

We think we are not precluded from arriving at this conclusion by the reference made to the above text in *Minakshi v. Ramanatha*(1). It would seem that on the strength of the statement in the *Dattaka Mimamsa* that a marriage between the persons mentioned in the text in question was a prohibited connection, it was assumed by the Court that the text was mandatory. But whether the text was mandatory or merely hortatory was not a matter for determination in that suit, and therefore the Court's observations cannot be treated as a binding decision on the point.

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The only other objection taken to the legality of the adoption rested on the fact that the adoptive mother Seshammal is the cousin of the natural father of the respondent. But this contention also is untenable; since it has been ruled in this Court that the adoption of a son of even a wife's brother is good (*Sriramulu v. Ramayya*(2)). It is scarcely necessary to say that it is immaterial in such a case whether the adoption is made by a man himself or by his widow after his death; for the adoption is for him.

We must, therefore, confirm the decree of the District Judge and dismiss the appeal with costs.

APPELLATE CIVIL.

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

VELU GOUNDAN (PLAINTIFF), APPELLANT,
v.
KUMARAVELU GOUNDAN AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1896.
November
27.
December
10.

VELU GOUNDAN (PLAINTIFF), PETITIONER,

v.

KUMARAVELU GOUNDAN (DEFENDANT), RESPONDENT.*

*Suit for partition of family property—Valuation of, for purposes of jurisdiction—
Suits Valuation Act, 1887—Court Fees Act, 1870, s. 7, clause (iv) b.*

In a suit by a member of a joint Hindu family praying for a partition of the family property and for the delivery to the plaintiff of his share, the value of the

(1) I.L.R., 11 Mad., 49.

(2) I.L.R., 3 Mad., 15.

* Appeal against Order No. 98 of 1896 and Civil Revision Petition No. 74 of 1896.

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suit for the purposes of jurisdiction is the amount at which the plaintiff values his share.

APPEAL against the order of C. Gopalan Nayar, Subordinate Judge of Madura (East), directing the return of the plaint presented by appellant for presentation to the proper Court, and petition under section 622 of the Code of Civil Procedure praying the High Court to revise the order of W. Dumergue, District Judge of Madura, in Civil Miscellaneous Appeal No. 37 of 1895, confirming the order of J. S. Gnanyar Nadar, District Munsif of Manamadura, in Original Suit No. 220 of 1895.

Plaintiff brought this suit originally in the Court of the District Munsif for partition alleging that the property to be divided was the property of a joint Hindu family consisting of himself, his father, his stepmother and the son of his stepmother. The following were the prayers of the plaint :—

“ To divide and deliver to the plaintiff one-third share in the A “scheduled properties 1 to 29 by casting chits with strict regard “to the nature and fertility of the lands;

“ To makē the defendants give to plaintiff one-third share in “the B scheduled property 1 to 21 or pay the value thereof;

“ To order the defendants to pay plaintiff the loss for fasli “1304 and costs of the suit together with further loss and to give “decree with other reliefs as the Court may deem fit to grant “considering the nature and circumstances of the case.”

In the plaint the plaintiff valued his share of the property at Rs. 1,996-4-0.

The District Munsif held that he had no jurisdiction, because that was determined by the value of the whole family property, which exceeded Rs. 4,000, and not by the value of the share claimed. In support of this position, the District Munsif quoted the rulings in *Vydinatha v. Subramanya*(1), *Khansa Bibi v. Syed Abba*(2), *Raniayya v. Subbarayudu*(3), *Krishnasami v. Kanakasabai*(4).

The plaint was thereupon presented to the Subordinate Court of Madura (East), and the Subordinate Judge also returned the plaint for presentation to the proper Court on the ground that “section 8 of the Suits Valuation Act, read with clause

(1) I.L.R., 8 Mad., 235.

(3) I.L.R., 13 Mad., 25.

(2) I.L.R., 11 Mad., 140.

(4) I.L.R., 14 Mad., 183.

“(iv) *b* of section 7 of the Court Fees Act, would make the value of the suit both for Court fees and jurisdiction to be the value of the plaintiff’s share, which, he says, is Rs. 1,996-4-0,” and that the suit was, therefore, within the District Munsif’s jurisdiction.

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The plaintiff then appealed to the District Judge against the District Munsif’s order alone. The District Judge held that the order of the District Munsif was correct and dismissed the appeal. The plaintiff now filed a petition under section 622 of the Civil Procedure Code praying for the revision of order of the District Court, and filed an appeal against the order of the Subordinate Judge.

Sivasami Ayyar for appellant.

Respondents were not represented.

JUDGMENT.—Plaintiff, a member of an undivided Hindu family, sued for partition and delivery to him of his one-third share of the joint family property.

The value of the share claimed was below Rs. 2,500, but the value of the whole property exceeds Rs. 4,000.

The District Munsif, following the ruling in *Vydinatha v. Subramanya*(1), declined jurisdiction and returned the plaint for presentation to the proper Court. His action was upheld on appeal to the District Judge. The plaintiff meantime presented his plaint to the Subordinate Judge, who also declined jurisdiction and returned the plaint to be presented to the proper Court. The Subordinate Judge held that, under section 7, clause (iv) *b* of the Court Fees Act, the suit should be valued for purposes of Court fees at the relief sought in the plaint, viz., at the value of the share claimed, which was less than Rs. 2,500; and that, under section 8 of the Suits Valuation Act (VII of 1887) the valuation for purposes of jurisdiction should follow and be the same as that for Court fees, and that, therefore, the suit was within the jurisdiction of the District Munsif.

The view of the Subordinate Judge is, in our opinion, correct, and in accordance with the law as laid down in the Suits Valuation Act, which it seems to us expressly altered the law as laid down in *Vydinatha v. Subramanya*(1).

Some doubt was sought to be thrown on this view by the fact that in three cases *Khansa Bibi v. Syed Abba*(2), *Itamayya v.*

(1) I.L.R., 8 Mad., 235.

(2) I.L.R., 11 Mad., 140.

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Subbarayudu(1), *Krishnasami v. Kanakasabai*(2) all decided after the passing of the Suits Valuation Act—the decision in *Vydinatha v. Subramanya*(3) was treated as still containing the law applicable to the question.

In those cases, however, no reference was made to section 8 of the Suits Valuation Act, nor did they directly declare that the ruling in *Vydinatha v. Subramanya*(3) still governs cases within its scope.

Moreover in the recent case of *Chukrapani Asari v. Narasinga Rau*(4) this Court expressly approved the view that “when the suit relates to co parcenary property, unless it is one for general partition among all the shareholders, the specific and definite share claimed must be held to be the subject-matter of the suit as stated in this Suits Valuation Act and Act III of 1873 (The Madras Civil Courts Act), and the value of the same should determine the Court’s jurisdiction, and not that set on the whole property, which will, of course, be the value of a suit in which a general partition of all the shares may be prayed for.” We think that these words correctly set forth the law as it now stands. The present suit, therefore, being for a share of the co-parcenary, and not involving a general partition, and the share being less than Rs. 2,500 in value, is within the jurisdiction of the District Munsif. We, therefore, confirm the order of the Subordinate Judge and dismiss this appeal, and in exercise of our revisional jurisdiction, we set aside the orders of the District Judge and of the District Munsif, and direct the District Munsif to receive the plaint and deal with it according to law. Costs throughout will be provided for in the decree of the District Munsif.

(1) I.L.R., 13 Mad., 25.

(2) I.L.R., 14 Mad., 183.

(3) I.L.R., 8 Mad., 235.

(4) I.L.R., 19 Mad., 56.