

ALAMI  
v.  
KOMU.

I do not see my way to holding that a will is not operative in Malabar unless some one of the conditions necessary to the validity of Hindu wills does not exist. Having regard to the decision of this Court in *Vallinayagam v. Pachche*(1), I also think that if the testator is the sole owner of the property in suit, if he is competent to alienate it by gift *inter vivos*, and if no right of survivorship exists in any one else, and if all these requirements are satisfied as they are in the case before us, a testamentary power must be recognized. I come to this conclusion, not in the view that a testamentary disposition is the necessary logical extension of a power to give *inter vivos*, but on the ground that the leading case on Hindu wills is an authority for the application of the principle it embodies to the people of Malabar, a section of Hindus, though they follow a special usage, when there are traces in the evidence of the practice of making wills for more than fifty years.

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## APPELLATE CIVIL.

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

NURDIN (PLAINTIFF), APPELLANT,

and

ALAVUDIN AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Cause of action—Suit to cancel patta.*

Plaintiff sued in a Civil Court to cancel a patta which he alleged was incorrect and fraudulently antedated by the defendant with a view to prevent plaintiff from taking steps to cancel it in a revenue court: a copy of the patta had been affixed to plaintiff's house:

*Held*, that the plaintiff had no cause of action cognizable by a Civil Court.

APPEAL from the decree of C. Venkoba Rau, Subordinate Judge of Madura (West), confirming the decree of P. S. Gurumurthi Ayyar, District Munsif of Madura, in suit No. 413 of 1886.

Plaintiff sued to cancel a patta which he alleged was not a proper one and was fraudulently antedated by the defendants with a view to prevent plaintiff from taking summary proceedings before the Revenue Courts under Act VIII of 1865 to compel

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(1) 1 M.H.C.R., 326.

\*Second Appeal No. 1271 of 1887.

his landlord to execute a proper patta. A copy of the patta was affixed to the outer wall of plaintiff's house by defendant No. 2, the agent of defendant No. 1, the landlord.

NURDIN  
ALAVUDIN.

The suit was dismissed on the ground that plaintiff had no cause of action in a Civil Court.

Plaintiff appealed.

*Ramachandra Rau Sahab* for appellant.

*Subramanya Ayyar* for respondents.

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

JUDGMENT:—The plaintiff sued to cancel a patta, a copy of which defendant No. 1 had caused to be stuck on the outer wall of his house. Plaintiff alleged that the patta was antedated and purported to charge an excessive amount of kist.

The question is whether such a suit will lie in the ordinary courts. Plaintiff does not demand that a proper patta should be granted him by defendant No. 1, in which case he would have a cause of action, nor does he allege that the affixing of the copy on his house has caused him any damage; he merely wants to have the patta cancelled, lest it should at some future time be used as evidence against him: in short, he wants practically a declaration that defendant has been making evidence against him.

It was urged that the decision of this court in second appeal No. 430 of 1885(1) was inconsistent with *Karim v. Muhammad Kadar*(2), but we do not think it is. The latter was a suit to

(1) "There is of course no doubt that a person aggrieved by any proceedings taken under colour of Act VIII is at liberty to file his suit for damages either before the Collector (s. 49) or in ordinary tribunals (s. 78), but the present suit is not one for damages and the right to resort to the ordinary tribunals is at least limited by the general principle that there must be a cause of action shown, an injurious act producing damage.

"Here there is no cause of action alleged. All that is stated is that the landlord sent a notice under s. 39 that he intended to move the Collector to sell certain land unless certain arrears claimed were paid within a month. Section 40 allows a month's grace within which the alleged defaulter may either pay the money or show cause before the Collector why the sale should not be held. In a certain sense, therefore, the notice gives a cause of action before the Collector, for it enables the defaulter to come into the Collector's court and indeed requires him to do so within a month, if he has any objection to make. But it gives no cause of action before the ordinary courts. The courts are strictly judicial; but the Collector combines judicial and executive functions being both bound to sell if no objection is raised and the proceedings appear regular, and bound to adjudicate on such objections as may be raised."

(2) I.L.R., 2 Mad., 89.

NURDIN  
v.  
ALAVUDIN.

enforce a substantial right, the former to cancel a mere notice. Neither the notice nor the affixing of an antedated patta amounts to more than a mere assertion on the part of the defendant, and we do not think either would give rise to a cause of action maintainable in an ordinary court of law. There is no infraction of any right.

On this ground, we think the decision of the courts below was right and dismiss this second appeal with costs.

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## APPELLATE CIVIL.

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

GOVINDA (PLAINTIFF), APPELLANT,

and

PERUMDEVI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1888.  
August 13.  
October 3.

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*Specific Relief Act, s. 42—Civil Procedure Code, s. 53—Amendment of plaint—Suit to declare alienation by Hindu widow invalid,—Death of widow pending appeal by plaintiff,—Right of appellant to proceed with appeal—Plaint not to be amended by claim for possession.*

The proviso to s. 42 of the Specific Relief Act that "no Court shall pass a declaratory decree where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so" refers to the position of plaintiff at the date of suit:

Where a suit was brought for a declaration that certain alienations of land made by a Hindu widow to the defendants were not binding on plaintiff, her reversionary heir, and pending appeal by the plaintiff, the widow died:

*Held*, (1) that the plaintiff was entitled to proceed with his appeal:

(2) that plaintiff could not be permitted to amend his plaint and claim possession.

APPEAL from the decree of Venkata Rangayyar, Acting Subordinate Judge of Godavari, in suit No. 2 of 1885.

The facts necessary for the purpose of this report appear from the judgment of the Court (Muttusami Ayyar and Wilkinson, JJ.).  
*Parthasaradhi Ayyangar and Biligiri Ayyangar* for appellant.  
*Subba Rau* for respondent.

JUDGMENT.—Defendant No. 1 in this suit was a Hindu widow, and the property in litigation devolved on her on the death of her

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