APPELLATE CIVIL.

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

1894.
July 13.
September 27.

BALAMMA AND ANOTHER (DEFENDANTS NOS. 3 AND 4), APPELLANTS,

v.

PULLAYYA AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 2), RESPONDENTS.*

Hindu law—Inheritance—Widow's rights as heiress—Female gotraja sapinda.

In a suit on a mortgage executed by a Hindu, since deceased, to the plaintiff, it appeared that the mortgage premises had been the property of A, whose daughter, since deceased, was the mortgagor's wife and had executed a will purporting to devise the property to him. The suit was defended by B, who was the widow of a great grandson of A's great grandfather, and she claimed title to the property against the plaintiff under the law of inheritance:

Held, that B had no title to the mortgage premises.

SECOND APPEAL against the decree of K. C. Manavedan Rajah, Acting District Judge of Kurnool, in appeal suit No. 26 of 1892, confirming the decree of V. Ranga Rau, District Munsif of Nandyal, in original suit No. 407 of 1890.

Suit to recover principal and interest due upon a hypothecation bond, dated 26th November 1887, and executed by Govindappah, the husband of defendant No. 1, to secure the repayment of Rs. 500 together with interest. The mortgagor had died before suit leaving first defendant, his widow, and no issue. The second defendant had obtained from the mortgagor a lease of the mortgage premises for thirteen years, dated 17th January 1888. The third defendant and her alleged adopted son, defendant No. 4, claimed title under the following circumstances. The mortgage premises were the properties of Aswartha Rau, whose family held the office of karnam and who was himself karnam, and who had died about twenty years before the suit, leaving a widow and a daughter named Onkaramma. Govindappah married Onkaramma as his first wife, and he managed the property during the life time of his father-in-law and remained in possession after the death of his wife, who left

* Second Appeal No. 1724 of 1893.

a will purporting to devise the property to him. According to the present case of the plaintiff, Govindappah was in fact entitled to the property under a gift from his father-in-law. The third defendant was the widow of Seshayya, whose great grandfather was also the great grandfather of Aswartha Rau; and she pleaded that the alleged gift to Govindappah was false, and that she was entitled to the land as sapinda of the last owner.

The District Munsif held that the alleged gift was proved and that the alleged adoption of defendant No. 4 was disproved and passed a decree for the plaintiff as prayed. The District Judge on appeal concurred in his finding as to the adoption, but held that there was no gift to Govindappah; he also held that the third defendant had no right to the land and consequently he upheld the decree of the District Munsif.

Defendants Nos. 3 and 4 preferred this second appeal.

Rajagopalachariar and *Desikachariar* for appellants.

Bhashyam Ayyangar and *Seshachariar* for respondent No. 1.

BEST, J.—The land in question belonged to one Aswartha Rau, and on his decease devolved on his widow, and then on his daughter Onkaramma, the wife of Govindappah (by whom the property was mortgaged to the plaintiff in this suit), who is the present first respondent. The Judge has found the will by Onkaramma in favour of her husband Govindappah to be true.

The appellants are (i) the widow of one Seshayya, great grandson of the great grandfather of Aswartha Rau, and (ii) the alleged adopted son of the said Seshayya.

Both the Courts below have found the alleged adoption of second appellant to be untrue. This is a finding of fact; but it is contended that it is open to objection in consequence of the wrongful admission of exhibits B and C which are decrees in suits to which this plaintiff was not a party. The finding against the alleged adoption rests not alone on B and C, but also on a consideration of the other evidence in the case including that of the appellants' witnesses which is rejected for very good reasons. We must, therefore, accept the finding of the lower Appellate Court that the adoption is not true.

Such being the case, has third defendant, as widow of Seshayya any *locus standi* for opposing the plaintiff's claim? The law as settled in this Presidency is that a widow can only succeed to her husband's property which was actually vested in him either in title or in

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possession at the time of his death. As observed by Mr. Mayne, she must take at once at her husband's death, or not at all. No such right can accrue to her as widow in consequence of the subsequent death of any one to whom her husband would have been heir if he had lived. Cf. *Peddamuttu Viramani* v. *Appu Rau*(1).

