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place this Court in accord with the other High Courts of India upon this question. I would put the decision upon the ground that section 50 of the Registration Act contemplates a conflict between two *bonâ fide* transactions relating to the same property, and not a case where a subsequent purchaser or mortgagee having notice that there is a *bonâ fide* and valid encumbrance on the property seeks to make use of the Registration Act to avoid it, thus making an enactment intended to prevent fraud an instrument of fraud.

This second appeal then came on for final disposal before COLLINS, C.J. and WILKINSON, J., and the Court delivered the following judgment.

JUDGMENT.—It having been decided by the Full Bench that the second mortgagee, taking with notice of a prior mortgage, is not entitled to priority, the second appeal fails and is dismissed, but without costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1892. Mar. 3, 4, 7, 8, 9, 10. Nov. 10.

PERIA AMMANI (DEFENDANT No. 5), APPELLANT,
v.
KRISHNASAMI (PLAINTIFF), RESPONDENT. } *In Appeal No. 153 of 1890.*

ADINADHA (DEFENDANT No. 6), APPELLANT,
v.
KRISHNASAMI AND OTHERS (PLAINTIFFS AND DEFENDANTS Nos. 2 to 5), RESPONDENTS.* } *In Appeal No. 166 of 1890.*

Hindu Law—Jains of Southern India—Personal law—Adoption—Proof of custom—Will of a Jain widow.

In a suit to declare plaintiff's right as the adopted son of a Jain (deceased) and as a beneficiary under the will of the adoptive mother, it appeared that the plaintiff had been taken in adoption by the widow without authority from her husband or consent of his kinsmen:

Held, that it lay on the plaintiff to prove by evidence that the adoption was valid and that he was entitled to take under the will according to the custom governing the family, and

* Appeals Nos. 153 and 166 of 1890.

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Held, on the evidence, that the plaintiff had failed to prove this.

Per BEST, J.—If a Jain widow succeeds to her husband's property absolutely and has the right to dispose of it as she likes, the adoption of a son to herself who may succeed to such property would be valid.

Observations of Holloway, J., in *Ritheurn Lallah* v. *Soojun Mull Lallah* (9 Mad., Jur., 21) distinguished, on the ground that there was no reason for supposing that the parties to the present suit were other than natives of Southern India whose ancestors had been converted to Jainism.

CROSS APPEALS against the decree of K. R. Krishna Menon, Subordinate Judge of Tanjore, in original suit No. 28 of 1887.

Suit for declaration that the plaintiff was the adoptive son of one Ramasami Mudaliar, deceased, and for a declaration of his rights as beneficiary under a will made by the widow of Ramasami Mudaliar, dated 20th August 1883.

The parties were Jains: the alleged adoption was made by the widow without the authority of her husband or the consent of his kinsmen.

The Subordinate Judge upheld the adoption and the will and passed a decree for the plaintiff.

These appeals were preferred by defendants Nos. 5 and 6, respectively.

Rama Rau, *Sadagopachariar* and *Kothandarama Ayyar* for appellant, in appeal No. 153 of 1890.

Bhashyam Ayyangar and *Pattabhirama Ayyar* for respondent.

Mr. *Gantz*, *Ramasami Raju*, *Ramachandra Rau Saheb* and *Tyagaraja Ayyar* for appellant, in appeal No. 166 of 1890.

Rama Rau for respondent No. 5.

Bhashyam Ayyangar and *Pattabhirama Ayyar* for respondent No. 1.

BEST, J.—In appeal No. 153 of 1890, the appellant is a sister of one Ramasami Mudaliar, deceased, the respondent being a boy adopted by the widow of the said Ramasami Mudaliar. The parties are Jains. The questions for decision are (1) whether the adoption of the respondent made by the widow, admittedly without authority from her husband or consent of his kinsmen, is valid; and (2) whether the will (exhibit A) executed by the widow is valid.

In the Lower Court, the *factum* of the adoption and genuineness of the will were both denied and so also in the memorandum of appeal; but at the hearing the appellant's vakil has with-

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drawn the objection to the Lower Court's finding that the adoption was in fact made and the will executed by the widow of Ramasami Mudaliar and has confined his arguments to the question of their validity.

The Jains are seceders from Brahmanical Hinduism and their religious tenets have more affinity to the precepts of Buddhists than to those of the Brahmans. They do not accept the Vedas of the Brahmans and differ from the latter in their conduct towards the dead omitting all obsequies after the corpse is burnt or buried. They have neither *Tithi* nor *Shraddha*.

