APPELLATE CIVIL.

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

1893.
January 9.
August 15.

RAMAN MENON (PLAINTIFF), APPELLANT,

v.

CHATHUNNI (DEFENDANT No. 2), RESPONDENT.*

Makkatayam rule of inheritance—Tiyans—Whether compulsory partition can be effected.

The ordinary rule of Marumakatayam against compulsory partition is equally applicable to Tiyans who follow Makkatayam, no custom to the contrary having been made out.

SECOND APPEAL against the decree of E. R. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 1054 of 1890, reversing the decree of A. N. Ananta Ram Iyen, Additional District Munsif of Calicut, in original suit No. 211 of 1890.

The defendants 1 to 4 were Tiyans following the Makkatayam rule of inheritance. The plaintiff, having obtained a small cause decree against the first defendant, in execution thereof, attached the family properties. The second defendant, karnavan of the tarwad, intervened and put in a petition alleging that the properties were impartible. The claim was allowed and the attachment removed. The plaintiff brought this suit to declare that, according to the law prevailing among the Tiyans, the first defendant had a definite share in the properties, and that such share was liable to be sold for his decree. The District Munsif decreed in favour of the plaintiff, whilst the Subordinate Judge, on appeal, reversed the decree.

The plaintiff preferred this appeal.

Sankara Menon for appellant.

Govindu Menon for respondent.

JUDGMENT.—The plaintiff's case was that, accordingto the customary law prevailing among the Tiyans, the first defendant was entitled to a definite share in the property. The defendants denied the alleged custom and pleaded that the properties were indivisible. The issue (fifth) on the point was too vague to direct

* Second Appeal No. 142 of 1892.

the attention of the parties to the real question which had to be tried, and the evidence adduced was inconclusive. The Subordinate Judge remarks that the witnesses were not asked the real question at issue, but on the authority of two unreported cases has come to the conclusion that the ordinary rule of Marumakatayam against compulsory partition is equally applicable to Tiyans who follow Makkatayam. We do not think that a question of such general importance should have been decided in this way, and we shall, therefore, ask the present Subordinate Judge to return a finding on the following issue:—Whether, according to the customary law followed by the parties to this suit, compulsory partition can be effected according to the wish of one member of the tarwad.

Fresh evidence may be taken.

In compliance with the above order the Subordinate Judge submitted a finding in which, on the authority of *Raricha*n v. *Perachi*(1), he held that there was no presumption that the Hindu Law rule of partibility of family property applied to the case of Makkatayam Tiyans, that there was no written evidence forthcoming in support of any such custom, and that the oral evidence was quite unsatisfactory or insufficient to establish any custom followed by the parties to the suit whereby compulsory partition could be effected according to the wish of one member of the tarwad.

JUDGMENT.—The finding is that, according to the customary law of the parties, compulsory partition cannot be effected at the will of one member of the tarwad.

This is in accordance with the finding in regular appeal No. 164 of 1891.

Accepting it, we dismiss this appeal.

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(1) I.L.R., 15 Mad., 281.