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ancestral property of the father and sons. Under the circumstances it may have been illegal for the Judge to make a personal decree against any of the defendants 1 to 4. But the word "illegal" in s. 622 has been held by the Privy Council not to mean an error of judgment—*Amir Hassan Khan* v. *Sheo Baksh Singh*(1). The Judge had jurisdiction to determine the question of liability of the defendants to pay the debt, and in the exercise of his judgment he may have decided erroneously, but we cannot interfere as to this. Then did he act with material irregularity? Irregularity refers to procedure. The Judge did not distinguish between the adult and non-adult defendants 1 to 4. In the circumstances procedure did not warrant a personal decree against an infant. As regards the infants 3 and 4 the Judge acted with material irregularity in giving a personal decree against them.

Therefore so far as it did give such personal relief against the infants, the decree is set aside.

APPELLATE CIVIL.

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

1887. Oct. 18. 1888. Jan. 6.

ARIYAPUTRI (DEFENDANT No. 1), APPELLANT,

and

ALAMELU AND ANOTHER (PLAINTIFF AND DEFENDANT No. 2), RESPONDENTS. *

Hindu law—Widow's estate—Mortgage by two co-widows—Sale of equity of redemption in execution of decree against one widow—Suit to redeem by other widow—Decree for redemption of moiety on payment of moiety of mortgage amount.

A mortgage of ancestral estate having been made by A. and B., two Hindu co-widows, the equity of redemption of the said estate was sold in execution of a decree for money against B. only and purchased by the mortgagee:

Held, that A. was entitled to redeem only a moiety of the estate during the lifetime of B.

APPEAL from the decree of J. Hope, District Judge of South Arcot, confirming the decree of C. Suri Ayyar, District Munsif of Cuddalore, in suit 53 of 1886.

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(1) I.L.R., 11 Cal., 6. * Second Appeal 16 of 1887.

The facts necessary for the purpose of this report appear from the judgment of the Court (Collins, C.J., and Muttusami Ayyar, J.)

Subramanya Ayyar for appellant.

Ramachandra Rau Saheb for respondents.

JUDGMENT.—The land in suit lately belonged to one Narrainsami Padayachi, since deceased, and the respondents are his childless widows. In December 1871 they executed a mortgage in appellant's favor for Rs. 500, and it is conceded that that mortgage is valid as against them. In original suit No. 589 of 1873, one Senji Chetti obtained a money decree against respondent No. 2 and her mother-in-law only, and in execution of the same, he attached and brought to sale the equity of redemption. Whilst that decree was under execution, respondent No. 1 objected to the attachment and sale on the ground that her husband and one Malaya Perumal were coparceners, and that upon the death of the former, the latter became entitled to the land in dispute by right of survivorship. Her objection was, however, overruled and the equity of redemption was put up to sale, at which the appellant became purchaser. Malaya Perumal instituted a suit afterwards to set aside the sale and failed. Thereupon respondent No. 1, who was not a party to the decree in original suit No. 589 of 1873, brought the present suit to redeem the mortgage of December 1871. The appellant resisted the claim and relied on the auction sale of the equity of redemption. He contended further that respondent No. 1 was not entitled to maintain the suit, as she disclaimed all interests in the land during the execution of the decree in original suit No. 589 of 1873.

It has been found in this case that the debt decreed in that suit was not one which could bind either respondent No. 1 or Narrainsami's estate. The court sale of the equity of redemption is therefore inoperative as against her and her interest in her husband's property. Nor is she estopped from maintaining this suit by reason of her having disclaimed all interest in the execution proceedings in original suit No. 589 of 1873. Though she then acted in collusion with Malaya Perumal, she did not thereby forfeit the right which she really had to her husband's property. The appellant was clearly not misled by her statement, for he purchased the equity of redemption in spite of it. The plea of estoppel must be overruled. Another contention in appeal is that the respondent No. 1 as one of Narrainsami's two widows can

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only redeem a moiety of the land in question and that the appellant is entitled to remain in possession of the other moiety during the lifetime of the other widow, respondent No. 2; this contention appears to us to be well founded. If Narrainsami left but one widow, and she sold his property for a purpose which was not binding on the reversion, the sale, although invalid as against the reversioner, would be good as against her to the extent of her life-interest. The reason is that she would then be a party to the sale, and, though she could not prejudice the reversion, the sale would certainly bind such interest as she had. We see no sufficient reason to hold that the same principle is not applicable in the case of an alienation by one of two widows. It is true that when there are more widows than one, they take together as a class. It is also true that partition is permitted between them not as in the case of male-coparceners for the purpose of converting a joint estate into two or more separate estates to be held in severally, but for the limited purpose of securing to each widow a distributive enjoyment of the benefit of joint property. In this view partition between them certainly creates no separate property in the portions placed in their separate possession and no disposing power so as to defeat the right of survivorship vesting in the co-widow, but as between them, each widow is entitled to take the income of the portion placed in her possession during her life, and it is to this extent the purchase must be upheld; otherwise, the widow that sells may induce her co-widow to recover the entire property sold and give her back her share so as to defraud the purchaser. Neither in *Jijoyiamba Bayi Saiba* v. *Kanakshi Bayi Saiba*(1) nor in *Gajapathi Nilamani* v. *Gajapathi Radhamani*(2) it decided that the widow's right to separate possession of her share might not be sold in execution of a decree against her subject to the co-widow's right of survivorship. As observed in both neither widow has disposing power so as to create separate property, but this is not inconsistent with her right of separate beneficial enjoyment during her life being bound by her own voluntary act or by a court sale in execution of a decree against her. We shall therefore modify the decrees of the lower courts and decree redemption of a moiety of the land sued for on payment of a moiety of the mortgage debt and declare the plaintiff entitled to redeem

(1) 3 M.H.C.R., 424. (2) I.L.R., 1 Mad., 290.

the other moiety on the death of the second respondent and confirm them in other respects. Each party will bear his costs in this court.

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APPELLATE CIVIL.

Before Mr. Justice Brandt and Mr. Justice Parker.

KESAVA AND OTHERS (PLAINTIFFS), APPELLANTS,

and

UNIKKANDA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1887. Nov. 21.

Malabar Law—Maintenance claimed by anandravans living in tarwad house against karnavan, who had left tarwad house and neglected to maintain family.

Where a suit was brought by an anandravan of a Malabar tarwad living in the family house for maintenance against the karnavan, who had left the family house, resided elsewhere, and neglected to maintain the plaintiffs:

Held that the plaintiffs were entitled to maintain the suit—*Kunhammatha* v. *Kunhi Kutti Ali* (I.L.R., 7 Mad., 235) distinguished.

APPEAL from the decree of F. H. Wilkinson, District Judge of South Malabar, confirming the decree of S. Subramanya Ayyar, District Munsif of Temelprom, in suit 89 of 1885.

The facts are set out in the judgment of the District Court, which was as follows:—

"This was a suit by certain members of the Naidalath Puthen house, a tarwad governed by Marumakatayam law, against their karnavan and certain others for a separate allotment of maintenance.

"The Munsif held that the suit would not lie, the High Court having in *Kunhammatha* v. *Kunhi Kutti Ali*(1) ruled that a member of a Malabar tarwad living in the tarwad house cannot bring a suit against the karnavan for a monthly allowance on the ground that the karnavan does not make sufficient provision for his or her maintenance.

"The plaintiffs appeal on the ground that the issue as to whether the suit was maintainable was not founded on the pleadings and that the case is different from that quoted above.

"In the above case the Chief Justice remarked: 'I can find

* Second Appeal 923 of 1886. (1) I.L.R., 7 Mad., 235.