

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.*

THANGAM PILLAI AND ANOTHER (DEFENDANTS), APPELLANTS,

1888.  
Aug. 2, 14.

v.

SUPPA PILLAI (PLAINTIFF), RESPONDENT.\*

*Hindu Law—Sudras—Illegitimate son—Suit for partition.*

Among Sudras an illegitimate son is entitled to maintain a suit for partition of the family property against his father's legitimate sons: and if his interest is endangered by reason of the property being left under the management of the latter, partition can be claimed during his minority.

SECOND APPEAL against the decree of G. D. Irvine, District Judge of Trichinopoly, in appeal suit No. 42 of 1887, confirming the decree of N. Saminadha Ayyar, Principal District Munsif at Trichinopoly, in original suit No. 733 of 1885.

The plaint stated that the mother of the minor plaintiff (who sued by his mother and next friend) was the concubine of the late father of the defendants, and that the plaintiff was his son; that the plaintiff and his mother had lived under his protection up to the date of his death, and that on his death the defendants refused to protect them and refused to surrender the share of the family property to which the plaintiff was entitled. The plaint prayed for possession of the plaintiff's one-sixth share in the immovable property of the family.

The defendants denied that the plaintiff was the son of their father or was entitled to partition. The parties to the suit were Sudras.

The District Munsif found that the plaintiff was entitled to an illegitimate son's share, and passed a decree as prayed, expressing, however, the opinion that the plaintiff might have claimed a one-fifth share.

The District Judge on appeal upheld the decree of the District Munsif and the defendants preferred this second appeal.

*Parthasaradhi Ayyangar* for appellants. A partition suit by a minor cannot be maintained unless malversation is proved

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\* Second Appeal No. 1355 of 1887.

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against the managing members of the family which has not been done here. But in any case a illegitimate son cannot sue for partition; he has not the ordinary rights of a coparcener under Hindu law. *Krishnayyan v. Muttusami*(1), *Ranóji v. Kandoji*(2), *Parvathi v. Thirumalai*(3), *Sadu v. Baiza*(4).

*Pattabhiramayyar* for respondent. The authorities cited do not preclude the present suit, which is against the legitimate sons and not against the father. The illegitimate son is a coparcener with the other sons and has the rights attaching to such a status. *Jogendro Bhuputi v. Nittyanund Man Singh*(5). In order to maintain a suit by a minor for partition, it is not necessary to prove malversation: it is enough to show that partition will be for the good of the minor. *Damoodur Misser v. Senabutty Misrain*(6), *Kamakshi Ammal v. Chidambara Reddi*(7), and cases cited in Mayne's Hindu Law, section 435, 4th edition.

The further facts of the case appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

JUDGMENT.—The parties to this appeal are Sudras, and the respondent, a minor, claimed partition by his mother and guardian. The plaint stated that he was appellants' illegitimate brother, that the appellants refused to maintain him, and that though partition was demanded on several occasions, yet it was refused. The appellants denied that the respondent was their brother, and contended that his mother was a married woman. It was found by the Courts below that respondent's mother was the continuous concubine of the appellant's father, and that she was not married to another person, and that respondent was entitled to one-fifth share, though he claimed only a sixth share. A decree was accordingly passed in his favour for one-sixth share, and two objections are taken to the decree in second appeal, viz., (1) that an illegitimate son is not entitled to sue for partition, and (2) that no partition can be claimed during his minority without proof of malversation on the part of his legitimate brothers.

(1) I.L.R., 7 Mad., 407.

(3) I.L.R., 10 Mad., 334.

(6) I.L.R., 11 Cal., 702.

(7) 3 M.H.C.R., 94.

(2) I.L.R., 8 Mad., 557.

(4) I.L.R., 4 Bom., 87.

(6) I.L.R., 8 Cal., 537.