"With the Jains the dead are forgotten almost as soon as they "are buried, and, in three days after the funeral, there is no fur- "ther mention of them." Abbé Dubois, pp. 562-3, Ed. of 1817. They do not make offerings to their dead in the Shraddha; they say "of what use is it to pour oil into the lamp after the wick is "burnt to ashes." Their belief is that the future births of men are regulated by present actions. Ward's "History of the Hindus," pp. 229–30. They retain, however, many of the customs of orthodox Hindus and it was held in *Chotay Lall* v. *Chunno Lall*(1) that where a custom different from the ordinary Hindu law is set up as prevailing among Jains, the burden of proving such custom is on those who allege it, and in the absence of such proof the ordinary law must prevail. The strict scrutiny which evidence of a custom opposed to the ordinary law and usage of the country demands, will not be relaxed in favour of Jains, where a right of adoption beyond that allowed by precedent and text law to Hindus at large is set up, the Jains not believing in the spiritual necessity or advantage of adoption.

The only cases brought to our notice in which adoptions by a widow without the authority of her husband or consent of his kinsmen have been upheld are *Maharajah Govind Nath Roy* v. *Gulal Chand*(2), *Sheo Singh Rai* v. *Mussumat Dakho*(3), *Lakhmi Chand* v. *Gatto Bai*(4), *Manik Chand Golecha* v. *Jagat Settani Pran Kumari Bibi*(5).

In three of these cases—the first, second and fourth—the special custom was expressly found to be proved, and in the other case

(1) L.R., 6 I.A., 15.
(2) 5 Sel. Rep., 276.
(3) 6 N.W.P. Rep., 382; s.c., L.R., 5 I.A., 87.
(4) I.L.R., 8 All., 319.
(5) I.L.R., 17 Cal., 518.

also there appears to have been evidence on the point considered, namely, the validity of a second adoption by the widow. It does not appear what was the authority on which the learned Judges there proceeded in saying "it is true that the powers of a Jain "widow in the matter of adoption are of an exceptional character, "namely, that she can make an adoption without the permission "of her husband or the consent of his heirs and that she may "adopt a daughter's son." It may be that the above point was conceded in that case on the authority of *Sheo Singh Rai* v. *Mussumat Dakho*(1), to which reference is also made in the judgment. But as was observed by Oldfield, J., in *Bachobi* v. *Makhan Lal*(2), "a custom established among one sect of Jains may not "necessarily prevail among another, since the Jains are divided "into numerous sects."

The statement of the Subordinate Judge that the decision of the Calcutta High Court in *Lalla Mohabeer Pershad* v. *Mussamut Kundun Koowar*(3) to the effect that Jains are governed by the Hindu law of inheritance applicable in the part of the country in which the property is situated was virtually overruled by the subsequent decision of the Allahabad High Court in *Sheo Singh Rai* v. *Mussumat Dakho*(1) is incorrect. The latter case went on appeal to the Privy Council and was upheld on the ground that the special custom was proved by the evidence given in the case. As was explained by their Lordships of the Privy Council in a later case, *Chotay Lall* v. *Chunno Lall*(4) the decision in *Sheo Singh Rai's* case(1) "did no more than adopt and affirm the law to be deduced from a long roll of cases in India, that when the customs of the Jains are set up they must be proved like other customs varying the ordinary law, and that, when so proved, effect should be given to them."

Equally unfounded is the Subordinate Judge's remark that *Bhagvanadas Tejmal* v. *Rajmal*(5) is "in favour of the widow's "power of adoption."

There can be no doubt that in the present case it is incumbent on the plaintiff to prove the special custom set up on his behalf, and the question "has it been proved" must, I think, be answered in the negative. No doubt a number of witnesses have deposed

(1) 6 N.W.P. Rep., 382; s.c., L.R., 5 I.A., 87.
(2) I.L.R., 3 All., 55.
(3) 8 W.R., 116.
(4) L.R., 6 I.A., 15.
(5) 10 Bom. H.C.R., 241.

