APPELLATE CIVIL.

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

1892. November 15. 1893. July 24.

MALLA REDDI AND ANOTHER (DEFENDANTS NOS. 2 AND 1), APPELLANTS,

v.

PADMAMMA AND ANOTHER (PLAINTIFFS NOS. 1 AND 2), RESPONDENTS.*

Hindu law—Illatom son-in-law—Inheritance—Survivorship.

The father since deceased of the second defendant took into his family an illatom son-in-law, who died, leaving a son. After the death of the son, one of his two daughters (who were his only children) sued to recover a one-fourth share of the property left by the second defendant's father:

Held, that the plaintiff was entitled to recover, in the absence of proof of a custom by which the rights of the plaintiff's father should have passed by survivorship to the second defendant.

SECOND APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in appeal suit No. 62 of 1889, confirming the decree of T. Ramachandra Rau, District Munsif of Nellore, in original suit No. 282 of 1887.

The first plaintiff was mother of the second plaintiff and sister of the first defendant, and they were the sole descendants of the illatom son-in-law (deceased) of the second defendant's father. The second defendant was the husband of the first defendant, and he was in possession of the property left by his father. The present suit was brought to recover a one-fourth share of the property.

The second defendant claimed to have become entitled to the whole estate, as the last surviving member of a Hindu coparcenary, on the death, without male issue, of the first plaintiff's father, the son of the illatom son-in-law above referred to.

The Lower Courts held that the first plaintiff and the first defendant were jointly entitled to a moiety of the property in question and passed decrees as prayed.

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* Second Appeal No. 1945 of 1891.

The defendants preferred this second appeal.

Seshagiri Ayyar for appellants.

Ramachandra Rau Saheb for respondents.

ORDER.—The father of Lakshmi Narasa Reddi (grandfather of the first plaintiff and the first defendant) was taken into the family of the second defendant's father as illatom son-in-law. Lakshmi Narasa Reddi died without male issue, leaving two daughters, the first plaintiff and the first defendant. The first plaintiff and her son claimed both by virtue of wills said to have been executed by Lakshmi Narasa Reddi and his wife and also by Hindu law.

As no evidence was adduced on either side the claim so far as it was based upon the alleged wills failed, and the only question now is whether the first plaintiff is entitled to one-fourth, *i.e.*, half of the half share of her late father. Both Courts have decreed in her favour and defendants have appealed.

For the purposes of the present appeal it may be taken that the property was the property of the second defendant's father's family in which plaintiff's grandfather was an illatom son-in-law. He was, therefore, entitled to equal rights therein with the second defendant's father, and the question is whether, on the death of Lakshmi Narasa Reddi, these rights passed by survivorship to the second defendant. Ordinarily under Hindu Law the relation of coparcenary, of which the right of survivorship is an incident, is only possible between descendants of a common paternal ancestor. In *Hanumantamma* v. *Rami Reddi*(1) it was considered unsafe (p. 283) to infer that the affiliation by illatom is analogous to adoption in any other respect save in the circumstance that the illatom son-in-law is regarded for purposes of inheritance as a member of the family into which he is admitted. In *Chenchamma* v. *Subbaya*(2) an issue was sent as to whether there can be coparcenary between an adopted son and an illatom son-in-law, but no evidence being produced it was held that in the absence of proof that the right of survivorship is an incident of custom it cannot be treated as such. The decision of Scotland, C.J., and Innes, J., in *Mopur Ademma* v. *Dhamavarapu Subba Reddi*(3) is

(1) I.L.R., 4 Mad., 272. (2) I.L.R., 9 Mad., 114.
(3) Appeal No. 103 of 1868, unreported.

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no doubt in conflict with the later decisions, but no evidence was taken in that case, and it was inferred that there was coparcenary, because the illatom custom was a mode of affiliation.

We think it is not safe to attach to the usage all the incidents of adoption without specific evidence. We shall, therefore, ask the District Judge to try the following issue:—

"Whether according to illatom custom the second defendant "excluded the daughters of Lakshmi Narasa Reddi from succes-"sion, and whether their father's undivided interest survived to "the second defendant?"

The finding is to be returned within two months from the date of the receipt of this order; and seven days, after the posting of the finding in this Court, will be allowed for filing objections.

The finding of the District Judge was as follows:—

"I am of opinion that the evidence adduced is not sufficient to "find upon the issue sent down by the High Court for the second "defendant."

This Second Appeal having come on again for final hearing, the Court delivered judgment as follows.

JUDGMENT.—We accept the finding and dismiss the appeal.

APPELLATE CIVIL.

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

1893. March 20. April 26.

MALLIKARJUNA PRASADA NAYUDU (PLAINTIFF), APPELLANT,

v.

LAKSHMINARAYANA (DEFENDANT), RESPONDENT.*

Rent Recovery Act (Madras)—Act VIII of 1865, ss. 9, 11—Sanction by Collector of enhanced rates of rent—Implied contract to pay rent at a certain rate.

In a suit brought by the Collector of a district, as receiver of a zamindari, against a tenant on the estate to enforce the exchange of patta and muchalka, it appeared that the rent demanded was assessed at an enhanced rate, and comprised a consolidated wet rate imposed on account of irrigation. To the enchancement of the rent by the addition of the water rate the sanction of the Collector required by the Rent Recovery Act, s. 11, first proviso, had not been obtained:

Held, that such sanction could not be implied from the fact that the Collector, as

* Second Appeal No. 1695 of 1891.