drawn to the evidence of Naráyanasámi and his signature in the document (IV) which Perumál and he jointly executed in 1867. The ink, with which his name was signed, seems to differ from that used for Perumál's signature, but Naráyanasámi's name appears in the body of the document and there is no ground for doubting that he actually joined in the execution of the document. There are also conveyances to members of the two branches jointly; a circumstance which is of greater import than their joining in executing conveyances, as this is sometimes done by members of a family no longer united, for the better assurance of the purchaser.

The evidence thus satisfactorily showing that the family is joint and undivided, the plaintiff has no right to administer to her husband unless she can prove that some portion of the assets is the self-acquired property of her husband. There was a purchase by Perumál the elder in 1820, the certificate of which, issued in 1830, stands strangely enough in the name of the vendor. There was also another conveyance between 1839 and 1850 in favor of Dévarájulu, son of the elder Perumál, and one in 1859 in favor of the younger Perumál (Dévarájulu's son).

It was contended for the appellant (plaintiff) that the *onus* on plaintiff is sufficiently discharged when it is shown that the two branches were trading separately, and that certain items of property were acquired in the names of members of the branch of the family

1877.

VE'DAVALLI v. NÁRÁYANA.

to which plaintiff's husband belonged; that then it rests with the other side to show that there were joint funds from which the purchases could have been made.

But this is opposed to the view of the Judicial Committee in *Dhurm Das Pandey* v. *Mussumat Shama Soondri Dibiah* (1), where it is said: "It is perfectly consistent with the notion of its being joint property that it was purchased in the name of one member of the family, and that there are receipts in his name respecting it." See also the observations of Couch, C.J., in *Taruk Chunder Totadar* v. *Joodheshteer Chunder Koondoo* (2), in which he refers to the case last quoted, and to *Neelkisto Deb Burmona* v. *Beerchunder Thakoor* (3) to show that a similar contention to that now made by the appellant cannot be maintained.

There may be sufficient on the facts in evidence to raise a doubt whether some of the purchases were not effected from self-acquired funds. But Dévarájulu, as the evidence shows, was the manager of the joint family after his father's death, and, therefore, purchases in his name would not be inconsistent with their having been made from the joint funds.

The purchase in 1854 in the younger Perumál's name, during the lifetime of Dévarájulu his father, is more calculated to suggest the use of separate funds for the acquisition of it; and the execution, a little more than three months after this, of a conveyance by Ramánjulu in the joint names of Rungashayi and Perumál the younger, seems to point to a distinction in the character of the two several purchases. But there is no evidence to show that any of the acquisitions in the name of Dévarájulu or Perumál alone were made with separate funds, and in the absence of such evidence they must be presumed to be joint property. I think, therefore, that plaintiff's case fails, and that the appeal should be dismissed with costs.

Appeal dismissed.

(1) 3 Moo. I.A. 229 at p. 240; 5 W.R.P.C., 39.
(2) 19 W.R., 178.
(3) 12 Moo. I.A. 523; 12 W.R.P.C., 21.