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in support of plaintiff's contention as to the widow's independent power of adoption and disposal of her late husband's property. The number of such adoptions spoken to by the witnesses examined by the Subordinate Judge himself is twenty-seven as shown in the list attached to the judgment of the Lower Court. There is, however, rebutting evidence given on the other side, as noticed in the same list, with regard to twenty-two of those cases and the Subordinate Judge has only treated the other five as proved, and this on the simple ground that there is "no reason to disbelieve "plaintiff's witnesses in the absence of any rebutting evidence." Of the five cases thus accepted as proved, No. 15 is spoken to by only one witness—plaintiff's 17th witness—who merely says it took place 40 years ago. Nos. 21 and 22 are also spoken to by a single witness—plaintiff's 26th witness—who says he was himself the subject of adoption No. 21. He does not know, however, whether there was, or was not, permission given by the deceased husband of his adoptive mother for the purpose. It is urged on behalf of appellant that the evidence in support of these cases was such as not to be worth rebutting. So also with regard to the alleged adoption No. 12 the only witness to which is No. 14 who deposes to having heard that his grandfather's father was adopted by the latter's aunt. Moreover, the witness is the natural father of the plaintiff. He is also one of the three witnesses who speak to the adoption No. 11, an adoption by one Vedattammal of her daughter's son which is said to have taken place 35 years before, when witness was a boy aged 14 years. The other witnesses for plaintiff who speak to this adoption are Nos. 17 and 24, the former of whom is the paternal uncle of Janadas Mudali, the next friend of the plaintiff in this suit; while 24th witness is the son of another brother of the 17th witness, that brother being no other than Purnachandra Mudali who is alleged to have been adopted by Vedattammal (adoption No. 11).

The 17th witness (whose age is 58 years) says an adoption took place 35 or 38 years ago. This witness's only reason for saying that the adoption was made by Vedattammal without permission is because "Purnachandra Mudali was my younger "brother and Vedattammal asked that he should be given in "adoption and conducted the adoption." The age of plaintiff's 24th witness is only 25 years. He has of course no personal knowledge of the adoption. He says "my father stated that

"Vedattammal had adopted him without the permission of her "husband and dayadis, when he gave evidence as a witness in the "execution proceedings in suit No. 14 of 1881 on the file of this "Court," but no such deposition has been produced. Exhibit H no doubt shows that Purnachandra Mudali described himself as the son of Anantappa Mudali (the husband of Vedattammal), but there is nothing in it to show that an adoption was made by the widow without authority from her husband or kinsmen.

Plaintiff's 14th witness referred to above also speaks to the 4th and 5th adoptions—not however in his examination-in-chief, but in cross-examination on being asked to give instances of adoptions by widows without special authority. Both these adoptions Nos. 4 and 5 had previously been spoken to by plaintiff's 9th witness, Rajarama Mudali, the natural father of the boy the subject of adoption No. 4. He says he gave his son in adoption to his (witness's) younger sister Dhanapati Ammal 12 years ago and that neither Dhanapati Ammal's husband nor his dayadis gave authority for the adoption. The adoption was oral. In the only document on record which relates to the boy, exhibit XXXV—which is an extract from the Register of the College at Tanjore which he attends—in the column headed "Father's or guardian's name" is entered the name of this witness. It is admitted that there are three brothers living of the alleged adoptive father, but none of them has been examined and though those brothers admittedly own house property, the alleged adopted son of the brother, it is admitted, has no share in the house. The 9th witness also speaks to the alleged adoption No. 5, *i.e.*, the adoption of one Appandai Mudali by one Ratnattammal, wife of Aiyana Mudali. Witness was admittedly not present at the adoption. There are dayadis of Ratnattammal's husband, but none of them has been examined. Appandai Mudali examined as plaintiff's 15th witness also speaks to the adoption of himself by Ratnattammal, wife of Aiyana Mudali. He is also the eldest son of his natural father and as in the case of No. 4, so here also all that the adopted son got by the adoption was moveable property. His natural father is alive; so also all his natural and adoptive mothers; but not one of these persons has been examined. There is thus only the evidence of the 15th witness, himself admittedly a boy of 10 years at the date of adoption, that the widow adopted "without the permission of "any one."

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Plaintiff's 8th witness alone has spoken to the adoptions Nos. 1, 2 and 3, of which No. 2 is alleged to have been made by the witness's own elder brother's widow. Witness was 19 years old at the time (his present age is 52). He admits that he objected to the adoption and that the adopted son died in three years. Witness says he then purchased the property, but no deed of sale was executed. Witness's brother was a cart-driver. No document of any sort is produced.

