

in it with his other coparceners. He is, as it were, divided from them in respect of it. If they take it by reason of his leaving no descendants and no widow, they take as heirs, not as coparceners. If this be so, such property would seem to enure as assets [152] of the deceased person for payment of his debts, and there appears no reason why the same principle should not apply in a family governed by *Marumakkattayam* law. We therefore hold that though the acquisition became tarwad property, it still remains liable for the debts of deceased *Unni Nambiar* in the hands of the members of the tarwad, and we dismiss the second appeal with costs.

#### NOTES.

[In the above case though the rule of succession in regard to the self-acquired property of a member of a Malabar tarwad, laid down in 2 M. H. C. R., 162, was accepted without question, still the principle of that decision, viz., that such property passed to the tarwad by survivorship was departed from, for, the reasoning by which the conclusion is arrived at necessarily involve the position that such property devolves upon the tarwad not by survivorship as parceners, but by inheritance as heirs.

The principle that there is no survivorship with regard to the self-acquisitions of a member of a Malabar tarwad was more distinctly laid down in 22 Mad. 9 where a member's power to dispose of such property by will was recognised.

But at the same time the rule of succession laid down in 2 M. H. C. R., 162 was followed or accepted as correct in 12 Mad. 126; 10 M. L. J., 57, and other cases till it was ultimately confirmed by the Full Bench decision in 19 M. L. J., 350. The ruling in 2 M. H. C. R., 162 and the cases following it applied, however, in terms to the property of a male member of a tarwad, the rule of succession to the property of a female member of a tarwad came up for discussion in 24 M. L. J., 240 where a Full Bench laid down that the self-acquisition of a female member of a *Marumakkattayam* tarwad does not lapse to the tarwad, but descends to her *thavazhi*.

Thus the law relating to this subject may be summarised as follows :—

- (1) The self-acquired property of a male member of a Malabar tarwad goes to the tarwad in preference to the *Thavazhi*.
- (2) The self-acquired property of a female member of a tarwad goes to the *thavazhi* in preference to the tarwad.
- (3) In either case, the property descends not by survivorship, but by inheritance.]

[4 Mad, 152.]

#### APPELLATE CIVIL.

*The 13th September, 1881.*

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE MUTTUSAMI AYYAR.

Karuppa Thevan.....(Plaintiff), Appellant

and

Alagu Pillai and others.....(Defendants), Respondent.\*

*Hindu law—Invalid alienation by widow in favour of son-in-law—  
Mortgage by son-in-law—Suit by mortgage against sons of  
mortgagor—Independent reversionary title qua daughters sons.*

\*Second Appeal No. 136 of 1881 against the decree of Arunachella Ayyar, Subordinate Judge of South Tanjore confirming, the decree of A. Anugraham Pillai, District Munsif of Pattukotai, dated 2nd November 1880.

R. a Hindu, had two daughters by his wife K. One daughter married S. and died in K's lifetime, leaving two sons, the defendants. The other daughter was alive at the date of suit. On the death of her husband, K succeeded to his estate and sold some land to S, without adequate necessity. S mortgaged this land to T.

*Held*, in a suit by T after the death of S and K against the defendants to enforce the terms of the mortgage, that the defendants were entitled to object to the validity of the sale to their father by K, in their own right, in answer to T's claim.

The restrictions on the father's power to alienate ancestral property are incidents of coparcenary, whereas the right to sell possessed by a widow is but a qualified power given for certain specified purposes over the reversion created by law in favour of the ultimate male heirs.

THE facts and arguments in this case appear in the Judgment of the Court (INNES and MUTTUSAMI AYYAR, JJ.).

*Bhashyam Ayyangar* for Appellant.

Hon. T. Ramu Rau for Respondents.

