SAMINADHA PILLAI v. THANGATHANNI.

not been actually decided in this Court. In *Gopalasami* v. *Chinnasami*(1) the inclination of the Court was evidently in favour of the contention that the rule did not apply in the case of daughter's sons succeeding. In principle there is no distinction between that case and the present. In both it is an instance of obstructed heritage, the heirs being ascertained at the time of the death and taking *per capita*. Since the date of the Madras case the question has been considered in Calcutta, and the conclusion arrived at was that the rule of survivorship does not apply to property taken in the ordinary course of inheritance as distinguished from property in which persons have an interest on birth (*Jasoda Koer* v. *Sheo Pershad Singh*(2)—see also *Nallatambi Chetti* v. *Mukunda Chetti*(3). We think this view is correct. To hold otherwise would be to recognize as coparceners with rights of survivorship a group of persons who might be descended from different parents and might at the same time belong to a larger group, having another and distinct family property of their own.

Apart from this there is the finding, which is amply supported by the evidence that the three heirs—Ramasami, Chockalingam and the plaintiff's husband—were divided when the property devolved upon them.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

1895. October 9.

SRINIVASA AYYANGAR (PETITIONER), APPELLANT,

v.

SEETHARAMAYYAR AND OTHERS (RESPONDENTS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, s. 295—Rateable distribution—Assets realized in execution.

A, B and C held money decrees against the same judgment-debtor. A attached by a prohibitory order dated in December funds of the judgment-debtor in the hands of D. In January, B attached in execution the same funds. In February they were paid into Court, and subsequently on the same day C attached them as money due in the custody of the Court;

(1) I.L.R., 7 Mad., 458.
(2) I.L.R., 17 Calc., 36.
(3) 3 M.H.C.R., 455.
* Letters Patent Appeal No. 17 of 1895.

Held, that the funds should be rateably distributed between A and B, and that C was not entitled to participate therein.

SRINIVASA AYYANGAR. v. SEETHARAM-AYYAR.

APPEAL under Letters Patent, section 15, against the judgment of MUTTUSAMI AYYAR, J., dismissing a petition under Civil Procedure Code, which prayed the High Court to revise the proceeding of A. F. Elliot, District Munsif of Vellore, in small cause suit No. 1480 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the following judgment :—

MUTTUSAMI AYYAR, J. :—Three persons hold money decrees against one Seetharamayya, and one Venkatasami had with him certain stamps and other things of Rs. 95-2-0 value belonging to the judgment-debtor.

Petitioner had the property attached by prohibitory order on the 22nd December 1892. Another judgment-creditor, Muniammal, attached the same on 16th January 1893 in execution of her own decree. Venkatasami paid Rs. 95-2-0 due by him to the judgment-debtor into Court on the 3rd February 1893. On the same day, but after payment into Court, one Manikkam Chetty attached it as money due in the custody of the Court. On the 30th March 1893 the District Munsif paid out of the deposit petitioner's costs and divided the balance rateably among the three creditors. To this order petitioner objects in revision, and urges that Manikkam Chetty attached after the money was realized, and that this was not a case for rateable distribution under section 295, Code of Civil Procedure. Neither of these contentions seems tenable. Section 295 applies to every case whereby the process of the Court in execution property becomes available for distribution amongst judgment-creditors. Money paid into Court by reason of a prohibitory order does not become the property of the creditor at whose instance the prohibitory order was issued without a further order directing payment to him. Until then his position is that of an attaching creditor, and under the Code of Civil Procedure several decree-holders may successively attach the same property and claim rateable distribution. The mere payment into Court does not constitute realization. There must be a further order directing its payment to a particular creditor or creditors. I see no reason to disturb the order in revision.

I dismiss this petition with costs.

The petitioner preferred this appeal under the Letters Patent, section 15.

SRINIVASA AYYANGAR v. SEETHARAM-AYYAR.

Subramania Ayyar for appellant.

Ethiraja Mudaliar and *Sivagnana Mudaliar* for respondent.

JUDGMENT.—It seems to us clear that the debt due by the third party to the judgment-debtor, when paid into Court, was realized within the meaning of the 295th section, *Pallonji Shapurji Mistry* v. *Jordan*(1) and was therefore liable to rateable distribution among those who applied before the payment into Court.

In Manikkam's case the application was not made till after the payment into Court, and he therefore is not entitled to distribution.

The order must be altered accordingly.

No costs.

ORIGINAL CIVIL.

Before Mr. Justice Subramania Ayyar.

1895. October 3.

RANGAYYA CHETTI (PLAINTIFF),

v.

THANIKACHALLA MUDALI AND OTHERS (DEFENDANTS).*

Hindu Law— Insolvency of managing member of a family—Insolvent Act, s. 7—Vesting order—Official Assignee's power to convey land.

The managing member of a Hindu family was adjudicated an insolvent and a vesting order was made. The Official Assignee conveyed a house forming part of the family property of the insolvent to the plaintiff who now sued for possession. The second defendant, who was a leper, was the younger brother of the insolvent, the other defendants were the insolvent's sons. The plaintiff did not prove that the debts which led to the adjudication were incurred for the necessary purposes of the family, and the insolvent's sons did not prove that they were incurred for immoral purposes:

Held, (1) that the second defendant's disease, which was not of a virulent type, did not affect his coparcenary rights;

(2) that the Official Assignee could only convey the shares of those persons upon whom the debts of the insolvent were binding, and accordingly that the plaintiff was entitled to a moiety of the house only and that the house should be sold and half the sale-proceeds paid to him.

THE facts of the case appear sufficiently for the purposes of this report from the judgment of the Court.

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(1) I.L.R., 12 Bom., 400. * Civil Suit No. 62 of 1894.