The witnesses' evidence as to the adoptions Nos. 1 and 3 is no more satisfactory; in any case it is not sufficient to show that those adoptions, if made, were made without authority.

The only person who speaks to adoption No. 6 is the plaintiff's 10th witness. The witness is the son of Appavu Nainar who is alleged to have been adopted by one Ulagammal. The witness was admittedly not born at the time of the adoption and is not therefore in a position to know whether it was made with or without authority.

The same witness also speaks to adoptions Nos. 7, 8 and 9. He admittedly does not know whether for No. 9 the widow Rammal had authority from her husband though he says there was no such authority in the cases Nos. 7 and 8; his evidence is far from conclusive on the point.

Plaintiff's 12th witness also speaks to four adoptions Nos. 7, 8 9 and 10. He says he only heard of the last (No. 10), but that he personally knows of the other three and that they "were made with the permission of dayadis and relations."

No other witness has spoken to adoption No. 10. Nos. 11 and 12 have already been considered.

No. 13 is spoken to by plaintiff's 16th witness. The adoption was by the witness's paternal uncle's widow, when witness was 15 years old. Assuming that what the witness has said is true, his evidence shows that the adoption was made with the consent of witness's father and the latter's other surviving brothers. He says the lady before making the adoption asked if she might do so, when witness's father replied she might. He says "three "were born with my father. That lady asked the three persons "other than the one deceased if she may adopt and they said she "may."

Adoption No. 14 is spoken to by plaintiff's 17th witness alone, whose evidence with regard to adoptions Nos. 11 and 15 has

been considered already. The adoption No. 14 admittedly took place prior to the witness's birth and he does not say that the widow acted without the authority of her husband or dayadis in making it.

The adoption No. 16 is spoken to by two witnesses, the 19th and 21st witnesses. Witness 19 also speaks to adoption No. 17 and witness 21 to adoption No. 18. The former witness merely "guesses (supposes) there was no permission" for the adoption by the widows in the cases spoken to by him, and witness 21 admits that he does not know whether or not Rukammal's husband and dayadi gave permission for the adoption No. 18, and he does not prove that there was not permission for the adoption No. 16.

Each of the other adoptions Nos. 19 to 27 is spoken to by a single witness. The 22nd and 25th witnesses who speak to adoptions Nos. 19 and 20 respectively do not say that they were made without permission. The 26th witness who speaks to adoptions Nos. 21 and 22 does not know whether there was or was not permission for No. 22; nor does he know there was no permission for his own adoption No. 21. Though he at first said that the woman who adopted him subsequently told him there was not, in his cross-examination by the 4th defendant he has said he did not ask his adoptive mother whether there was permission and that he only said that she did not get permission from her husband because she had "wept saying her husband had died "suddenly."

The evidence of plaintiff's 27th witness who speaks to the adoption No. 23 is most unsatisfactory. He says that Padmavati Ammal, the widow of Perumal Nainar adopted one Appandai Nainar, as advised by the witness himself, because "her dayadis "were troubling her." He does not know which dayadi was troubling her. Padmavati is alive and also the man who is alleged to have given the boy in adoption, but neither of them has been examined.

Plaintiff's 31st witness who speaks to the adoptions Nos. 24 and 25 is careful to say that a Jain widow has power to adopt without the permission of her husband "only if he were a divided member," the reason being that two brothers of the witness are dead leaving widows. He says "my brothers and I were "undivided; therefore their widows cannot adopt." Finally he

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admits that he was not present at the making of the adoptions spoken to by him. His evidence is therefore merely hearsay.

Adoptions Nos. 26 and 27 are spoken to by plaintiff's 32nd witness. As to No. 26 he explains that his reason for saying that permission was not given for that adoption is that the husband of the woman who made that adoption "became unable to speak as "soon as he was attacked with paralysis and died after two days' "illness;" and as to No. 27 he admits that "even if no adoption "had been made it is only the said boy that should enjoy the "properties." Finally he admits that he "does not know whe-"ther or not it is customary that either the husband or the dayadi "should have given permission for the adoption by a widow."

