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authority, their notification is to that extent invalid. The latter conclusion has been arrived at by the High Court of Bombay on the same ground. *Lallu Ganesh* v. *Ranchhod Kahandás.*(1)

The proceedings of the District Múnsif in this case must be quashed as without jurisdiction. The judgment-debtor must pay the costs of this appeal as well as the appellant's costs in the Múnsif's Court. *The revision petition No. 180 of 1885 will be simply dismissed. The order of the District Múnsif was one made under s. 351 and therefore an appeal lay to this Court under ss. 588, cl. (17) and 589. In such an appeal it is open to the appellant to take the preliminary objection that the Court had no jurisdiction to make such an order.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

1885. Sept. 14, 22.

CHENCHAMMA (DEFENDANT No. 4), APPELLANT,

and

SUBBAYA AND ANOTHER (PLAINTIFF AND DEFENDANT No. 3), RESPONDENTS.*

Hindú Law—Illatam custom—Status of son-in-law—Co-parcenary—Survivorship—Proof of special custom.

Although an illatam son-in-law and a son adopted into the same family may live in commensality, neither they nor their descendants can, in the absence of proof of custom, be treated as Hindú co-parceners having the right of survivorship.

THIS was an appeal from the decree of L. A. Campbell, District Judge of Nellore, confirming the decree of V. Rámá Ayyar, Acting District Múnsif of Ongole, in suit 571 of 1882.

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

Mr. *Wedderburn* for appellant.

Rámachandra Ráu Sahib for respondents.

MUTTUSÁMI AYYAR, J.—Both parties to this second appeal derive their claim from one Nalluri Ramanappa. He gave his daughter Mangamma in marriage to one Ala Ayanna and admitted

(1) I.L.R., 2 Bom., 641.

* Second Appeal 904 of 1884.

him into his family as illatam son-in-law. Subsequently, Ramanappa adopted one Venkataramanappa. Ala Ayanna had by Mangamma a son named Rámudu and a daughter named Sitamma. Venkataramanappa married Sitamma and had by her a son named Punnaya and a daughter named Chenchamma who is the appellant before us. On Mangamma's death, Ala Ayanna married another wife, and, in consequence of this marriage, a disagreement arose between him and the other members of the family. Thereupon, Ala Ayanna left the family with his second wife, but, before doing so, he renounced his illatam rights, with the consent of the rest of the family, in favor of his son Rámudu. It is found by the Judge that Rámudu, the son of Ayanna, enjoyed, in commensality with Venkataramanappa, the property belonging to the family, and to this finding no objection has been taken. Rámudu and Venkataramanappa died first, and Punnaya, Venkataramanappa's son, died afterwards. Sitarámudu, the son of Rámudu, and Chenchamma, the sister of Punnaya, and Ala Ayanna are the only members of the family now alive. In October 1881, the respondent No. 1 purchased the land in suit, which admittedly belonged to the family, from the guardian of Sitarámudu, who is a minor, and brought this suit to recover possession. Both the Lower Courts upheld the purchase and considered that, as the sole surviving male coparcener of the joint family, the minor Sitarámudu was entitled to the whole property. It was urged in second appeal that Ayanna having separated from his father-in-law, he could not assign his illatam right to his son, and that, even if it was assignable, Venkataramanappa's adoption put an end to that right. When the second appeal came on for disposal on the 9th March last, three issues were referred for trial with reference to the customary law, viz., (1) What share is taken by an illatam son-in-law in competition with an adopted son? (2) Whether there can be union between an adopted son and an illatam son-in-law or the son of an illatam son-in-law? (3) Whether an illatam son-in-law inherits from an adopted son's son. But neither of the parties produced evidence of usage in regard to any of these points.

