

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice and
Mr. Justice Muttusami Ayyar.

BALÁYYA (DEFENDANT NO. 1), APPELLANT,

and

KISTNAPPA (PLAINTIFF), RESPONDENT.*

1888.
February 28.
March 15.

Madras Civil Courts Act, 1873, s. 16—Suit by reversioner to recover land granted to Hindu widow—Presumption as to death of widow from absence, not a question of succession or inheritance.

Plaintiff sued as reversioner to recover certain land granted in lieu of maintenance to a Hindu widow. The widow had left her village 16 years before suit and had not been heard of since :

Held, that the question whether a presumption arose that the widow was dead was not a question regarding succession or inheritance to be decided according to Hindu law within the meaning of s. 16 of the Madras Civil Courts Act, 1873.

PLAINTIFF, as reversioner, sued in 1885 to recover certain land which had been granted by his deceased father to one Laksmakka for maintenance. The land was in possession of the defendant who had purchased it in execution of a decree obtained against Laksmakka in 1873. It was found by the Munsif that Laksmakka had not been heard of since 1870, she having gone on a pilgrimage. The Munsif held that under Hindu law as Laksmakka was 30 years old when she left her village, 20 years must elapse before she could be presumed to be dead. He cited *Parmeshar Rai v. Bisheshar Singh*(1) in support of the proposition that the question was to be governed by Hindu law and not by the Evidence Act, s. 108. The suit was dismissed as premature. On appeal the District Judge held that under Hindu law 12 years was the period and not 20 years. He cited *Janmajay Mazumdar v. Keshab Lal Ghose*(2); *Guru Das Nag v. Matilal Nag*(3); and *Parmeshar Rai v. Bisheshar Singh*. The period fixed by the Evidence Act, s. 108, being less than 12 years, the decree was reversed and a decree was given for plaintiff.

* Second Appeal No. 700 of 1887.

(1) I.L.R., 1 All., 53.

(2) 2 B.L.R., A.C., 134.

(3) 6 B.L.R., App., 16.

Defendant appealed.

Ramachandra Rau Saheb for appellant.

Bhashyam Ayyangar for respondent.

BALAYYA
v.
KISTNAPPA.

The Court (Collins, C.J., and Muttusami Ayyar, J.) delivered the following

JUDGMENT:—The land in dispute was given by the respondent's father to his step-mother Laksmakka to be enjoyed by her during her life on account of her maintenance. Laksmakka went on a pilgrimage and she had not been heard of for 16 years when the present suit was brought. In July 1873, the appellant purchased the land in suit in execution of a money-decree which he had obtained against her. The respondent claimed the land on the ground that Laksmakka was dead and that it reverted to him. The appellant resisted the claim. There was no evidence as to whether Laksmakka was really alive or dead. It is found that she was about 30 years of age when she left her village. The District Munsif held that no presumption of death could arise under Hindu law before the expiration of 20 years and dismissed the suit; but on appeal the District Judge observed that 12 years was the period necessary to raise a presumption of death under Hindu law and decreed the claim. The contention in second appeal is that a period of 20 years is necessary under Hindu law to raise a presumption of death. It is urged for the respondent that the question raised for decision is not one of succession, and that it is not governed by Hindu law under s. 16 of Act III of 1873.

That section provides that where in any suit or proceeding it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Hindu law shall form the rule of decision in cases in which the parties are Hindus.

We are of opinion that the present case is not one of inheritance or succession, and the question raised for decision relates to the right of reversion under the terms of a grant, and is one rather of contract than of succession or inheritance. The decision of the District Judge is right, and we dismiss this second appeal with costs.