

QUEEN-
EMPRESS
v.
VENKAT-
RAYADU.

Chowdhry(1), or in s. 60, Act I of 1879. But the intent to defraud is the essential ingredient of the offence made punishable by s. 63.

For these reasons we set aside the finding of the Sessions Judge and restore that of the Joint Magistrate.

APPELLATE CIVIL.

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

ABDUL AND OTHERS (DEFENDANTS), APPELLANTS,

v.

AYAGA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

*Civil Procedure Code, s. 45—Suit for declaration—Multifariousness—Malabar Law—
Suit by junior members of tarwad.*

Suit by some of the junior members of a Malabar tarwad against the karnavan and the other members of the tarwad, and certain persons to whom some of the tarwad property had been alienated by the karnavan, for a declaration that the alienations were not binding on the tarwad :

Held, that the suit was not bad for multifariousness. *Vasudeva Shanbhaga v. Kuleadi Narnapai*(2) followed.

APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of South Canara, in original suit No. 22 of 1886.

The plaintiffs, who were some of the junior members of a Malabar tarwad, sued the karnavan, the remaining members of the tarwad, and certain persons to whom some of the tarwad property had been alienated by the karnavan for a declaration that these alienations were not binding on the tarwad.

The Subordinate Judge decreed as prayed in the plaint. The alienees preferred this appeal on the grounds (among others) that the suit was bad for multifariousness, and misjoinder of causes of action, and that the decision of the Subordinate Judge was against the weight of evidence.

Ramachandra Rau Saheb, Sankaran Nayar and Subba Rau for appellants.

Mr. Subramanyam and Sundara Ayyar for respondents.

(1) I.L.R., 2 Cal., 309.

* Appeal No. 98 of 1887.

(2) 7 M.H.C.R., 290.

The Court (Muttusami Ayyar and Wilkinson, JJ.) delivered the following

JUDGMENT:—Two questions are argued in this appeal, viz., that the suit is bad owing to multifariousness, and that the finding of the Subordinate Judge that the alienations are not binding on the tarwad is unwarranted and not borne out by the evidence. As to the first point, the plaintiffs, who are junior members of the tarwad, sue the karnavan, certain members of the tarwad who side with him, and certain alienees for a declaration that certain documents executed by the karnavan are not binding on the tarwad or its property. It is not denied that if they had prayed for the removal of the karnavan the alienees would be necessary parties. The same view was taken in the decision referred to by the Subordinate Judge (*Vasudeva Shanbhaga v. Kuleadi Narnapai*(1)) with reference to a Hindu family, and we see no reason why a declaratory suit should be treated differently from a suit for possession inasmuch as the title to be adjudicated upon is the same in both.

Their Lordships then proceeded to consider the evidence in the case, and agreeing with the findings of the Subordinate Judge, dismissed the appeal with costs.

APPELLATE CIVIL.

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

VENKAYYA (PLAINTIFF), APPELLANT,

v.

SURAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, s. 13—Res judicata—Decree in suit by a karnam as such binds his successor.

The karnam in a certain mita sued to recover certain land as part of the mirasi property attached to his office. It appeared that the plaintiff's father and predecessor in office had sued to recover the same land by virtue of his office and that his suit had been dismissed:

Held, that the plaintiff's claim was *res judicata*.

1889.
Jan. 7.
Feb. 8.