

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Parker.

1887.
July 12.

VENKATÁCHALA (DEFENDANT No. 1), APPELLANT,

and

KUPPUSÁMI (PLAINTIFF), RESPONDENT.*

Civil Procedure Code, ss. 31, 53—Public right—Amendment of plaint:

A sued for an injunction to restrain interference with his right to graze cattle on the bed of a certain tank. The other raiyats of the village in whom the same right vested were originally joined as plaintiffs, but the plaint was amended under s. 53 of the Code of Civil Procedure, and their names were struck off the record. A proved no special damage:

Held, (1) that the fact that the other raiyats of the village have similar rights does not make A's right a public right in the sense that no action can be brought upon it unless special damage is proved;

(2) that the right claimed vests in A severally as well as jointly with the other raiyats, and the amendment of the plaint was not contrary to the provisions of s. 31 or 53 of the Code of Civil Procedure.

SECOND appeal against the decree of D. Irvine, District Judge of Trichinopoly, in Appeal Suit No. 69 of 1885, confirming the decree of W. Gopalácharyár, District Múnsif of Kulitalai, in Original Suit No. 472 of 1884.

This was a suit for an injunction to restrain defendants from interfering with plaintiff's right to graze his cattle and cut trees for agricultural purposes in the bed of the Periyari (big tank) of Toraiyur. The plaintiff was one of the raiyats and the first defendant was the Zamíndár of Toraiyur. The plaintiff first brought the suit in conjunction with other raiyats, but on the objection of the first defendant that the suit was bad for misjoinder, the Court directed the amendment of the plaint by striking out the names of the other plaintiffs. The suit was then gone into on the merits, and a decree was passed by the District Múnsif in favor of the plaintiff which was confirmed on appeal by the District Judge.

Defendant No. 1 preferred this second appeal.

Rámachandra Ráu Saheb for appellant.

Mr. Parthasaradhi Ayyangár for respondent.

The further facts of the case and the arguments adduced on this second appeal appear sufficiently for the purpose of this

* Second Appeal No. 652 of 1886.

report from the judgment of the Court (Muttusámi Ayyar and Parker, JJ.).

VENKATÁ-
CHALA
v.
KUPPUSÁMI.

JUDGMENT.—Three objections are taken to the decree of the Judge, and the first of them is that the right which is the subject of the present suit is a public right, and that in the absence of special damage no suit ought to have been brought upon it. The respondent's case was that as a raiyat of the village of Toraiyur, he was entitled to graze his cattle on the tank bed and the fact that the other raiyats of the village have similar rights does not make his right a public right in the sense that no action can be brought upon it unless special damage is proved. As observed by the Judge, the right in contest is one which vests in the respondent and the other raiyats jointly and severally. The next objection taken in appeal is that the respondent ought not to have been permitted to amend the plaint and that his suit ought to have been dismissed. The amendment allowed consisted in striking out the names of nine other persons which appeared in the original plaint as those of co-plaintiffs and allowing the plaint to stand as one framed for the purpose of establishing the respondent's right alone. The right claimed vests, as already observed, severally as well as jointly in the respondent and the other raiyats, and the amendment made is not in our judgment contrary to the provisions either of s. 31 or 53.

As to the merits, we see no reason to interfere, and upon the facts found, the decision is right.

We dismiss this second appeal with costs.

APPELLATE CIVIL.

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

NÁRÁYANASÁMI AND OTHERS (DEFENDANTS), APPELLANTS,
and
KUPPUSÁMI (PLAINTIFF), RESPONDENT.*

1886.
October 22.
1887.
April 19.

Hindí Law—Adoption—Only son given in adoption by widow.

A widow is competent to give in adoption whenever the husband is legally competent to give, and when there is no express prohibition from him.

* Appeal No. 90 of 1885.