It is quite clear that there could have been no secrecy about his appointment to be zamindar. The matter was the subject of public proclamation, and Woya Tevar must have known, and all his descendants must have known, that the sanad granting the zamindari was in the name of Gauri Vallaba Tevar, and that the zamindari was actually occupied and enjoyed by Gauri Vallaba Tevar and his descendants.

No suit can be brought forward at the present time to re-open the question, and their Lordships will humbly advise Her Majesty to affirm the decree of the High Court and dismiss the appeal with costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *Rowcliffes, Rawle, Johnstone and Gregory.*

Solicitors for the respondent: Messrs. *Lawford, Waterhouse and Lawford.*

APPELLATE CIVIL.

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

1893. October 3.

NARANAYYAN (DEFENDANT), APPELLANT,

v.

NAGESWARAYYAN (PLAINTIFF). RESPONDENT. *

Code of Civil Procedure—Act XIV of 1882, s. 283—Whether defendant may plead that the decree in question was collusively obtained.

A defendant in a suit brought under section 283 of the Civil Procedure Code, who is connected with the judgment-debtor as being reversionary heir of the judgment-debtor's husband, or as being his coparcener, may show that the decree, in execution of which the property in dispute was attached, was collusively obtained. *Gulibai* v. *Jagannath Galvankar*(1) dissented from.

APPEAL against the order of J. A. Davies, District Judge of Tanjore, in appeal suit No. 577 of 1891, reversing the decree of T. Venkatramaiyar, District Munsif of Valangiman, in original suit No. 247 of 1890.

This was a suit under section 283 of the Code of Civil Procedure to establish the plaintiff's right to proceed against certain

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* Appeal against Order No. 64 of 1892.

(1) I.L.R., 10 Bom., 659.

NARANAYYAN v. NAGESWARAYYAN.

property of Sitaramayyan, against whose widow the plaintiff held a decree. The District Munsif, having determined that decree to be fraudulent, dismissed this suit.

On appeal by the plaintiff, the District Judge, relying on *Gulibai* v. *Jagannath Galvankar*(1), reversed the decree of the District Munsif and passed a decree in favour of the plaintiff. The defendant preferred this appeal.

Subramanya Ayyar for appellant.

Mr. *Norton* and *Sankaran Nayar* for respondent.

JUDGMENT.—We are of opinion that the decision of the Judge cannot be supported.

It is not necessary, for the purposes of this suit, to determine whether it is open to the plaintiff in a suit brought under section 283 of the Code of Civil Procedure to ask for consequential relief in addition to a declaration establishing his right to the property. If it were necessary to decide the question, we should certainly hold that even a plaintiff could do so, and thus avoid a multiplicity of suits. Such is also the opinion of Jardine and Telang, JJ., in *Sadu Bin Raghu* v. *Ram Bin Govind*(2).

The question before us is whether a defendant in such a suit is precluded from showing that the decree, in execution of which the property in dispute was attached, was collusively obtained. Such a defence would not be ordinarily available or necessary when the defendant is an utter stranger, in no way connected with the judgment-debtor, unless, it may be, the decree makes the debt a charge on the property claimed. In the present case, however, the Munsif considered the defendant interested in setting up the defence either as reversionary heir of the judgment-debtor's husband Seetharamiah or as a coparcener of his. We are unable to hold that such a defence is not open to a party interested in making it in a suit brought under section 283. We do not see our way to following the decision in *Gulibai* v. *Jagannath Galvankar*(1), as in our opinion section 283 does not introduce an exception to the rule that the defendant is bound to set up every defence available to him. Moreover, we think it unreasonable that he should be compelled to submit to a decree that may result in his eviction and thus have to bring a fresh suit for restoration.

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(1) I.L.R., 10 Bom., 659. (2) I.L.R., 16 Bom., 608.

We must observe, however, that the defence is only available to the defendant if he is interested as mentioned above.

We set aside the order of remand and send back the appeal to the District Judge for disposal with reference to the foregoing observations.

The costs of this appeal will abide and follow the result.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

YOHAN AND OTHERS.*

1892. January 17.

Christian Marriage Act—Act XV of 1872, s. 68—Solemnization of marriage under Hindu rites between a Native Christian and a Hindu by a person not authorized to perform marriages under s. 5 of the Act.

A person who performs a ceremony of marriage according to Hindu form between a Native Christian and a Hindu commits an offence under section 68 of Act XV of 1872, unless he is authorized to solemnize marriages under section 5 of the Act.

PETITION under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of H. T. Ross, Sessions Judge of Gódávari, acquitting the prisoners in calendar case No. 39 of 1891.

The third accused, a Hindu, performed the ceremony of marriage according to Hindu form between the first accused, who was a Native Christian at the time, and a Hindu girl, who was given in marriage by the second accused, her uncle. The Sessions Judge acquitted the accused persons on the ground that section 68 of the Christian Marriage Act (XV of 1872) does not apply to marriages in Hindu form, solemnized by a Hindu, though one of the parties is found in fact to be a Christian, and that the whole Act appears to contemplate marriages in the Christian form alone, differing in that particular from Act V of 1865.

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* Criminal Revision Case No. 488 of 1892.