KRISHNAYYA v. PICHAMMA.

and his son are the father's cognates, because the father's maternal grandfather is the person to whom they and the father offer funeral oblations, and though they belong to different families they are, on that ground, bhinna gotra sapindas. It follows, then, that the father's maternal grandfather, who is nearer to the father than his maternal uncle, is a bhinna gotra sapinda or bhandu as explained in Mitakshara, ch. II, s. v. 4. We, therefore, set aside the decree of the Subordinate Judge and restore that of the District Múnsif with costs.

APPELLATE CIVIL.

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

1887. Dec. 9, 20.

LAKSHMINARAYANA (DEFENDANT), APPELLANT,

and

DASU (PLAINTIFF), RESPONDENT.*

Hindú Law—Grant by widow for religious benefit of husband.

Where two widows of a zamíndár granted a small portion of the zamíndárí to a brahman who had been brought up by them with a view that he should perform the funeral and annual ceremonies of their deceased husband:

Held, that the grant was not *ultra vires*, and could not be resumed by the zamíndár's successor.

APPEAL from the decree of C. L. B. Cumming, Acting District Judge of Ganjam, confirming the decree of K. Murtirazu, Acting District Múnsif of Berhampore, in suit No. 734 of 1884.

On the 2nd December 1863, two widows of an Uriya zamíndár in Ganjam granted certain land valued at Rs. 140, a portion of the zamíndárí, to the plaintiff on condition of paying a kattubadi or quit-rent of Rs. 1-8-0 to the estate.

The deed recited that plaintiff had performed ceremonies for the late zamíndár, that the land should be enjoyed for ever, and concluded with the following sentence: He who appropriates any gift made by himself or another shall suffer in hell as a worm for 60,000 years.

In 1883, the defendant, who had been adopted by the widows,

---

* Second Appeal No. 284 of 1887.

dismissed the plaintiff and resumed the land. Plaintiff sued to recover the land.

The Múnsif found that it was customary among the Uriya zamíndárs to appoint a brahman to perform funeral and annual ceremonies and not to perform them in person. The brahman so appointed was styled a "pro-son brahman."

The late zamíndár had appointed one Lakshmana Panda as "pro-son brahman" to the family, and on his death the widows got the plaintiff, a brahman boy aged 7, and brought him up.

The plaintiff had performed the ceremonies and was willing to continue to perform them. The defendant contended that the grant was a service inam, and as such resumable.

It was stated in the District Court that it was necessary that the boy should be brought into the gotra of the zamíndár whereby he ceased to be a brahman. The Judge held that under the circumstances the widows were bound to make a permanent provision for him.

Both the Lower Courts held that the grant could not be resumed.

Defendant appealed.

Ramachandra Rau Saheb and *Venkoba Rau* for appellant.

Rama Rau for respondent.

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

JUDGMENT:—On the death of one Lakshmana Pandá, pro-brahman in the family of the late zamíndár of Budaresingu, the widows of the zamíndár brought plaintiff into the family for the performance of that office, and, on December 2nd, 1863, executed to him a deed of gift (A), which stated that, as he had performed the pro-brahman karma for their late husband, they have given him the land specified on a kattubadi of Rs. 1-8-0 per annum, which he was to enjoy from generation to generation as long as the sun and moon endure.

It is conceded that the gift was made rather for future than for past services and the extent given is only small.

About seven years after the grant defendant was adopted by the ladies, but plaintiff continued to perform the annual ceremonies as pro-brahman and to enjoy the land (paying the kattubadi) till June 1883, when defendant dismissed him and resumed possession of the land, to recover which plaintiff now sues.

LAKSHMI-NARAYANA v. DASU.

The defendant's contention is that plaintiff is a mere servant whom he (defendant) can dismiss at pleasure, and that the gift of the land to plaintiff by the widows of the late zamíndár was beyond the scope of the authority of a Hindú widow.

We cannot assent to this view of the plaintiff's position. The widows were the owners of the estate for the time being, and, in the lawful exercise of their rights of management, made an alienation of a very small piece of land for an indispensable religious necessity, not for their own sakes, but for that of their late husband. Such alienations under similar circumstances are recognized—vide *Rama* v. *Ranga*(1), *Paran Dai* v. *Jai Narain*(2), also *The Collector of Masulipatam* v. *Cavaly Vencata Narrainapah*(3).

The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Brandt.

1887. Nov. 15, 23.

PATTAT AMBADI MARAR AND OTHERS (PLAINTIFFS), APPELLANTS,

and

KRISHNAN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Suit to recover money due on a promissory note by assignee of rights of payee not being endorsee.

K. executed a promissory note on demand for Rs. 6,000 in favor of S. in 1882. In 1884 S., by an agreement in writing, assigned all her property, including the promissory note, to M., but did not endorse over the promissory note to M. M. assigned his rights in the promissory note to a bank in payment of a debt. In a suit by M., and the bank against K. and S. to recover the principal and interest due under the note:

Held, that the plaintiffs could not maintain the suit.

APPEAL from the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, in suit 33 of 1885.

The plaintiffs in this suit were (1) Pattat Ambadi Marar, (2) Raman Marar, and (3) E. Sherman, Agent of the Bank of Madras at Tellicherry.

(1) I.L.R., 8 Mad., 552.
(2) I.L.R., 4 All., 482.
(3) 8 M.I.A., 550.
* Appeal No. 158 of 1886.