APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

KAMARAZU AND ANOTHER (DEFENDANTS NOS. 1 AND 2), APPELLANTS, 18 Decem

v.

VENKATARATNAM (PLAINTIFF), RESPONDENT.*

Will by a Hindu—Construction of—Gift to daughter—Daughters' estate.

A Hindu by will bequeathed to his daughters his separate property to be enjoyed by them 'as they pleased':

Held, that the daughters took an absolute estate.

APPEAL against the decree of G. T. Mackenzie, District Judge of Godavari, in Original Suit No. 12 of 1894.

The plaintiff brought this suit to declare that he was entitled to certain monies in the hands of the defendants after the death of the widow and daughter of one Mallaya.

The monies in question were the proceeds of certain jewels which had been given by Mallaya's widow and daughter to the defendants for charitable purposes.

The plaintiff claimed to be entitled to the monies as the reversioner to the estate of Mallaya, by whom he had been adopted, and with whom he had subsequently effected a partition.

The defendants contended that the jewels were the stridhanam of Mallaya's widow and daughter, but on this point no decision was given either in appeal or in the lower Court, it being assumed by the Courts that the jewels had been inherited under the will of Mallaya. The will of Mallaya, after reciting amongst other things that provision had been made for the maintenance of his eldest daughter-in-law, proceeded:

"Out of the rent of the bazaar godown, the expenses relating "to the repairs, &c., of the said godown and also the maintenance allowance which I have been paying every year to my "eldest daughter-in-law, Nadipilly Ademmah, is deducted, and "the balance of rent is divided and taken in equal shares by "myself and my adopted son—I taking one half, and he the "other half—in accordance with the deed of partition entered into "between myself and my adopted son. It is hereby arranged

* Appeal No. 181 of 1895.

KAMARAZU v. VENKATA-RATNAM.

"that my three daughters mentioned above, should, after my "death, receive the amount relating to the half share I have been "receiving. In the matter of the house in which (I am) residing, "my adopted son Venkataratnam should enjoy one half and my "daughters the other half, as mentioned in the *Pharikhat*, after the "death of myself and my wife. My three daughters, viz., the "said Kankatala Bangaramma, Korangi Rattamma and Devata "Bapanamma, should, from the date of my death, take possession "of the whole of my moveable and immoveable property—the "whole of the moveable property relating to the Shroff trade "carried on by me and referred to above, as also all the transac-"tions, accounts, &c., relating thereto and also the said immoveable "property—and enjoy the same happily as they please. The afore-"said people, that is to say, my daughters-in-law and my adopted "son, have no right whatever to cause any obstruction in respect of "my property. Even if they cause any, they shall not be valid. "My daughters aforesaid should properly attend to the wants of "myself and my wife till our death. My three daughters afore-"said should, after my death, take possession of *Pharikhat* and other "documents which are with me, as also the aforesaid property, and "manage the same as they please. I caused this will to be written "while I am steady in mind and of my own free will. This "should take effect from the date of my death."

Of the three daughters, two had died before the gift of the jewels in question.

The District Judge said: "The will which is now admitted by "both parties leaves the father's property to his wife and daughter "to be enjoyed as they please. Notwithstanding these words, I "hold that this will bestow nothing more than the usual widow's "and daughters' life-interest. If the property in question were "land, they could not alienate it. Defendants, however, contend "that this is movable property at the disposal of these ladies. "I cannot accept this contention. It is not alleged that this "Rs. 4,000 was taken from the income of the estate. As the "greater part of it was jewels, it seems to have been part of the "corpus of the estate. I am of opinion that not even the charit-"able object of the alienation justifies the alienation, and that "plaintiff is entitled to the declaration which he solicits." And in the result gave a decree for plaintiff.

Defendant appealed.

Subba Rao and *Gopalasami Ayyangar* for appellants.

Mr. *Smith* for respondent.

JUDGMENT.—The terms of the will read in the light of the deed of partition referred to therein clearly indicate that the intention of the testator was to confer on his daughters an absolute, and not a limited, estate, in so far as the moveable property which was at his absolute disposal was concerned. There is nothing in the instrument or in the surrounding circumstances, which could lead one to think that the intention was to limit the gift to a daughter's estate, or in, other words, simply for their lives. The daughters thus having taken an absolute estate, the alienation sought to be impeached was within their rights. We must, therefore, overrule the view taken by the District Judge, and in reversal of his decree we dismiss the suit with costs throughout. This involves the dismissal of the memorandum of objections also.

APPELLATE CIVIL.

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

THILLAI CHETTI (DEFENDANT No. 1), APPELLANT,

v.

RAMANATHA AYYAN AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1896. November 24, 27.

Mortgage to a co-owner—Suit to redeem—Right of one or more co-owners to redeem in absence of partition.

When several owners of undivided shares in immovable property mortgage their share with possession to another undivided sharer, a smaller number than the whole body of co-mortgagors cannot sue to redeem the mortgage until there has been a partition of the property mortgaged among the several co-owners. *Mamu* v. *Kuttu*(1) followed; *Naro Hari Bhave* v. *Vithalbhat*(2) distinguished.

SECOND APPEAL against the decree of W. Dumergue, District Judge of Madura, in Appeal Suit No. 803 of 1894, confirming the decree of S. Authinarayana Ayyar, District Munsif of Mana Madura, in Original Suit No. 58 of 1894.

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* Second Appeal No. 1008 of 1895.

(1) I.L.R., 6 Mad., 61. (2) I.L.R., 10 Bom., 648.