Of the eleven adoptions spoken to by witnesses examined in Mysore, No. 1 is spoken to by plaintiff's 33rd, 34th and 40th witnesses. Though the first of these began by stating that the boy adopted in this case was the son of the adopting widow's younger brother, he has subsequently admitted that such was not the case, but that the boy was the son of the widow's late husband's brother, and so also says the 34th witness. The witnesses do not say that the boy's natural father did not authorize the adoption, and even if they did say so, it could not be believed. Anantammal, who is alleged to have made the adoption, is admittedly alive, but has not been examined. The presumption in this case is that the adoption, if made, was made with the consent of a dayadi, if not under authority given by the adoptive father.

Adoption No. 2 is spoken to by plaintiff's witnesses 33 and 38. The former has expressly stated that he does not know if Payamma who made that adoption had authority from any body to make it. 38th witness is the son of the alleged adopted son of Payamma and has no personal knowledge of the matter; he has merely heard that his father was adopted by Payamma. Payamma is admittedly alive but has not been examined. Both these witnesses gave evidence for plaintiff in the former suit No. 14 of 1881 where the only issue was as to the genuineness of a will.

The witnesses who speak to the adoption No. 3 are plaintiff's witnesses Nos. 34 and 38—the former of whom also spoke to No. 1 and the latter to No. 2. Neither of the witnesses says the adoption was made without authority. As the 34th witness was at the time of the alleged adoption "reading in school," the 38th

witness, who is his junior by 16 years, can have no personal knowledge of the adoption.

The same 34th witness also speaks to the alleged adoption No. 4. He is the only witness who speaks to it; and he says nothing about its being made by the widow without authority, whereas, according to his evidence, the boy adopted was related to Dharanappa, by whose widow the adoption is alleged to have been made.

Adoptions Nos. 5 and 6 are spoken to by plaintiff's 35th witness alone, and this only in his cross-examination. As to No. 5 he merely says that about 9 or 10 years ago Chikkanappa's wife (widow ?) adopted a boy. He does not know how the boy was related to Chikkanappa, nor does he say that the adoption was not authorized by Chikkanappa or his brothers who are alive but not examined.

As to No. 6 he merely says one Padmavatamma adopted. He does "not know if the elder and younger brothers and the dayadis "were or were not there." This witness also gave evidence for Lakshmimati Ammal in the suit of 1881. Adoption No. 7 is spoken to by the same 35th witness and also by witnesses 36 and 37. Not one of them says the adoption was made without authority.

So also with regard to adoption No. 8 which is spoken to by the above 36th witness alone, and adoptions Nos. 9 and 10 to which plaintiff's 39th witness alone has spoken, and No. 11 as to which the only witness is No. 40. These last two witnesses also gave evidence in original suit No. 14 of 1881 for Lakshmimati Ammal, by whom plaintiff claims to have been adopted.

As to the absence of rebutting evidence with regard to these alleged Mysore adoptions, one of the grounds of appeal is that appellant "was not allowed sufficient facilities to examine her witnesses on commission in the Mysore territories;" and from the order directing return of the commission, dated 13th September 1889, it is seen that appellant asked for an adjournment in consequence of the non-appearance of the witnesses (for the summoning of whom batta had been paid on 12th August), but the request was not complied with on the ground that the "Subordinate "Judge, Tanjore, has requested to expedite the execution of the "commission and return of the same, as the suit could no longer "be postponed."

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Under these circumstances the appellant would have been entitled even now to an opportunity of examining her witnesses, were there any real necessity for it, but the evidence of the plaintiff being what it is and altogether insufficient to prove the special custom set up, there is no necessity for further evidence on the side of the defendant (appellant). The witnesses examined on behalf of the appellant as 5th defendant in this suit before the Subordinate Judge of Tanjore and on behalf of plaintiff in original suit No. 7 of 1888 (which it was agreed should be considered as evidence also for this suit) swear that among Jains in South India widows have no greater powers in regard to adoption and alienation of their husband's property than is possessed by widows under the ordinary Hindu Law, and many of these witnesses seem to be entitled to more credit than those examined on the other side, who start by claiming in general terms unrestricted powers for the widow, but have failed to establish the special instances of the exercise of such power.

