THAYAMMAL v. ANNAMALAI MUDALI.

I have already shown that the plaintiff is not his heir. But even supposing Seshammal's mother was married in an inferior form—*Bandam Settah* v. *Bandam Maha Lakshmy*(1), wherein it was broadly laid down that under the Hindu law a daughter-in-law is not an heir to her mother-in-law, is a direct authority against the plaintiff.

I must, therefore, hold that in no point of view the plaintiff's claim, that she is entitled to Seshammal's stridhanam, is sustainable. And finding the first issue against her I dismiss the suit with costs.

Branson & Branson attorneys for plaintiff.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Subramania Ayyar.

1895. August 20, 29.

KANAKAYYA (PLAINTIFF NO. 2), APPELLANT,

v.

NARASIMHULU AND OTHERS (DEFFENDANTS), RESPONDENTS.*

Party-wall—Erection on the wall by one tenant in common—Injunction at suit of other co-tenant.

One of two tenants in common of a party-wall raised the height of the wall with a view to building a superstructure on his own tenement. The other tenant in common, who had not consented to the alteration in the wall, but had suffered no inconvenience therefrom, now sued to enforce the removal of the newly-erected portion:

Held, that the plaintiff was entitled to the relief sought.

SECOND APPEAL against the decree of N. Saminadha Ayyar, Subordinate Judge of Vizagapatam, in appeal suit No. 40 of 1893, affirming the decree of A. L. Narasimham, District Munsif of Vizianagaram, in original suit No. 86 of 1892.

The plaintiffs and defendants were tenants in common of a party-wall. The defendants, without the consent of the plaintiffs, intending to build a superstructure on their tenement, raised the

(1) 4 M.H.C.R., 180.

* Second Appeal No. 865 of 1894.

height of the party-wall. This suit was brought to compel the removal of the newly-erected part of the wall.

The District Munsif dismissed the suit, and his decree was affirmed on appeal by the Subordinate Judge who held that the defendants had "every right to use the wall for lawful purposes "without inconvenience or injury to the co-owner, and this is "exactly what they have done."

Plaintiff No. 2 preferred this second appeal.

Ramachandra Rau Saheb for appellant.

Mr. *M. O. Parthasaradhi Ayyangar* and *Parthasaradhi Ayyangar* for respondents.

PARKER, J.—The finding is that the wall in dispute is a party-wall, belonging to plaintiffs and defendants as tenants in common. It is also found that the agreement A has no reference to the plaint wall.

The plaint asks that the part of the wall newly raised by the defendants shall be removed, and on the authority of *Watson* v. *Gray*(1), I am of opinion that plaintiffs are entitled to the relief asked for. It is true that the refusal of plaintiffs to give the required permission may be ill-natured and that the raising of the wall will not really harm them; but, at the same time, the altered wall is no longer the same wall and the newly-erected portion will not be a common or party-wall. The erection of it might give rise to inconvenience and quarrels.

I would give second plaintiff a decree for removing the portion of the wall newly raised, but as both parties have set up false pleas, I would direct that each pay his own costs throughout.

SUBRAMANIA AYYAR, J.—I was at first inclined to hold that the sound view to take with reference to the point at issue was that adopted in *Brookes* v. *Curtis*(2). There the Court of Appeal of New York observe:—"The fairer view and the one generally "adopted in legislative provisions on the subject in this and other "countries is to treat a party-wall as a structure for the common "benefit and convenience of both of the tenements which it separates, "and to permit either party to make any use of it which he may "require either by deepening the foundation or increasing the "height, so far as it can be done without injury to the other. The

(1) L.R., 14 Ch. D., 192.

(2) Gray's Cases on Property, Vol. II, pp. 225, 226.

KANAKAYYA v. NARASIMHULU.

"party making the change, when not required for purposes of "repair, is absolutely responsible for any damage which it occasions; "but in so far as he can use the wall in the improvement of his own "property without injury to the wall or the adjoining property, "there is no good reason why he should not be permitted to do so." On further consideration, however, I have arrived at the conclusion that the better rule to lay down is the simpler one enunciated in *Watson* v. *Gray*(1) since it will compel such of the owners of party-walls as are desirous of adding to, or otherwise materially interfering with, the common property to obtain beforehand the consent of the others interested in it to the change being effected, and consequently is the one less likely to lead to disputes among joint holders of party-walls. I agree, therefore, with my learned colleague in giving a decree to the appellant as proposed.

APPELLATE CIVIL—FULL BENCH.

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

1895. August 6, 7. September 6. October 24. November 1.

VALLABHA VALIYA RAJAH (COUNTER-PETITIONER), APPELLANT,

v.

VEDAPURATTI (PETITIONER), RESPONDENT.*

Transfer of Property Act—Act IV of 1882, *ss.* 87, 89, 92, 93.

A mortgagor who has made default in payment of the mortgage money within the time limited by the decree in a suit for redemption is not entitled to apply for execution of the decree after the time limited.

SECOND APPEAL against the order of R. S. Benson, District Judge of South Malabar, on civil miscellaneous appeal No. 122 of 1893, reversing the order of E. K. Krishnan, Subordinate Judge of Palghat, made on miscellaneous petition No. 706 of 1893 in the matter of original suit No. 3 of 1889.

The plaintiff sued to redeem a kanom, and a decree was passed directing that the mortgage premises be delivered to him on his payment of the mortgage money to defendant No. 31 within six

(1) L.R., 14 Ch. D., 192. * Appeal against Appellate Order No. 32 of 1894.