VENKAYYA v. SUBBA-RÁYUDU.

JUDGMENT:—The office of karnam in this zamíndárí village was hereditary in the plaintiff's family. It was originally held by three brothers, but on the death of one of them without issue the rájá considered that the work could be well conducted by the remaining two, and that it was not necessary to appoint a third. These two were succeeded in due course by their sons, of whom one—the plaintiff's father, Buchanna—has now resigned in consequence of old age.

The plaintiff's elder brother was appointed to succeed his father.

The rájá now wishes to reappoint a third karnam and has nominated an outsider to the joint tenancy of this hereditary office.

Such a course is opposed to s. 7, Regulation XXIX of 1802, which provides that the heirs shall be chosen except in the case of incapacity. It has been held by this Court in *N. Krishnamma* v. *N. Papá* (1) that the word "heir" means "next of kin," and judged by this ruling plaintiff is the proper person to be nominated, since his brother and cousin are already karnams and his father has declared himself incapable from old age—*vide* also *Arumugám Pillai* v. *Vijayammál.* (2)

The appellant has no preferential claim as an heir, and the appeal must be dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Kernan and Mr. Justice Muttusámi Ayyar.

1886. April 2.

QUEEN-EMPRESS

against

DORASÁMÍ.*

Penal Code, s. 75—Trial of prisoner of offence under ch. XII or XVII after previous conviction.

If a prisoner is to be tried for an offence punishable under s. 75 of the Indian Penal Code, a separate charge under that section must be framed and recorded.

APPEAL from the sentence of the Presidency Magistrate's Court, Black Town, in calendar case No. 20239 of 1885.

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(1) 4 M.H.C.R., 234. (2) I.L.R., 4 Mad., 338.

* Criminal Appeal 71 of 1886.

QUEEN-EMPRESS v. DORASÁMÍ.

The facts necessary for the purpose of this report appear from the judgment of the Court (Kernan and Muttusámi Ayyar, JJ.).

Counsel were not instructed.

KERNAN, J.—We think that the practice of the Presidency Magistrates' Court is not consistent with the provisions of the Criminal Procedure Code.

The practice appears to be to charge the prisoner, say, of theft. No charge under s. 75 of the Indian Penal Code is placed on the record, but if the prisoner is convicted the Magistrate questions the prisoner whether he was convicted of the prior offence whatever it is. To this inquiry the prisoner replies either admitting or denying the fact; and, if he denies, the Magistrate without framing a charge tries him. If convicted then the Magistrate in his judgment, as in this case, refers to the prior conviction as a ground for increasing the punishment beyond what should be given for a first offence.

No doubt the sentence pronounced may be, and in this case was, within the competence of the Magistrate to inflict for the first offence.

But the object and direction of the Code are that for each offence there must in warrant cases be a separate charge. We will not interfere with the sentence, and we dismiss the appeal; and no doubt the Magistrate will in future cases follow the views of this Court and in such cases frame a charge under s. 75 and try on that charge.

APPELLATE CIVIL.

Before Sir Charles A. Turner, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.

SIVASUBRAMANYA (PLAINTIFF), APPELLANT,

and

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), RESPONDENT.*

1884. July 21. 1885. April 30.

Forest land—Enjoyment—Adverse possession—Quasi possession—Prescription.

In a suit by a zamindár to recover certain forest tracts from Government, the plaintiff relied on certain accounts called ayakut accounts as furnishing proof of the inclusion of the said tracts within the limits of his zamindári.

* Appeal 1882 of 1883.