The Court (Collins, C.J., and Parker, J.) delivered the following JUDGMENT :—The question is whether the landlord has a right to charge water-cess when a wet crop is cultivated on dry land, and when a second wet crop is cultivated on wet land.

It is not denied that the water taken for these purposes is taken from the proprietor's tank.

This is not a question of a landlord having, at his own expense, repaired a tank and rendered land formerly cultivated as punjah cultivable as nunjah, as in *Kottasawmy* v. *Sandama Naik*(1), but the question is whether the tenant can be called upon to pay for extra water taken from the landlord's tank for special crops. There is nothing illegal in such a charge see *Vaythenátha Sástrial* v. *Sámi Pandither*(2).

In the present case there is no dispute about the rate of assessment.

The appeal must be allowed and the decree of the Lower Appellate Court reversed and that of the Temporary Deputy Collector restored.

The respondents must pay appellant's costs in this and in the Lower Appellate Courts.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt and Mr. Justice Parker.

MUTTIA (COUNTER-PETITIONER), APPELLANT,

and

VÍRAMMÁL (PETITIONER), RESPONDENT.*

1886. Oct. 13. 1887. April 29.

Hindú Law—Execution of decree for maintenance of widow—Liability of ancestral estate.

Maintenance decreed to a coparcener's widow by reason of her exclusion from succession in a joint family cannot be regarded as a charge on the family estate or the decree treated as a decree against the managing member of the family for the time being.

(1) 5 M.H.C.R., 294. (2) I.L.R., 3 Mad., 116.

* Appeal against Appellate Order No. 1 of 1886.

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A, the widow of an undivided member of joint Hindú family, obtained a decree for maintenance against B, the brother of her deceased husband, not expressed to be a decree against the head or representative of the joint family.

B died, and C, his son, having been brought in as his representative, resisted the execution of the decree by attachment of the family estate:

Held, that the family estate was not liable.

Per cur.—In a regular suit, C may clearly be held liable to pay maintenance to A, and a decree may be passed against him; but in execution proceedings the decree must be taken as it stands and executed against the son as his legal representative in the mode prescribed by s. 234 of the Code of Civil Procedure, and it is not open to extend the scope of the decree in such proceedings—*Karpakambál* v. *Subbayyan* (I.L.R., 5 Mad., 234) approved and followed.

APPEAL against an order of J. W. Reid, District Judge of Coimbatore, confirming an order made by P. Náráyanasámi Ayyar, District Múnsif of Coimbatore, in Original Suit No. 19 of 1872.

In the above suit one Vírammál obtained a decree for maintenance against Venkatakristna Gounden, the undivided brother of her deceased husband, not expressed to be a decree against the head or representative of the joint family. The decree was executed from time to time against Venkatakristna Gounden, and, on his death, his son, Muthu Gounden, was brought on to the record as his legal representative. The plaintiff now filed Civil Miscellaneous Petition No. 210 of 1885 in the above suit applying for the execution of her decree by the attachment of a house, which formed part of the ancestral property of the family.

The defendant opposed the petition on the ground that the maintenance decreed to the petitioner did not constitute a charge on the family estate.

Both the Lower Courts held that the family house was liable for the decree amount and ordered accordingly.

Bháshyam Ayyangár for appellant.

The decree to be executed was only a decree for money passed against the appellant's father in a suit to which the appellant was no party; therefore, the decree-holder is not entitled to execute the decree by the attachment of ancestral property which has passed to the appellant by survivorship.—*Karpakambál* v. *Subbayyan*, I.L.R., 5 Mad., 234, does not apply; for, in the present case, the property sought to be made liable was not the self-acquired property of the father.—*Nanomi Babuasin* v. *Modhun Mohun* (I.L.R., 13 Cal., 21) was also referred to.

Rámánujáchárydr for respondent.

The further arguments adduced on this appeal appear suffici-

ently for the purpose of this report from the order of reference and the judgment of the Court.

This appeal came on for hearing on 30th July 1886, before Muttusámi Ayyar and Brandt, JJ, who seeing reason to doubt the correctness of the decision in *Karpakambál* v. *Subbayyan*, decided to refer the case to the Full Bench, and accordingly made the following

ORDER OF REFERENCE:—The respondent, the widow of a deceased brother of the minor appellant's father, an undivided member of a joint family, had a decree for maintenance against the appellant's father, now deceased.

The minor appellant's name was entered on the record as the representative of the original decree-debtor, and the question is whether the Courts below are right in holding that the ancestral property of the family now represented by the minor is liable in execution of the decree.

The District Múnsif referred to the Full Bench decision in the case of *Karpakambál* v. *Subbayyan*(1), but held, on the authority of the *Sivagiri case*(2), subsequently decided, that the "estate which a son takes by heritage from his father constitutes assets by descent for the payment of the father's debts," being debts not incurred for vicious or immoral purposes.

The District Judge appears to have considered *Karpakambál's* case to be an authority for holding that a decree for maintenance, such as we have to deal with here, can be executed against all the right and interest of the son to the extent of the assets descended to him from his father, and that the right and interest of the son in the ancestral property descending to him constitute assets liable in execution of such decree.

It is doubtful if the District Judge rightly apprehended the principle of the decision in *Karpakambál's* case, and we are bound by that decision, which, unless it be reconsidered and modified or overruled by another Full Bench decision, is conclusive, and the orders of the Courts below must be reversed.

Having considerable doubts as to whether that case is decided on correct principles, and seeing reason to doubt whether the view now propounded is not more correct, we resolve to lay this case before the Full Bench in view to discussing the question whether

(1) I.L.R., 5 Mad., 234. (2) I.L.R., 6 Mad., 1.

