VYTHI-NADAYYAN v. SUBRAMANYA.

successful termination if alienations, *pendente lite*, were permitted to prevail. Hence it was held that the necessities of mankind require that the *decision of the Court* in the suit shall be binding not only on the litigant parties but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings.

According to Roman Law after *litis contestatio*, the subject in dispute became litigious and passed into quasi-judicial custody; but where a suit is compromised by the act of the parties we think the *litis contestatio* has ceased, and the Court performs no judicial function, but only an administrative one in recording the compromise. This is the view taken by Couch, C.J., in *Kailas Chandra Ghose Fulchand Jaharri*(1) and is consistent with the principle laid down by Chelmsford, L.C., and Lord Romilly in *Jenkins* v. *Robinson*(2); see also the use of the terms "contentious suit or proceedings" in section 52 of the Transfer of Property Act.

We therefore confirm the order of the Subordinate Judge and dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

1889. March 7, 12.

RAMAKRISTNA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

SUBBAKKA (DEFENDANT), RESPONDENT.*

Hindu Law—Inheritance—Illatam—Burden of proof.

N, a Hindu, who had admittedly been taken as *illatam* into the family of his father-in-law died, leaving property which he had acquired by virtue of his *illatam* marriage. He was succeeded by his son, who died without issue, leaving only a sister surviving him. In a suit by the brother of N, who was the managing member of his family, to recover the property from the sister of the last holder:

Held, that the plaintiff was *primâ facie* entitled to recover, notwithstanding the admission, and that it was for the defendant to establish any special circumstances to rebut his claim.

APPEAL against the decree of L. A. Campbell, District Judge of Nellore, in original suit No. 27 of 1887.

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(1) 8 B.L.R., 474, 489. (2) L.R., 1 Scotch Appeals, 117.

* Appeal No. 136 of 1888.

This was a suit to establish the plaintiffs' right to and to obtain possession of the movable and immovable property of one Pichi Reddi, deceased.

Plaintiff No. 1 was the brother of one Narasa, the late father of the deceased, and sued as the managing member of his undivided Hindu family, of which plaintiffs Nos. 2 and 3 were also members; he further claimed as heir to the deceased.

The defendant was the only sister of the deceased whose only brother had predeceased him leaving no issue. She was in possession of the property in dispute and claimed to be entitled to it—(1) upon the fact which was set forth in the plaint, that her father, Narasa, had been taken as *illatam* into the family of his father-in-law, and subsequently had become possessed of all the property of that family, and (2) upon the allegation, which was not tried, that her husband had been taken by Narasa as *illatam* son-in-law.

The District Judge framed the following among other issues: "Are the natural brother and nephews of an *illatam* son-in-law "heirs at law of that *illatam* son-in-law's sons, who survived him, "in respect of the property of the family to which he was affiliated "in preference to his daughter?"

Upon this issue, the District Judge, after considering the two cases referred to in the judgment of Shephard, J., and *Chenchamma* v. *Subbaya*(1) recorded a finding in the negative, and without proceeding to try the other issues raised on the pleadings he dismissed the plaintiffs' suit.

The plaintiffs preferred this appeal against the decree of the District Judge.

Mr. *Subramanyam* for appellants.

Mr. *Wedderburn* for respondent.

The arguments adduced on this appeal appear sufficiently for the purpose of this report from the following judgments:—

PARKER, J.—The District Judge has decided the suit upon the first issue only, and we are of opinion that he has placed the *onus probandi* on the wrong side.

It appears that Narasa Reddi predeceased his wife, but that, at her death at any rate, their sons Venkata Reddi *alias* Pichi Reddi, and Rami Reddi took jointly as full owners. The younger brother died first without issue, and elder brother was

(1) I.L.R., 9 Mad., 114.

RAMAKRISTNA v. SUBBAKKA.

then the last full owner. According to the ordinary rule of Hindu Law his paternal uncles are nearer reversioners than his sister, and it is for those who allege a special custom or a special arrangement at variance with the ordinary rule of law to prove the same. Treating the property as self-acquired, the origin of the self-acquisition would not *primâ facie* affect the right of inheritance.

The defendant alleges that her husband was taken as *illatam* son-in-law into her father's family, in order that after the death of her last surviving brother, the entire family property should be enjoyed by her as of right. This plea it is for her to prove.

I would reverse the decree of the District Court and remand the suit to be heard on the merits. The costs will abide and follow the result.

SHEPHARD, J.—The last holder of the property sought to be recovered was Venkata Reddi *alias* Pichi Reddi, who died in November 1886, leaving him surviving his sister, the defendant, and the plaintiff, his father's brother. Apart from any special custom, there is no doubt that the plaintiff is entitled to recover. The suit has been dismissed on the ground that the plaint discloses the fact that the defendant's father, Narasa, who died 30 years ago, was taken by one Putta Venkata Reddi as his *illatam* son-in-law, and it has been held that the plaintiff who belongs to Narasa's original family cannot take property, which came to him by virtue of his *illatam* marriage, to the exclusion of a member of the family into which he married. I am of opinion that this decision cannot be supported. It has been held that a person who is taken as *illatam* into another family does not thereby lose his right of inheritance in his natural family—*Balarami* v. *Pera*(1). The tie of relationship between him and his natural family is not severed as it is when there is an adoption under Hindu Law. From this, I think, it must follow that the members of his natural family must equally have such rights in respect of property acquired by him as they would otherwise have had. The circumstance of being taken as *illatam* constitutes a mode whereby the person taken acquires property—*Challa Papi Reddi* v. *Challa Koti Reddi* (2), and if that circumstance is not inconsistent with the person affected still remaining a member of his own family, I cannot understand why it should affect the rules which would ordinarily

(1) I.L.R., 6 Mad., 267. (2) 7 M.H.C.R., 25.

govern the devolution of his property on his death. It may seem hard that a member of the family into which the *illatam* son-in-law was taken should be ousted from the property originally belonging to that family in favor of one who belongs to another family. But that is a necessary consequence of the alienation in favor of the *illatam* son-in-law. It was competent to him or at any rate to his last surviving son who was sole owner of the property to alienate, and it must equally be an incident of the property that on the death of the last sole owner it should, in the absence of special custom to the contrary, go to his heirs according to Hindu Law.

In my opinion the decree of the Court below must be reversed and the case remanded for trial on the merits. Costs to be provided for in revised decree.

APPELLATE CIVIL.

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

MEKAPERUMA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

THE COLLECTOR OF SALEM AND OTHERS (DEFENDANTS), RESPONDENTS.*

1889. Jan. 14. March 5.

Revenue Recovery Act (Madras), Act II of 1864, ss. 25, 27—Regulation V of 1804, s. 20—Notice on minor defaulter—Irregularity in revenue sale.

A *mitta* consisting of an unsurveyed village, of which the plaintiffs (minors) were the registered proprietors of an undivided moiety, was brought to sale for arrears of kist and was purchased for the plaintiffs by their guardian, duly appointed under Regulation V of 1804, s. 20. The sale was subsequently cancelled; and further arrears having accrued, the mitta was attached again. Before the second attachment took place, the guardian died, and no one having been appointed to succeed him, though an application was made to the Court for that purpose, a written demand under Revenue Recovery Act, s. 25, was tendered to the plaintiffs' mother and affixed to the wall of the house on 17th January, and notice under s. 27 was served on 17th February. The sale took place in September and defendant No. 2 became the purchaser. It was admitted that a division of the village was impracticable. In a suit by the plaintiffs by their mother and next friend to set aside the sale:

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* Appeal No. 96 of 1887.