With reference to the remarks of Holloway, J., in *Rithcurn Lallah* v. *Soojun Mull Lallah*(1) which have been quoted by the Subordinate Judge, it is to be observed that from the names of the parties to that suit it is clear that they were immigrants from the North, and it may be that their ancestors seceded from orthodox Hinduism centuries before the text of Vasishta "Let not a woman give or accept a son unless with the assent of her husband" became a part of the Hindu Law. But there is no reason whatever for supposing that the parties to the present suit are other than natives of South India whose ancestors were converted to Jainism. It is clear from the evidence of respondent's own witnesses that they still observe many of the customs of the Hindus —including Homams at marriages and Upanayanams—though according to Wilson "the Homam is an abomination" to Jains. Religions of the Hindus, p. 287. There are also gotrams which are changed on marriage or on adoption. Though some of the witnesses deny division into four castes, others admit it. Also ceremonies are performed for the dead similar to those performed by orthodox Hindus. See the evidence of plaintiff's 18th witness who speaks of Pindam being offered and Masiam or the monthly ceremony being performed, as also Tithi or the annual ceremony.

(1) 9 Mad. Jur., 21.

There is no reason for supposing that this witness wishes to favour the defendant, now appellant, yet he has expressly stated that "widows should not adopt. They should not give property to any one by a will."

As has been remarked by Colebrooke in his "Observations on the sect of Jains"—Asiatic Researches, Volume 9, p. 288, though the Jains are seceders from Brahmanical Hinduism, they nevertheless constitute a sect of Hindus "differing indeed from the "rest in some very important tenets, but following in other respects "a similar practice and maintaining like opinions and observances." As observed by West and Bühler, p. 952, 3rd Edition, they generally submit to the Hindu Law of adoption, though denying important doctrines—"their capacity to adopt is therefore governed "by the ordinary rules." As is seen from Volume II of Punjab Customary Law, p. 154, even among the Jains of that province, the birth-place of Jainism, the consent of husband or kinsmen is necessary for adoption by a widow except in a few specified tribes.

Exhibit XXXVIII which is a deposition given by Lakshmimati Ammal (plaintiff's adoptive mother) in 1869 shows that she then stated that she was entitled to the property of her deceased husband "under Hindu Law," and in the will which is filed in this suit as plaintiff's exhibit A, one of the objects of adopting plaintiff is stated to be that he should "perform all the rites incidental to religious matters for the enjoyment of spiritual welfare of my husband and myself," which is more in accordance with Brahmanical Hinduism than with the doctrines of Jainism.

At the close of his work on Buddhism, Monier-Williams has stated that Indian Jainism "is gradually drifting back into the current of Brahmanism which everywhere surrounds it." Buddhism, p. 536. Be this as it may, it is open to question whether among the converts to Jainism in the southern districts of this Presidency—to which the parties to this suit belong—there was any drifting away from Hinduism as far as the law regulating the devolution and alienation of property is concerned, and with regard to the powers of a widow to alienate property or to make an adoption to her husband without authority from her husband or his kinsmen, which are the questions for decision in this appeal. I am of opinion that the evidence adduced by plaintiff is altogether insufficient to prove the special custom.

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As to the application of the maxim *cessante ratione legis cessat ipsa lex*, it certainly does not strengthen the plaintiff's case. As adoption among Hindus rests on the advantage of having a son to perform funeral rites, and as the Jains deny this advantage, there ceases to be any reason for allowing a Jain widow to make an adoption to her husband. Of course, if she succeeds to her husband's property absolutely and has the right to dispose of it as she likes, the adoption of a son to herself who may succeed to such property would be valid. But some of plaintiff's own witnesses deny the right of a widow to alienate such property and defendants' witnesses are unanimous on the point.

Such being the case, I would allow the appeal and setting aside the Lower Court's decree direct the plaintiff's next friend to pay the appellant's costs in this Court and in the Lower Court.

Appeal No. 166 of 1890 follows, but each party to that appeal will bear his own costs.

MUTTUSAMI AYYAR, J.—I concur.

APPELLATE CIVIL.

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

1892. Oct. 5. Nov. 2.

VYTHILINGA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

VÊNKATACHALA AND OTHERS (DEFENDANTS NOS. 2 TO 9 AND REPRESENTATIVES OF DEFENDANT NO. 4), RESPONDENTS.*

Evidence Act—Act I of 1872, s. 13—Ejectment—Notice to quit.

In a suit for possession of land, the plaintiffs claimed title under a lease from the shrotriemdars of the village where the land was situated. The defendants who had obstructed the plaintiffs from taking possession of part of the land, claimed to have permanent occupancy rights, and asserted that the shrotriemdars were entitled not to the land itself but to melvaram only. To meet this allegation the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were purakudis merely. The defendants had received no notice to quit before suit:

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* Appeal No. 167 of 1891.