Ala Ayanna was taken as illatam son-in-law before Venkataramanappa was adopted, and, in the absence of evidence in regard to any special usage, I do not see my way to hold that the adoption could divest any interest which had already vested in Ayanna. Nor do I see any ground for the contention that it was not

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competent to Ayanna to renounce his illatam right in favor of his own son. It is found by the District Múnsif that this renunciation was made with the consent of the rest of the family, and the Judge has adopted the finding. As an illatam son-in-law and the natural son share equally, we see no reason to think that the adopted son could be in a better position than the natural son. The question which remains to be considered is whether, when an illatam son-in-law and an adopted son live in commensality, they are to be regarded as co-parceners. The right of survivorship is an incident under Hindú Law of co-parcenary, which is only possible between the male descendants of a common paternal ancestor, and, in the absence of proof that it is also an incident of the illatam custom, we are unable to treat it as such, for the custom derogates from the Hindú law, and the extent to which it does so must be proved like any other fact when it is disputed. We can therefore only uphold the sale to respondent No. 1 to the extent of Sitarámudu's share and decree to him possession of a moiety of the land in suit. I would modify the decrees of the Lower Courts accordingly and award proportionate costs.

HUTCHINS, J.—The sole question is whether the lands in dispute belonged to the appellant, Chenchamma, or to the minor Sitarámudu whose rights have been assigned to the plaintiff, now respondent No. 1, or to both, and if to both in what shares.

On the findings, we must take it that the minor has succeeded to all the illatam rights of his grandfather, Ala Ayanna. Both the Courts below agree that Ala Ayanna's evidence may be implicitly relied on: he became affiliated to Nalluri Ramanappa as illatam, and his account is that some time after Ramanappa's death, his wife, the daugher of Ramanappa, having died and he having married again, he was asked by Chenchamma's father—an adopted son of Ramanappa with whom till then he had lived in commensality—to relinquish his illatam right to his son Rámudu and quit the Nalluri family, and that he did so accordingly. It follows that whatever right to the property in dispute was formerly vested in Ala Ayanna was transferred to Rámudu with the assent of Chenchamma's father, and Chenchamma herself cannot question the validity of the transfer. The rights of Rámudu have now passed to his son, the minor Sitarámudu, by inheritance. So it has been found, and even if the finding is not indisputable as it seems to

me to be, it has become conclusive by appellant's failure to object to it.

Thus all the illatam rights formerly vested in Ayanna are now vested in his grandson Sitarámudu, and we have next to see in what those rights consisted with regard to this particular property. After Ramanappa's death, when his illatam son-in-law and his adopted son lived in commensality, were they Hindú co-parceners to all intents and for all purposes, or joint tenants, or tenants in common? Whatever their true relation, it must be remembered that Rámudu took exactly his father's place by mutual consent and the very same relation, and no other, was continued between Chenchamma's father and Rámudu.

The learned Counsel for the appellant maintains that they were not co-parceners, but join tenants. His contention is that Rámudu having predeceased Chenchamma's brother, Punnaya, the former's rights did not pass to his son by representation, as would have been the case if they had been true co-parceners, but to the other joint tenant, Punnaya, by survivorship. He overlooked, however, that the original co-parcenary or joint tenancy was between Rámudu and Punnaya's father, and that no interest could have passed even to Punnaya himself except upon the principle that the son represents the father. Yet there is no doubt that the interest of Punnaya's father devolved on Punnaya himself and the patta was for many years in his name.

But I see no reason why Rámudu and Punnaya's father should be supposed to have been joint tenants, and, in the absence of evidence on the third issue remitted, I do not see my way to holding that they were fully co-parceners. It seems to me that they were merely tenants in common if they were not co-parceners, and *Hanumantamma* v. *Rámi Reddi*(1) is an authority for saying that Rámudu's share was a full moiety. It follows that the minor's share, now conveyed to respondent No. 1, was also a moiety and the decree in his favor must be modified accordingly.

Although the respondent No. 1 brought his suit in ejectment and has only proved a title to partition, there is no reason why the decree should not run as for the delivery up of half the land. I agree that the costs should be borne throughout proportionately.

(1) I.L.R., 4 Mad., 272.