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there are or are not sufficient grounds for reconsidering that decision on the following grounds.

If the decree passed against the deceased had been expressed to be passed against him as representing the undivided family, or if the ancestral property had been indicated as the source from which the maintenance was to be provided, it could no doubt be executed against that property in the hands of the appellant. Is it not an inference necessary from the facts of the case itself that the decree was passed against the deceased in his capacity of representative of the family, and that it was intended to be satisfied by means of the ancestral property, if any? It is suggested that the true principle upon which the solution of the question appears to depend is as follows: according to the Mitakshara law, widows of coparceners are excluded from inheriting their husbands' shares, and in consideration of their exclusion from such inheritance, the right of survivorship is burdened with the obligation to provide for their support. The right then that survived to the appellant's father survived as a potentiality, in other words what actually survived was the difference between the value of the undivided share, and the cost of the widow's maintenance during her life; and having regard to this legal basis of a decree for the maintenance of an undivided brother's widow, the decree might be taken to be a decree passed against the appellant's father as the head or representative for the time being of his branch of the joint family. We would observe that it does not appear from the report in *Karpakambál's* case, whether the maintenance was awarded to the widow of an undivided coparcener, or to a mother, or other female relative.

We would also draw attention to the results which must follow if the decision in that case is correct; it would, in such case, be necessary for a widow of a coparcener in a joint Hindú family in Southern India to institute a fresh suit for maintenance as often as the head or managing member of the joint family happens to die.

The decision must be in accordance with the true principles of the law applicable, but if decrees for maintenance in such cases cease to have effect on the death of the person originally made a party to the suit, it may be matter for consideration whether it is not desirable to have recourse to the assistance of the Legislature.

This appeal came on for hearing before the Full Bench

(Collins, C.J., Kernan, Muttusámi Ayyar, Brandt and Parker, JJ.), on 13th October 1886 and on 29th April 1887, the following judgment was delivered :—

JUDGMENT.—In this case the respondent obtained a decree against the appellant's father, since deceased, for her maintenance, in Original Suit No. 19 of 1872 on the file of the District Múnsif of Coimbatore. It is conceded that the maintenance awarded was not charged in the decree against family or ancestral property. Nor does it appear that the decree was in terms a decree against the head or representative of the joint family. So long as the appellant's father was alive, the decree was executed against him from time to time. For some time after his death, the appellant's guardian paid the maintenance whenever the decree was put into execution. When the respondent attempted to execute the decree in 1885 by attaching a house, the guardian objected to the attachment, alleging that the appellant's father left no separate estate, and that, as the ancestral property survived to the appellant on the death of his father, a mere personal decree against the latter could not be executed against the former who had inherited no separate estate from the judgment-debtor. The District Múnsif overruled the objection on the ground that the house, which was ancestral, formed assets in the son's hands available for the payment of the father's debts, provided they were neither vicious nor immoral. The District Judge upheld the order in appeal, relying on the decision of the High Court in *Karpakambál* v. *Subbayyan*(1). In that case, there was a decree for maintenance against the respondent's father, but it did not appear on the face of the decree that he was sued as the manager of the family. It was held by the Full Bench of this Court that, though a decree can be executed against the sons for arrears which have accrued since their father's death, it can only be executed against them as representatives of their father, and, until his assets are exhausted, it being, of course, understood, that, on the father's death, the interest he had in his lifetime in joint ancestral property lapsed, and would not be available as assets.

This decision, far from supporting the order made by the Judge, is clearly an authority against it.

Muttayyan v. *Sangili Vera Pandia Chinnatambiar*(2), on which

(1) I.L.R., 5 Mad., 234. (2 I.L.R., 6 Mad., 1, s.c. L.R., 9 I.A., 128.

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the District Múnsif relied, shows only that in a regular suit ancestral property that has survived to the son may be treated as assets for the payment of the father's debts, those debts being neither vicious nor immoral. It is not a decision as to the extent to which a personal decree against the father can be executed against his son as his representative under s. 234 of the Code of Civil Procedure.

The question referred by the Division Bench in this appeal is, whether maintenance decreed to a coparcener's widow by reason of her exclusion from succession in a joint family cannot be regarded as a charge on the family estate or the decree treated as a decree against the managing member of the family for the time being. It now appears, upon further consideration, to Muttusámi Ayyar and Brandt, JJ., who entertained some doubt on the point, as well as to the rest of the Court, that the question must be answered in the negative. In a regular suit the appellant may clearly be held liable to pay maintenance to the respondent, and a decree may be passed against him; but, in execution proceedings, the decree must be taken as it stands and executed against the son as his legal representative in the mode prescribed by s. 234 of the Code of Civil Procedure, and it is not open to extend the scope of the decree in such proceedings. As to the observations contained in the order of reference, it may be pointed out that the difficulty suggested may be obviated by the person entitled to maintenance obtaining a decree making it a charge on the family property, if any, or making the judgment-debtor liable as the representative of the undivided family. We are, therefore, of opinion that the decision of the Full Bench in *Karpakambál* v. *Subbayyan*(1) must be adhered to, and that the case must be referred back to the Division Bench for disposal with reference to the foregoing observations.

This second appeal came on for hearing on 15th July 1887 before the Division Bench (Muttusámi Ayyar and Brandt, JJ.), when the following judgment was delivered :—

In accordance with the decision of the Full Bench, the orders of the Courts below are set aside, and the application for execution is dismissed with costs throughout.

(1) I.L.R., 5 Mad., 234.