

SANKARA-
MURTI
MUDALIAR
v.
CHIDAMBARA
NADAN.

suit was so transferred, and moreover this is not a suit for rent. The right to bring suits for the recovery of the property of a religious or charitable institution is vested as an ordinary incident of his office in the trustee or manager of such institution unless he is precluded by any special law from exercising it. There is nothing in the Act to take away such right from trustees appointed by the committee, and therefore plaintiff is entitled to maintain this suit. We reverse the decrees of the Courts below and remand the suit to the Court of First Instance for disposal on the merits. Costs hitherto incurred including costs of this appeal will be costs in the cause.

APPELLATE CIVIL.

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

1893.
March 17.

RAMANAYYA (PLAINTIFF), APPELLANT,

v.

RANGAPPAYYA AND ANOTHER (DEFENDANTS NOS. 2 AND 3),
RESPONDENTS.*

*Attachment before judgment—Suit against one member of undivided Hindu family—
Death of defendant before decree—Right of survivorship.*

Where, in a suit against one member of an undivided Hindu family, not as representing the family, there is an attachment before judgment of family property, and the defendant dies before decree is passed, the right of survivorship takes effect before the attachment becomes effectual for the purpose of execution. *Sadayappa v. Ponnama*(1) followed.

SECOND APPEAL against the decree of S. Subbaiyar, Subordinate Judge of South Canara, in appeal suit No. 188 of 1890, confirming the decree of S. Raghunathaiya, District Munsif of Karkal, in original suit No. 41 of 1890.

Suit to recover Rs. 1,078-8-0 due under a registered bond executed by defendant No. 1 in plaintiff's favour. Defendant No. 1 died after the institution of the suit and before the summons was served on him, but after certain land belonging to him, and defendants Nos. 2 and 3, had been provisionally attached. Defendants Nos. 2 and 3 were then sued as the personal representatives

* Second Appeal No. 829 of 1892.

(1) I.L.R., 8 Mad., 554.

of defendant No. 1. The Lower Courts passed decrees in favour of the defendants and the plaintiff preferred this second appeal.

Pattabhirama Ayyar for appellant.

Ramachandra Rau Saheb and *Ranga Rau* for respondents.

RAMANAYYA
P.
RANGAP-
PATTAYYA.

JUDGMENT.—It is argued before us that the debt contracted by the deceased first defendant was a family debt and is therefore binding on the respondents, and that the Subordinate Judge is in error in omitting to record a finding on this point.

The suit was originally brought against first defendant alone upon a bond executed by him. He does not appear to have been sued as representing the family, and defendants Nos. 2 and 3 were only brought in after his death as his legal representatives. In the view that the debt was a family debt, the contention in the Courts below as to the effect of the attachment on survivorship was immaterial. This contention is at variance with the case on which the parties proceeded to trial in the Courts below.

As to the effect of the attachment on survivorship, it is to be observed that the attachment in question was one before judgment, and intended to protect the property from alienation by the defendant pending the decision of the suit. Till decree was passed it could not operate to render the attached property available for sale in execution. In the case before us there was no decree when the respondents' right of survivorship accrued on the death of the first defendant, and the principle laid down in *Sadayappa v. Ponnama*(1), we think, governs this case; consequently the right of survivorship took effect before the attachment became effectual for the purpose of execution. The result is that the appeal fails and is dismissed with costs.

(1) I.L.R., 8 Mad., 554.
