

RAMASAM-
 AYYAN
 v.
 VIRASAMI
 AYYAR.

is needed the *dictum* in *Mussamut Nanomi Babuasin v. Modun Mohun*(1) may be cited as showing that the son may question alike the existence and the nature of the debt in consequence of which the sale has taken place.

The decrees of both Courts must be reversed and the suit must be remanded for retrial by the District Munsif. It must be understood that no questions have been decided in this appeal save those two questions which arise upon the allegations made in the plaint. The respondents must pay the costs of this appeal. Other costs will be provided for in the revised decree.

DAVIES, J.—I agree to the reversal of the Lower Appellate Court's decree, because there was no allegation in the plaint and nothing to show that the mortgagees who brought the suit wherein the sale was decreed had notice of the plaintiff's interest. Their omission therefore to make the plaintiff also a party to that suit did not *ipso facto* entitle the plaintiff to a decree, for in the Allahabad case the ruling in which the Judge has followed, and with which I cannot say that I disagree, the fact was there had been such notice. I also agree to the reversal of the decree of the Court of First Instance and to the order of remand which my learned colleague has directed in the case, because there can be no doubt that the plaintiff's suit lies to show, as is alleged in the plaint, that there was no consideration for the mortgage or, in other words, the non-existence of the debt by which it is sought to bind the plaintiff's share in the family property.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

CHINNA OBAYYA (PLAINTIFF), APPELLANT,

v.

SURA REDDI AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
 RESPONDENTS.*

Hindu law—Illatom son-in-law—Right to partition.

The question whether an illatom son-in-law can demand partition from his father-in-law is not a pure question of law, but one that depends upon custom and can only be determined upon evidence.

(1) L.R., 13 I.A., 1 at p. 18.

* Appeal No. 71 of 1896.

APPEAL against the decree of W. G. Underwood, District Judge of Cuddapah, in Original Suit No. 10 of 1894.

CHINNA
OBAYYA
v.
SURA REDDI.

The plaintiff was the illatom son-in-law of defendant No. 1, and he brought this suit for partition of the family property. Among the issues framed, the eleventh was:—"Is the suit prematurely brought?" The District Judge decided this issue against the plaintiff and dismissed the suit on the ground that an illatom son-in-law is not entitled to partition during the life-time of his father-in-law.

The plaintiff preferred this appeal.

Rameshchandra Rau Sahib for appellant.

The Acting Advocate-General (Hon. *V. Bhashyam Ayyangar*), *Ethiraja Mudaliar*, and *Tiruvengkatachariar* for respondents.

JUDGMENT.—The question whether an illatom son-in-law can demand partition from his father-in-law is not a pure question of law, as the Judge has treated it, but one that depends upon custom and can only be determined upon evidence taken as to the custom. Such a question was indeed raised in *Hanumantamma v. Rami Reddi*(1), but was not decided in that case. The Judge should, therefore, have acceded to the plaintiff's request to permit him to adduce evidence as to the custom alleged to be one of the incidents of an illatom adoption. We must, therefore, reverse the decree of the Judge and remand the case for re-trial, directing the eleventh issue to be dropped altogether and the following issue to be substituted for it, viz., whether it is one of the incidents of an illatom adoption that the adoptee may demand partition from his father-in-law. The costs hitherto incurred will be provided for in the revised decree.

(1) I.L.R., 4 Mad., 272.]