This appeal fails therefore and should be dismissed with costs.

MUTTUSAMI AYYAR, J.—I come to the same conclusion. My learned colleague has stated the facts found by the Courts below. The District Munsif has also found that Onkaramma died eight or ten years before the suit, and the District Judge has not expressed a different opinion on the subject. It was argued in second appeal that a cousin's widow is a relative, and that as such the third defendant was an heir to Aswartha Rau, while Govindappah, who was his son-in-law, was no heir at all. In support of this contention, reliance was placed on *Kutti Ammal* v. *Radakristna Aiyan*(2) and *Lakshmanammal* v. *Tiruvengada*(3). I may refer also to the decision in *Venkata Subbaiya* v. *Narasingappa*(4).

Under the Mitakshara law, as administered in this Presidency, a cousin's widow is a female gotraja sapinda, and the last case is an authority for the proposition that as between her and her husband's coparcener or male sapinda, she is not entitled to succeed to another coparcener or sapinda. As pointed out by my learned colleague, she can only succeed to property vested in her husband prior to his death as his widow, and not to a sapinda who survives her husband, as a female gotraja sapinda. As regards the decision in *Lakshmanammal* v. *Tiruvengada*(3), it was held there that a sister's son excludes a sister, that he has a preferential right as a bhinna gotra male sapinda. In *Kutti Ammal* v. *Radakristna Aiyan*(2), it was held that a sister was entitled to succeed as a bandhu. This decision proceeds on the view that any relative who is also a cognate may be treated as coming within the definition of bhinna gotra sapinda, and that the term sapinda, as used in chapter 2, section 6 of the Mitakshara, includes females. A cousin's widow, who is a gotraja sapinda, cannot be also a bhinna gotra sapinda, for her gotra is by marriage that of her husband. She is therefore not among the relatives who are contemplated as being among bandhus. A cousin's widow, if she is an heir at all, must be an

(1) 2 M.H.C.R., 117.
(2) 8 M.H.C.R., 88.
(3) I.L.R., 5 Mad., 241, 249.
(4) 3 M.H.C.R., 117.

heir as a gotraja sapinda, and all female gotraja sapindas such as brother's and paternal uncle's widows are excluded from the table of heirs prescribed by the Mitakshara. The decision of the District Judge is right, and I would also dismiss the appeal with costs.

BALAMMA v. PULLAYYA.

APPELLATE CIVIL.

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

GOVINDA PILLAI (PLAINTIFF), APPELLANT,

v.

RAMANUJA PILLAI AND OTHERS (DEFENDANTS NOS. 1 TO 4 AND 6), RESPONDENTS.*

1894. January 17, April 19.

Limitation—Adverse possession—Non-payment of melvaram—Claim of kudivaram right by prescription.

In a suit to recover land, of which neither the plaintiff nor his predecessor in title had been in possession within a period of forty years before the suit, the defendants pleaded that the plaintiff had been entitled to receive melvaram only, that the payment of melvaram had been discontinued fifteen years before the date of the suit, and that they themselves were entitled to the kudivaram right in the land. It was found that the non-payment of melvaram had not been accompanied by an assertion of adverse title and that the defendants' kudivaram right had not been set up twelve years before the suit:

Held, that the suit was not barred by limitation.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of South Arcot, in appeal suit No. 271 of 1892, reversing the decree of T. B. Vasudeva Sastri, District Munsif of Chidambaram, in original suit No. 661 of 1891.

Suit to recover possession of land with mesne profits. It appeared that neither the plaintiff nor his predecessor in title had actual possession for the forty years previous to this suit; and the defendants, who were in possession, pleaded that the plaintiff, like his vendor, was a manyamdar merely, and that the arrangement was that the manyamdar should receive a fixed permanent rent of twelve cullums of paddy per cawni *per annum*, and that the raiyats should pay the quit-rent to Government and enjoy the land with

* Second Appeal No. 773 of 1893.