ZAMINDAR OF VALLUR AND GUDUR v. ADINARAYUDU.

are of opinion that execution proceedings in such suits must be had in that Court in which the jurisdiction now vests, that is the Subordinate Judge's Court.

APPELLATE CIVIL.

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

1896. January 23.

SESHAGIRI RAU AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

RAMA RAU AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Letters Patent, clause 12—Jurisdiction of High Court—Immovable property situated outside—Movable property situated within the jurisdiction—Leave granted by Registrar.

Where the plaintiffs brought a suit for their share of family property consisting of land situated outside the jurisdiction of the High Court and for movables situated within, leave having been granted by the Registrar:

Held, that the High Court had no jurisdiction as to the lands, and that the suit must be dismissed as to them:

Held, further, that leave to sue had been wrongly granted by the Registrar.

APPEAL against the judgment of *Shephard*, J., sitting on the Original Side of the High Court in civil suit No. 147 of 1894.

The facts of the case were as follows:—

This suit was brought on the Original Side of the High Court, Madras, by the first plaintiff and his two sons, plaintiffs Nos. 2 and 3, to recover his share in the ancestral property of his late father Cumbam Narasinga Rau. On the death of his said father, plaintiff's brother Cumbam Subba Rau, since deceased, took possession of and managed the family property until his death. After the death of Cumbam Subba Rau, the property came into the possession of his widow, the second defendant. The first defendant is the son of Cumbam Subba Rau (deceased).

The plaintiffs demanded their share from the defendants on 19th January 1891 of the family property consisting of immov-

* Appeal No. 48 of 1895.

able property situated in the Godavari and Cuddapah districts and certain movable property as specified in the plaint and schedule situated within the jurisdiction of the High Court.

Leave was granted to the plaintiff to sue in the High Court by an order of the Registrar, dated 21st August 1894.

The material portion of clause 12 of the Letters Patent is as follows:—"And we do further ordain that the said High Court "of Judicature at Madras, in the exercise of its ordinary original "civil jurisdiction, shall be empowered to receive, try and deter- "mine suits of every description, if in the case of suits for land or "other immovable property, such land or property shall be situated "or in all other cases if the cause of action shall have arisen, either "wholly, or, in case the leave of the Court shall have been first "obtained, in part, within the local limits of the ordinary original "jurisdiction of the said High Court or if the defendant at the "time of the commencement of the suit shall dwell, or carry on "business or personally work for gain within such limits."

On the suit coming on for settlement of issues on the 7th March 1894 *Seshagiri Aiyar* for defendants took the preliminary objection that the High Court had no jurisdiction to try the suit under clause 12 of the Letters Patent as far as immovable property was concerned, inasmuch as no portion of the immovable property sued for was situated within the jurisdiction of the High Court. He further contended that the leave to sue was improperly granted by the Registrar and ought to be set aside.

S. Subramania Ayyar for the plaintiffs contended that the Court had jurisdiction and that the case was provided for by the words "in all other cases."

SHEPHARD, J.—This suit is brought by the plaintiff against the son and widow of his late brother Subba Rau to recover his share of the family property. The defendants are said to reside in Madras and the property consists of cash and other movables, and also of lands situated in the Godavari district. Leave has been obtained under clause 12 of the Letters Patent to institute the suit in the High Court. It is objected on behalf of the defendants that, inasmuch as the only immovable property concerned is outside the limits of the jurisdiction of the Court, the Court has no jurisdiction in respect of it and leave ought not to have been granted.

SESHAGIRI RAU v. RAMA RAU.

The question turns upon the construction of clause 12 of the Letters Patent. It is clear upon the decided cases *Prasanna Mayi Dasi* v. *Kadambini Dasi*(1) and *Jagadamba Dasi* v. *Padmamani Dasi*(2) that the provision as to leave applies as well to the case of land situated not wholly within the local limits as to the case of causes of action not wholly arising within those limits, and that it is not restricted to the former case as it might seem to be at first sight. In the present case, there being no immovable property within the jurisdiction, it is manifest that leave could not properly be granted, and that the Court could not assume jurisdiction, unless there were other property involved as the subject matter of the same cause of action.

Now as I read the clause with the aid of the interpretation put upon it by the abovementioned cases, it may be paraphrased as follows :—The Court has jurisdiction in respect of land situated wholly or subject to the proviso as to leave in respect of lands situated partly within the local limits ; "in all other cases" it has jurisdiction, if the cause of action has arisen wholly or subject to the proviso as to leave, if the cause of action has in part arisen within such limits, I think that the phrase "in all other cases" must be read as excluding the case mentioned in the immediately preceding sentence, that is the case of suits for land—and that, therefore, the provision as to leave when applied to a case in which the cause of action has not wholly arisen within the local limits must relate to cases other than those of suits for land. If this be the correct view, leave could not rightly be granted in the present case, because the suit is in part a suit for land. Although the cause of action may have arisen in part within the local limits, the case is not within the category of "other cases" and, therefore, the provision as to leave does not apply.

This interpretation of the clause is in accordance with the decision of West, J., in *Jairam Narayan Raje* v. *Atmaram Narayan Raje*(3).

Accordingly I must hold that leave ought not to have been granted, and that the suit must be dismissed so far as regards the land.

Plaintiffs appealed

(1) 3 B.L.R., O.C., 85. (2) 6 B.L.R. 686. (3) I.L.R., 4 Bom., 482.

Subramania Ayyar for appellants.

Seshagiri Ayyar for respondents.

JUDGMENT.—We agree with the learned Judge in the construction he has placed on clause 12 of the Letters Patent. No portion of the immovable property is situated in Madras and therefore leave to sue in the High Court could not be granted. The appeal is dismissed with costs.

PRIVY COUNCIL.

MUTTUVADUGANADHA TEVAR, PLAINTIFF,

AND

PERIASAMI TEVAR, DEFENDANT.

P.C.* 1896. June 17, 27.

[On appeal from the High Court at Madras.]

Mitakshara law of inheritance—Impartible zamindari.

Heritage to an impartible zamindari is to be traced according to the ordinary rules of the Hindu law of inheritance, unless some further family custom exists, beyond the custom of impartibility, although the estate will be in the possession of only one heir at a time.

It was contended for the appellant that, in tracing the right heir to the proper stock entitled to the inheritance, a rule was applicable to an impartible estate, different from that applied to a partible one; and that when once the heritage to an impartible estate had become obstructed, on the death of each successive owner the true successor was the heir of the last owner of the originally unobstructed estate, though this did not apply to a partible estate. But for such a distinction no authority was cited, nor any principle suggested; and it was not upheld.

The parties to this suit, first cousins once removed, contested the right to inherit an impartible zamindari, which had been acquired by their common ancestor, who had left two daughters by two different wives. The plaintiff was the son of the younger daughter, the defendant's father was the son of the elder. The younger half-sister survived the elder, and in 1863 was judicially declared to have inherited alone the impartible zamindari. On her death the elder daughter's son, in litigation ending in 1881, made good his title to the impartible zamindari, being the descendant in the elder line:

Held, that this son of the elder daughter became, as the last male owner, the stock from which descent had now to be traced, and that the ancestor was no longer that stock. And *held*, that the son of this last male owner had a title to

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* *Present:* Lords WATSON, HOBHOUSE and DAVEY, and Sir RICHARD COUCH.