

## APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, *Kt.*, Chief Justice, and  
Mr. Justice Brandt.

1886.  
October 1.

ABD UL RAHIMAN (RESPONDENT), PETITIONER,  
and

KUTTI AHMED (PETITIONER), RESPONDENT.\*

*Act XIX of 1841, s. 3—Civil Procedure Code, s. 622.*

Where a District Court purporting to act under s. 4 of Act XIX of 1841 directed an inventory of the estate of a deceased person to be taken without conforming to the requirements of s. 3 of that Act, the High Court set aside the order under s. 622 of the Code of Civil Procedure as made without jurisdiction.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order made by J. W. Best, District Judge of South Canara, on a petition presented under Act XIX of 1841.

On an application made under Act XIX of 1841 by the next friend of Kutti Ahmed, a minor, alleging that he was entitled to the estate of Kunhamed, deceased, his grand-uncle, and praying that an inventory of the estate left by the deceased might be taken, Abdul Rahiman opposed, claiming to be entitled to the said estate under an agreement executed by the deceased which he produced in Court. This agreement was impugned by the minor's mother's sister, Biyatamma, a party to it, who was examined by the Court. The District Judge under these circumstances held that the case was a proper one for the taking of an inventory of the movables and made an order to that effect.

To set aside this order Abdul Rahiman made the present application.

The Acting Advocate-General (Mr. Shephard) and Gopala Rao for petitioner.

Mr. Subramanyam and Narayana Rao for respondent.

JUDGMENT.—In our opinion the District Judge has acted without jurisdiction in making the order to which exception is taken. He has not set forth the facts necessary to show jurisdic-

\* Civil Revision Petition 119 of 1886.

by art. regard to the requirements of s. 3 of Act XIX of 1841. On the contrary, after citing the parties and having them before him, he has himself recorded that they may properly be left to their remedy by means of a regular suit, so far as the dispute between them is concerned.

In these circumstances, his jurisdiction under Act XIX of 1841 ceased. The order for taking an inventory had not been made prior to the time when he decided that the parties should be referred to a regular suit, and the Judge had no jurisdiction then to make an order for such inventory to be taken. He directs that the inventory is only to be taken in certain circumstances and under certain conditions; but the Act does not contemplate such order being made subject to conditions. The order appears to us to be made without jurisdiction and must be set aside on that ground. The respondent must pay the petitioner's costs in this Court.

ABDUL RAHY-  
MAN  
v.  
KUTTI  
AHMED.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice,  
and Mr. Justice Parker.*

TELLIS (PLAINTIFF), APPELLANT,

and

SALDANHA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Indian Succession Act, 1865, effect of, on estates of Native Christians previously following Hindú law.*

A and J, brothers, Native Christians, descendants of Brahmans, were living in coparcenary and owned certain land on the date when the Indian Succession Act, 1865, came into force. In 1872, no partition having been made, A died :

*Held* that J did not take the whole estate on the death of A by survivorship.

APPEAL from the decree of C. Venkoba Ráu, Subordinate Judge at Mangalore (South Canara), modifying the decree of A. Venkataramana Pai, District Múnsif of Mangalore, in suit 286 of 1883.

The facts of the case, so far as they are necessary for the purpose of this report, are set out in the judgment of the Court (Collins, C.J., and Parker, J.).

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1885.  
Aug. 20.  
Oct. 8.

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\* Second Appeal 1053 of 1885.