therefore the plaintiff cannot recover from the defendants on that footing. On this point the learned Judge is right.

Then it is said that there has been default on the mortgagor's part within the meaning of clause (*b*), section 68 of the Transfer of Property Act. The alleged default is the non-payment of the amount due on the first mortgage which led to the sale of the mortgaged property. And in this connection our attention is drawn to clause (*c*), section 65 :—"and where the mortgage is a "second or subsequent incumbrance on the property, that the "mortgagor will pay the interest from time to time accruing "due on each prior incumbrance as and when it becomes due, "and will, at the proper time, discharge the principal money "due on such prior incumbrance." In the absence of an express contract to the contrary, this clause would certainly be an authority for implying a contract on the part of the mortgagor in favor of the second mortgagee to pay the first mortgage debt on its becoming due, and a breach of a covenant, whether express or implied, would equally be a default within the meaning of clause (*b*) of section 68. The conclusion arrived at by the Small Cause Court is therefore right. We must set aside the order of the learned Judge and restore the decree of the Small Cause Court.

The revision petition is dismissed with costs including the costs of this appeal.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

1889. Sept. 30.

KANDASAMI (DEFENDANT No. 3), APPELLANT,

v.

AKKAMMAL AND OTHERS (DEFENDANT No. 2 AND PLAINTIFFS Nos. 1 AND 2), RESPONDENTS.*

Specific Relief Act—Act I of 1877, *s.* 42—*Declaratory decree—Suit by reversioner.*

The intervention of two life estates does not preclude the reversioner from obtaining a declaration of his interest as to land under Specific Relief Act, s. 42.

SECOND APPEAL against the decree of G. D. Irvine, Acting District Judge of Coimbatore, in appeal suit No. 48 of 1888, confirming

* Second Appeal No. 88 of 1889.

KANDASAMI v. AKKAMMAL.

the decree of T. Dorasami Pillai, District Munsif of Erode, in original suit No. 444 of 1884.

The plaintiffs sued as the brothers of one Gopal Chetty, deceased, (the husband of defendant No. 2, and the father of the deceased husband of defendant No. 1,) for a declaration that certain alienations of the property of their late husband, made by defendants Nos. 1 and 2, respectively, in favor of defendant No. 3, were invalid as against the plaintiffs' reversionary interest.

Defendants Nos. 1 and 2 were *ex parte* throughout. The District Munsif passed a decree as prayed, which was affirmed on appeal by the District Judge.

Defendant No. 3 preferred this second appeal.

Mr. Subramanyam and Mr. *DeRozario* for appellant.

Rama Rau for respondents.

The arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court.

JUDGMENT.—It is urged that the District Judge was in error in holding that the suit was maintainable under section 42 of the Specific Relief Act. The last male owner was one Sanjivi Chetty, the first defendant is his widow, and the second his mother. As the half-brothers of Sanjivi Chetty's father and the next male reversioners, the plaintiffs brought this suit to set aside a mortgage executed by the first defendant in favor of the third defendant. Under section 42 of the Specific Relief Act, illustration (*e*), it is clear that, where there is an alienation by a Hindu widow to the prejudice of the male reversioner, he is entitled to maintain a suit for a declaration that the alienation is not binding upon the reversion. It was also held by the Judicial Committee in *Rani Anand Kunwar* v. *The Court of Wards*(1) that as between the presumptive reversionary heir and a more remote reversioner the latter was not entitled to maintain a suit for a declaratory decree, unless he showed collusion between the former and the widow. The question for decision in this appeal is whether the relation between the second defendant and the plaintiff is that of the nearer and the more remote reversioners within the meaning of the Privy Council decision. The second defendant has only a widow's estate, which under the Mitakshara law is a qualified heritage and

(1) I.L.R., 6 Cal., 764.

an estate interposed between the last male owner and the next full owner. We are of opinion that the Judge was right in holding that the intervention of two life estates does not alter the nature of the reversionary interest, which section 42 was intended to protect. His view is in accordance with the observations made by this Court in *Narayana* v. *Chengalamma*(1) and by the Privy Council in *Anant Bahadur Sing* v. *Thakurain Raghunath Kour*(2). Another objection urged upon us is that the alienation made by the first in favor of the third defendant is binding on the reversion. Both the Courts below find that the appellant, who dealt with a Hindu widow and was therefore bound to show affirmatively the legal necessity which made the alienation by her binding on the reversioners, has failed to establish such necessity. The question whether there was such legal necessity is one of fact, and we are concluded by the concurrent findings of both the Courts below.

This second appeal fails and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1889.
August 20.
October 8.

BERESFORD (DEFENDANT), APPELLANT,

v.

RAMASUBBA AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Hindu Law—Impartible zamindari—Right of zamindar to alienate—Civil Procedure Code, ss. 437, 464*—Regulation V of* 1804 *(Madras), ss.* 2, 8*—Suit by a ward of the Court of Wards—Non-joinder and misjoinder of parties.*

The holder of an impartible zamindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend, (authorized in that behalf by the Court of Wards,) now sued the assignee of the lessee to have the lease set aside. The second plaintiff was the grantee from the Court of Wards (acting on behalf of the minor zamindar) of certain mining

(1) I.L.R., 10 Mad., 1. (2) L.R., 9 I.A., 53.

* Appeal No. 2 of 1889.