**Judgment**:—The suit from which this appeal arises was brought by the plaintiff (appellant) to recover possession under a mortgage executed in his favour by the first and second defendants' father, Sellamuttu Pillai, on the 11th November 1878. The land under mortgage originally belonged to Appavu Pillai, the first and second [153] defendants' maternal grandfather, and passed from him to his widow Karuppai. Though the plaintiff alleged that it was Karuppai's Stridanam the Lower Courts have found against that allegation. Some time before her death, Karuppai sold the land to Sellamuttu Pillai, who instituted Suit 403 of 1876 against her, and in execution of the decree passed therein in his favour, obtained possession of the land under Section 264 of the Code of Civil Procedure. After his death, as alleged by the plaintiff, the first and second defendants entered into possession, and their maternal grandmother died eight months prior to the suit, leaving her surviving a daughter with children, the first and second defendants' mother having predeceased her. The Lower Courts have found that the plaintiff failed to prove such necessity as would, under Hindu Law, justify the sale by a widow of her husband's property. In the Court of First Instance the plaintiff contended that the first and second defendants took the land as their father's heirs, and that it was not competent to them to question his title; but this contention was overruled on the ground that it was not proved that the first and second defendants entered into possession after their father's death. On appeal it was urged in the Lower Appellate Court that the first and second defendants were not entitled to the land in dispute, their mother having predeceased Karuppai, and that these defendants took proceedings under the decree in Original Suit 403 of 1876, acknowledging the purchase by, and delivery of possession to, their father, as though they bound themselves by his act. Neither of these grounds of objection was noticed by the Subordinate Judge in his judgment, and on second appeal it is argued that, after Karuppai's death, her property, if any, vested in her surviving daughter; that the first and second defendants are not at liberty to plead their aunt's title in answer to the claim; and that they have no *locus standi* at all in this suit.

The first question is whether this case should be remitted to the Court below in order that the surviving daughter of Karuppai may be made a party. It is not alleged that she is in possession, and even if she were made a party, she would have to institute another suit to obtain possession. As any judgment that may be passed in this case will not bind her, it is not necessary to make her a party for the purpose of protecting her interests. Further, [154] the plaintiff does not profess to claim under her, and he is therefore not entitled to insist that this litigation should be protracted by her being made

a party and a fresh trial ordered. It is next urged in support of this appeal that though the first and second defendants may, in a certain event, be ulterior male heirs, they have no present interest, and that under the Hindu Law women, whether widows or daughters, represent the inheritance. But it must be observed that although they represent the inheritance for certain purposes, still they take but a qualified heritage. In comparing the widow's power to alienate the reversion in a certain exigency with the restrictions on the father's power to alienate ancestral property, it should be remembered that the restrictions in the one case are the incidents of coparcenary, while the right to sell in the other is not an incident of inheritance, but a qualified power given for specified purposes over the reversion created by law in favour of the ulterior male heirs. If the daughter's son is but a contingent reversioner by virtue of this power and has no *locus standi*, because one of the daughters is alive and she represents the inheritance, it may be contended, with equal force, that even the daughter had no vested interest during her mother's life, inasmuch as the mother then represented the inheritance. The fallacy in the contention consists in comparing a power over the reversion vesting in the next male heir under Hindu Law with the restriction on the alienation by a male owner of his own property. The first and second defendants are therefore entitled to object to the sale to their father in their own right and not simply by virtue of their aunt's title. In this view it is unnecessary to decide for the purpose of this suit whether it is open to the first and second defendants to rely on their aunt's title in answer to the claim. The only question then which remains to be considered is whether the first and second defendants are estopped by their conduct from denying their father's title. Though certain proceedings are referred to in the memorandum of appeal filed in the Lower Appellate Court as creating his estoppel, and the Subordinate Judge has failed to notice them in his judgment, this ground of objection was not relied upon at the hearing of this appeal.

We think, therefore, that this appeal fails, and that it must be dismissed with costs.

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[155] APPELLATE CIVIL.

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*The 13th September, 1881.*

PRESENT:

SIR CHARLES A. TURNER, K.T., CHIEF JUSTICE, AND MR. JUSTICE  
MUTTUSAMI AYYAR.

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Appaya and another.....Appellants

*and*

The Collector of Vizagapatam.....Respondent.\*

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*Application for recovery of amount of Court fees under Section 411 of the  
Code of Civil Procedure—Limitation.*

Government is not entitled to any exemption from the provisions of the Indian Limitation Act, 1877, relating to applications.

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\* C. M. A. No. 412 of 1881 against the order of A. L. Lister, Acting District Judge of Vizagapatam, dated 18th March 1881.