The parties to this appeal are governed by the Mitakshara law. The Smṛiti of Yagnavalkya directs that "if the father be dead, the brethren should make him (illegitimate son) partaker of the moiety of a share"(1). The author of the Mitakshara commenting on the Smṛiti says: "If there be sons by the wedded wife, let these brothers allow the illegitimate son half an allotment"(2). The other commentaries of authority in the South give a similar direction and see Vyavahara Mayukha, chapter IV, section IV, paragraph 32(3): Sarasvati-vilasa, sloka 395(4): Madhaviya, paragraph 33(5). In *Rajagopala v. Dorasami*(6), this Court recognised the right of an illegitimate son to sue for his share, and the contention that he can claim a share only if his legitimate brothers divide, is not only unreasonable, but is also at variance with the Mitakshara. The text states that when the father is alive, he takes a share by his choice, but directs that after the father's death, his illegitimate (sons) brothers should give him moiety of a son's share. It is true that in *Ranoji v. Kandoji*(7) and *Krishnayya v. Muttusami*(8) this Court held that he was not entitled to claim partition of ancestral estate either from his father's brother or the son of such brother. But those decisions proceeded on the view that he had no claim by survivorship against his father's coparceners by *jus representationis*, and that he was neither a co-heir with his father nor a sapinda in relation to his father's coparceners. It was also observed in the case of *Ranoji v. Kandoji*(7), in *Rajagopal v. Dorasami*(6), and in *Parvathi v. Thirumalai*(9), that the ordinary incident of the *status* of an illegitimate son was a right to be maintained; that among Sudras, a specific share was allotted as a special case on account of the limited importance attached to ceremonial offerings rather than a recognised laxity of marriage tie, and that the inferiority of his *status* in the family was marked by reducing his share and making him a co-heir with the legitimate daughter and her son. It was nowhere held that he was entitled to the share allotted to him only by the choice of his legitimate brother, and that he could not recover that

(1) Yagnavalkya, chapter II, paragraphs 133a, 134, Mandlik's edition, p. 220.

(2) Mitakshara, chapter I, section XII, paragraphs 1 and 2, Colebrooke, edition of 1870, pp. 330, 331.

(3) Mandlik, p. 47.

(4) Foulkes' translation, p. 80.

(5) Burnell's translation, p. 24.

(6) Appeal No. 84 of 1885, unreported.

(7) I.L.R., 8 Mad., 557.

(8) I.L.R., 7 Mad., 407.

(9) I.L.R., 10 Mad., 334.

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share by insisting on partition. As regards the second objection, there is the averment in the plaint that the respondent was not maintained. The appellants persistently denied in the suit that the respondent was their brother, and that he was the offspring of adulterous intercourse. We cannot say that the respondent's interest in the joint property was not in danger at the date of the suit in being left under the management of the appellants.

We dismiss this second appeal with costs.

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## APPELLATE CIVIL.

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

THE COLLECTOR OF SALEM (DEFENDANT NO. 3), APPELLANT,

v.

RANGAPPA (PLAINTIFF), RESPONDENT.\*

*Jurisdiction—Suit to cancel patta of Government waste issued by Collector—Power of  
Collector to cancel patta granted by him—Standing Order.*

The plaintiff having obtained from the Revenue officers of the district a patta of Government waste, sued for the cancellation of a patta for the same land subsequently granted to other persons by the Collector who considered that the issue of the plaintiff's patta was not in accordance with the darkhast rules:

*Held*, (1) it was not competent to the Collector to issue the second patta in super-session of that issued to plaintiff.

(2) it was competent to a Civil Court to pass a decree declaring the second patta null and void, and the plaintiff was entitled to such a decree. *Kullappa Naik v. Ramanuja Chariyar* (4 M.H.C.R., 429), followed.

SECOND APPEAL against the decree of C. W. W. Martin, District Judge of Salem, in appeal suit No. 294 of 1886, affirming the decree of P. Ayyavayyar, District Munsif of Namakal, in original suit No. 221 of 1886.

The plaintiff stated that he had obtained from the Collector of Salem, defendant No. 3, a patta for certain land, and sued to cancel a patta granted subsequently by defendant No. 3 to defendants Nos. 1 and 2 for the same land.

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\* Second Appeal No. 1104 of 1888.