

## APPELLATE CIVIL.

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

VENKAYYA (PLAINTIFF), APPELLANT,

v.

LAKSHMAYYA (DEFENDANT No. 1), RESPONDENT.\*

*Hindu law—Partition of part of family property—Suit for ejectment.*

A Hindu sued for possession of a one-third part of a house, a portion of his family property. Defendant No. 1 claimed title from the purchaser at a court-sale, held in execution of a decree against the plaintiff's father, the other defendants were undivided brothers of the plaintiff. The title claimed by defendant No. 1 was supported by the other defendants, but the plaintiff alleged that the purchase at the court-sale had been made *benami* for him :

*Held*, that the suit was not maintainable, being a suit for partition of a specific item of the family property, but that the plaintiff might sue to eject defendant No. 1 joining his own brothers as defendants.

SECOND APPEAL by the plaintiff against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in appeal suit No. 281 of 1889, reversing the decree of V. Subramanya Ayyar, District Munsif of Ongole, in original suit No. 455 of 1886.

The facts of the case are stated above sufficiently for purposes of this report.

*Anandachariu and Krishnasami Rau* for appellant.

*Subramanya Ayyar* for respondent.

JUDGMENT.—The District Judge has reversed the decree of the District Munsif on the ground that a suit to enforce partition in a specific item of the immoveable property of the family is not maintainable. We think this decision is right. The general rule is that a suit will not lie for a partial partition of family property. In this case the action is really one in ejectment, and the plaintiff, if he established that first defendant is a trespasser, can claim to eject him, notwithstanding that his brother supports a false title which first defendant sets up.

The case is not similar to *Chinna Sanyasi v. Suriya*(1), as here there has been no alienation by a coparcener to a stranger.

\* Second Appeal No. 1380 of 1891.

(1) I.L.R., 5 Mad., 196.

The plaintiff, if he does not choose to sue for partition of the whole estate, can sue to eject first defendant from the house, making his brothers, who refuse to join as co-plaintiffs, defendants in the suit. VENKAYYA  
v.  
LAKSHMAYYA.

The second appeal fails, and we dismiss it with costs.

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## APPELLATE CIVIL.

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

NATASAYYAN AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

PONNUSAMI (PLAINTIFF), RESPONDENT.\*

1892.  
September 2.  
October 7.

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*Hindu law—Son's liability for his father's debt—Immoral origin of debt—Limitation Act—Act XV of 1877, sched. II, art. 120—Suit by a decree-holder against the sons of a deceased judgment-debtor whose property had passed to them.*

A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it. The judgment-debtor having died, the decree-holder sought to attach in execution property of the family which had passed into the hands of his sons by survivorship. The sons objected that such property was not liable to attachment, and the decree-holder was referred to a regular suit. He now brought a suit against the sons:

*Held*, (1) that the suit was governed by art. 120 of the Limitation Act and that time began to run for the purposes of limitation from the death of the father ;

(2) that the sons were not entitled to go behind the decree except for the purpose of showing that the judgment-debt was immoral or illegal in its origin ;

(3) that the judgment-debt was not of an illegal or immoral nature so as to exclude the pious obligation of the sons to discharge it.

APPEAL against the decree of V. Srinivasacharlu, Subordinate Judge of Kumbakonam, in original suit No. 56 of 1888.

Plaintiff, Savarimuthu Nadan and Susai Nadan were undivided brothers, who owned certain property. Part of this property and certain outstanding debts due to the family were sold in 1877 by Savarimuthu Nadan to the father of the present defendants who realised the debts. The plaintiff, alleging that the sale by his brother was not binding on him, brought original suit No. 20 of 1879 on the file of the Subordinate Court of Negapatam against