

PRIVY COUNCIL.

VENKATADRI APPA RAU (PLAINTIFF)

and

PEDA VENKAYAMMA AND OTHERS (DEFENDANTS).

F. C.
* J. C.
1886.
July 7.

[On appeal from the High Court of Madras.]

Attempt to control the descent of property—Res judicata.

Two brothers having divided their family estate, each took a share consisting of villages which they held separately, agreeing in the instrument of partition that “the villages of the shares of both of us should in future descend only to the sons and grandsons, and so on of us both, but must not go to any others.”

On the death of one brother leaving a widow and daughters, the widow obtained possession of the villages which formed her husband's share, and a suit brought against her by the other brother to recover them was dismissed on the ground that the divided shares descended according to law. The widow then transferred the villages to her elder daughter, whose right to the possession, as against the brother, was declared in the present suit on the ground that, as between the widow and the brother, the question of the widow's title was *res judicata*.

APPEAL from a decree (26th February 1884) of the High Court, affirming a decree (16th March 1883) of the District Judge of Godávári.

About the year 1835, the brothers Simhadri and Venkatadri, Rájás belonging to the Nuzvid family, received from their elder brothers, the zamíndárs of Nidadavole and Nuzvid, respectively, a grant of certain villages in the Godávári district by way of permanent and heritable maintenance. On the 7th August 1846, the two brothers entered into an arrangement for the separate holding of these villages by them, each taking his separate share and agreeing in a samákhyá or partition deed of that date to the following effect :—“As both of us are born of the same mother, the villages of the shares of both of us should in future descend only to the sons and grandsons, and so on, of us both, but must not go to any others.” An entry in accordance with the above was made in the collectorate books and the separation was carried out.

Simhadri died in November 1861, Venkatadri surviving him, and left a widow, Sithaya, and two daughters; and the widow

* Present: Lord WATSON, Lord HONHOUSE, Sir BARNES PEACOCK, and Sir RICHARD COCKE.

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obtained possession of the villages which had been allotted to her husband. These, by suit in 1863, Venkatadri sought to recover from her, alleging that he had been joint with his late brother, and that, by usage from time immemorial in the family, women did not inherit. This suit was dismissed, the Court holding that the deed of 1846 was an ordinary partition deed in its effect and that the alleged special custom was not proved. This decree was affirmed by the High Court.

By an instrument executed on the 24th April 1880, Sithaya transferred all the villages in her possession, as above stated, to her elder daughter, Peda Venkayamma, the first respondent, in consideration of her assuming the management thereof and discharging all the debts payable by her mother, including Rs. 20,000 stated in the document to be due to the elder daughter, whose sister, in the event of her death, was to succeed her, the issue of the younger daughter taking ultimately.

Venkatadri opposed the entry of this transfer in the collectorate books and Peda Venkayamma, accordingly, brought against him the present suit to obtain a declaration of her right to possession of the villages. He contended that the alienation by Sithaya was inoperative in consequence of the effect of the agreement of 1846 between himself and his deceased brother; also that it was contrary to the custom of the family that females should hold the family estate.

The District Judge held that effect should be given to the transfer made in 1880 by Sithaya. The questions whether or not the estate was still family estate, and whether or not the brothers were divided, and whether there was any agreement or custom of the family debarring females from inheriting, had been directly and substantially in issue in the suit decided in 1863. The questions raised had, in the Judge's opinion, been decided, and he decreed the suit in the plaintiff's favor.

On appeal to the High Court, this decree was affirmed by a Divisional Bench (Muttusami Ayyar and Hutchins, JJ.), whose judgment was as follows:—

“Only two points have been urged by the Advocate-General in support of this appeal—(1) that the question whether female heirs can come in is not *res judicata*; and (2) that the suit for a declaration is not maintainable. Upon the latter point there cannot be any doubt. The declaration is necessary to enable the

plaintiff to go to the Collector for consequential relief, and it has been rendered necessary by the appellant's own act in opposing the application which she formerly made to the Collector. Nor can the appeal be sustained upon the other ground. The same question was clearly decided in the former suit between this appellant and the widow, the defendant No. 1. The widow then represented the estate; and even if it were not so, her daughter, the present plaintiff, is at present claiming under her.

“ We dismiss the appeal with costs.”

On this appeal Mr. *J. D. Mayne* appeared for the appellant.

Mr. *R. V. Doyme* and Mr. *G. P. Johnstone* for the respondents.

Mr. *J. D. Mayne* for the appellant, after adverting to some other points bearing on the question how far the decision of 1863 was conclusive in regard to the present suit, suggested that the transfer of 1880 was open to the construction that it attempted to control the descent of the estate. This might be held to render it an invalid act on the part of a female, whose estate was but a limited one, the estate of a widow. This question, however, had not been raised below.

Their Lordships, in the result, without calling upon counsel for the respondents, dismissed the appeal with costs.

C.B.

Appeal dismissed.

Solicitor for the appellant—*R. T. Tasker*.

Solicitors for the respondent—*T. L. Wilson & Co.*

APPELLATE CIVIL.

Before Mr. Justice Brandt and Mr. Justice Parker.

VENKATRAMANNA (PLAINTIFF), APPELLANT,

and

VIRAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886.
Sept. 6, 8.

Decree—Fraud—Collusion between parties—Defendant subsequently pleading his own fraud.

A obtained a decree against B, in execution of which he was put in possession of certain land by proclamation, the land being in the possession of tenants. A subsequently sued B and the tenants to recover possession of the same land. B pleaded

* Second Appeal 418 of 1886.