

BRAHMANNA v. RAMAKRISHNA. principle laid down in *Subbaiyar v. Kristnaiyar*(1), *Luckumsey Rowji v. Hurbun Nursey*(2), and *Daya v. Param Sukh*(3). Setting aside the decrees of the Lower Courts, I dismiss the suit; but, under the circumstances, there will be no order as to costs throughout.

BEST, J.—Though most unwilling to disturb the decrees of the Courts below in this case, I am constrained to come to the conclusion that the authorities cited leave us no option and that the plaintiff's suit must fail. I concur, therefore, in the decree proposed by my learned colleague.

APPELLATE CIVIL.

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

1894.
September
17, 27.

KRISHNA AYYAN AND OTHERS (DEFENDANTS NOS. 1, 3 to 7, 11
AND 12), APPELLANTS,

v.

VYTHIANATHA AYYAN (PLAINTIFF), RESPONDENT.*

Hindu law—Stridhanam—Gift, construction of—Provincial Small Cause Courts Act—Act IX of 1887, sched. II, art. 18—Suit relating to a trust.

A Hindu executed in favour of his daughter an instrument in the following terms:—"I have hereby given to you to be enjoyed as stridhanam after my death " 2,320 fanams out of 6,000 fanams which remain as kanom on the land T. . . " The proportionate rent on 2,320 fanams is 365 paras. This quantity of " paddy . . . shall be enjoyed by you and your sons and grandsons " hereditarily by receiving the same from my sons." After certain clauses restricting the mode of enjoyment and the power of alienation the instrument proceeded, "in the event of the said kanom being paid, that money shall be " received by my sons and shall be invested on some other property, which may be " approved of by you and your sons and by my sons, and from that property you " may receive income yearly and enjoy the same." In a suit by a grandson of the donee to recover his share of the income:

Held, (1) that the suit "related to a trust" within the meaning of Provincial Small Cause Courts Act, schedule II, article 18;

(2) that the instrument was not invalid under Hindu law and that the plaintiff was entitled to a decree.

(1) I.L.R., 1 Mad., 383.
(3) I.L.R., 11 All., 104.

(2) I.L.R., 5 Bom., 580.
* Second Appeal No. 577 of 1894.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar (Palghat), in appeal suit No. 842 of 1892, affirming the decree of V. Kelu Eradi, District Munsif of Palghat, in original suit No. 53 of 1892.

KRISHNA
 AYYAN
 v.
 VYTHIANATHA
 AYYAN.

The plaintiff was the great grandson and the defendants also were descendants of one Subramania Sastri, and this suit was brought to recover the plaintiff's share of the income derived from certain funds comprised in an instrument executed in September 1841 by Subramania Sastri in favour of his eldest daughter Shalakshi, who was the plaintiff's paternal grandmother. The instrument was as follows:—

“ I have hereby given to you to be enjoyed as stridhanam
 “ after my death 2,320 fanams out of 6,000 fanams which rest as
 “ kanom exclusive of further charge on the land Tottakara. Out
 “ of the puttom (rent) of 950 paras, deducting nigudi and micharam,
 “ arising out of the said property, the proportionate puttom on
 “ 2,320 fanams is 365 paras. This quality of paddy shall be paid
 “ to you by my sons to be enjoyed hereditarily by you and your
 “ sons and grandsons. The said puttom of 365 paras of paddy
 “ shall be enjoyed by you and your sons and grandsons hereditarily
 “ by receiving the same from my sons. On the security of the
 “ said property, no debt shall be contracted by you or by your
 “ husband or by your children or by my children. If debt is so
 “ contracted, it shall not be valid. In the event of the said kanom
 “ being paid (by the mortgagor), that money shall be received by
 “ my sons and shall be invested on some other property which may
 “ be approved of by you and your sons and by my sons, and from
 “ that property you may receive (income) yearly and enjoy the
 “ same. Let your family be a support to my family.”

It appeared that the plaintiff's share of the income of the funds in question had been paid to him up to 1887-88.

The District Munsif passed a decree for the plaintiff, and it was affirmed on appeal by the Subordinate Judge.

Certain of the defendants preferred this second appeal.

Sundara Ayyar for appellants.

Subramanya Sastri for respondent.

JUDGMENT.—We agree with Courts below that the suit is one relating to a trust, and is therefore one over which a Small Cause Court has no jurisdiction.

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