APPELLATE CIVIL.

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

KANNAMMAL (Plaintiff), Appellant,

v.

VIRASAMI and another (Defendants), Respondents.*

Evidence Act—Act I of 1872. s. 115—Estoppel by conduct—Hindu Law—Adoption.

A Hindu widow, professing to have authority from her husband to do so, took the second defendant in adoption, brought him up as her adopted son, and permitted him to perform the funeral ceremonies of her husband. Land to which she otherwise would have been entitled was attached in execution of a decree against defendant No. 2. She now sued to release the attachment, alleging the adoption was bad, as having been unauthorized :

Held, that the plaintiff was estopped from raising this contention.

SECOND APPEAL against the decree of J. A. Davies, District Judge of Tanjore, confirming the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in original suit No. 95 of 1883.

Suit to release from attachment property which had been attached by defendant No. 1 in execution of a decree obtained by him against defendant No. 2. Defendant No. 2 claimed to be the adoptive son of the plaintiff, and it was admitted that if he had been validly adopted by her, which she denied in this suit, alleging that she had no authority from her husband to make the adoption, her claim must fail.

The further facts of the case appear sufficiently for the purposes of this report from the judgment of the High Court.

Plaintiff preferred this second appeal.

Bhashyam Ayyangar and *Desikachariar* for appellant.

Krishnasami Ayyar for respondent No. 1.

Subramanya Ayyar for respondent No. 2.

JUDGMENT.—The only question which had to be decided in this suit was that of estoppel. It is not denied that the plaintiff did represent to the parents of the second defendant in 1876 that she had the authority of her husband to adopt; that

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* Second Appeal No. 260 of 1891.

acting upon the belief that such representation was true, they
gave the second defendant in adoption; and that the plaintiff
then brought up the second defendant as her adopted son, and,
as such, married him to the girl of her choice, and as her adopted
son he, for years, performed funeral ceremony of her husband.
Having so acted, she cannot now be heard to deny that the
adoption was valid.   We have been referred to the decisions in
Chitko v. *Janki*(1) and *Ravji Vinayakrav Jaggannath Shankarsett*
v. *Lakshmibai*(2), in both of which it was held that the conduct
of the person who actively participated in the adoption estopped
him from disputing the validity of the adoption.   It seems to
us that this is just such a case as section 115 of the Evidence
Act was framed to meet, and we are unable to assent to the
argument of the appellant's pleader that estoppel only refers to
cases of contract.

This second appeal fails and is dismissed with costs.

<div style="text-align:right">KANNAMMAL
v.
VIRASAMI.</div>

APPELLATE CIVIL.

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

SUBBAN (DEFENDANT No. 1), APPELLANT,

v.

ARUNACHALAM (PLAINTIFF), RESPONDENT.[*]

<div style="text-align:right">1892.
April 13.</div>

*Transfer of Property Act—Act IV of 1882, s. 85—Parties to a mortgage suit—
Objection in written statement as to non-joinder.*

In a suit by a mortgagee against two of his three mortgagors, the defendants
objected in their written statement that the suit was bad for non-joinder of the third
mortgagor, and also alleged that subsequent encumbrances on the mortgage premises
had been created with the concurrence of the plaintiff. It appeared that the third
mortgagor, as a witness, renounced interest in the greater part of the mortgage
premises. On second appeal :

Held, that the suit should be remanded to the Court of First Instance for dis-
posal after joinder of the third mortgagor and the subsequent encumbrancers.

SECOND APPEAL against the decree of C. Venkobachariar, Subor-
dinate Judge of Madura (West), in appeal suit No. 661 of 1890,

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(1) 11 Bom. H.C.R., 199.   (2) I.L.R., 11. Bom., 381.