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for specific performance (*Venkata Narasimhulu* v. *Peramma*(1), *Venkatarama Ayyar* v. *Venkatasubramanian*(2) and *Sriramulu* v. *Chinna Venkatasami*(3)). The decree of the lower Court is reversed and there will be a decree in favour of the plaintiff for Rs. 60 with interest at six per cent. (per annum) from the 21st March 1902 to date of payment and costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Russell.

1903. October 7, 8, 14.

VYTHINATHA AYYAR AND OTHERS (DEFENDANTS NOS. 4 to 6, 8, 9 AND 11), APPELLANTS,

v.

YEGGIA NARAYANA AYYAR (PLAINTIFF), RESPONDENT.*

Hindu law—Suit for partition of property come to plaintiff's father from the father of his adoptive mother—Nature of property so devolved—Plaintiff joint owner with his father.

In a suit for partition brought by plaintiff against his father, as first defendant, and others, plaintiff sought to recover a share of property which had come to first defendant from the father of the first defendant's adoptive mother.

Held, that plaintiff was a joint owner with first defendant in the property, and was entitled to partition of it.

Venkayamma Garu v. *Venkataramanayyamma Bahadur Garu*, (I.L.R., 25 Mad., 687) and *Karuppai Nachiar* v. *Sankaranarayanan Chetty*, (I.L.R., 27 Mad., 300), followed.

SUIT for partition. The relationship of the parties was as follows: Plaintiff was the son of first defendant; defendants Nos. 2 and 3 were plaintiff's brothers; defendants Nos. 4 to 10 were first defendant's brothers and their sons. The remaining defendants were impleaded as persons in possession of portions of the property in question. The property in which plaintiff sued for a share had come to the first defendant (plaintiff's father) from the father of first defendant's adoptive mother. The

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(1) I.L.R., 18 Mad., 173. (2) I.L.R., 24 Mad., 27.
(3) I.L.R., 25 Mad., 396.

* Civil Miscellaneous Appeal No. 31 of 1903 presented against the order of F. D. P. Oldfield, District Judge of Tanjore, in Appeal Suit No. 109 of 1902, presented against the decree of A. Ramalingam Pillai, District Munsif of Tiruvadi, in Original Suit No. 522 of 1900.

District Munsif dismissed the suit. Plaintiff appealed to the District Judge, who said: "Of the various issues in the suit the lower Court only found it necessary to decide one, which may be very shortly stated. The partition sued for is of property alleged to have belonged to plaintiff's father's mother's father and plaintiff's father, a Sudra, consents to the partition. The lower Court referring to Mayne's 'Hindu Law' (3rd edition), section 25, said that property inherited by a man through or from a female could not be ancestral, and found against plaintiff. A much longer discussion than I intend would be necessary but for the existence of a very recent authority which was not before the lower Court (*Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu*(1)) and I do not think it necessary to go into cases which have been superseded by that decision. To leave out of consideration the wills referred to therein which are not held to be operative, the property passed from the original male holder through his widow and daughter to the sons of the latter, and the decision is that these sons held the property thus inherited, as ancestral property, as joint tenants with benefit of survivorship. I can find no reason for distinguishing from these facts those now before me or the position of two sons from that of a son and his father."

He dealt with the arguments raised, reversed the Munsif's order and remanded the suit to be disposed of on its merits.

Against that order, defendants Nos. 4 to 6, 8, 9 and 11 preferred this appeal.

T. V. Seshagiri Ayyar and *T. Narasimha Ayyangar* for appellants.

P. S. Sivaswami Ayyar for respondent.

JUDGMENT.—The facts, so far as they need be stated for the purpose of this appeal, are as follows. The plaintiff is the son of the first defendant. The second and third defendants are the plaintiff's brothers. Defendants Nos. 4 to 10 are the first defendant's brothers and their sons. The parties are governed by the Mitakshara Law of inheritance and the plaintiff is undivided from his father, the first defendant. The plaintiff sued for partition. The property in respect of which he sued for a share was property which came to the first defendant from the father of Kamakshi, the first defendant's adoptive mother. The District Munsif

(1) I.L.R., 25 Mad., 678 at p. 687.

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dismissed the suit on the ground that the plaintiff could not claim a share in property which came to his father from the maternal side. The District Judge set aside the District Munsif's order and remanded the suit, relying on the recent decision of the Privy Council in the Jaggainpett case (*Venkayyamma Garu* v. *Venkataramanayyamma Bahadur Garu*(1)). The appeal is against this order. We think that the order of the District Judge is right. The Privy Council case relied on does not directly decide the point in issue, but that case has recently been explained and commented on in great detail by a Full Bench of this Court in *Karuppai Nachiar* v. *Sankaranarayanan Chetty*(2). The first defendant in the present case occupies precisely the same position *quoad* the property that the brothers, Niladri and Appa Rao, occupied in the Privy Council case. In that case it was held that though "the property was self-acquired property in the hands of their grandfather, yet in the hands of the grandsons it was ancestral property which had devolved on them under the ordinary law of inheritance" and that they took it as joint family property with right of survivorship and might have partitioned it if they had so desired.

In commenting on this decision the Full Bench of this Court pointed out that the right of survivorship referred to by the Privy Council was the right of survivorship as understood by the Mitakshara Law (*Jogeswar Narain Deo* v. *Ramachandra Dutt*(3)), according to which the right will not prevail in favour of the survivor as against the male issue of the deceased. They also laid stress on the fact that under the Mitakshara joint family system there can be no joint family property in respect of which the male issue of the joint owners do not by birth become joint owners with their father, as held in *Sudarsanam Maistri* v. *Narasimhulu Maistri*(4). It follows that in the present case the plaintiff is a joint owner with his father, the first defendant, in the property inherited from the first defendant's maternal grandfather, and the order of the District Judge is right. This being so, it is, perhaps, hardly necessary to deal with the various difficulties which, it was suggested at the Bar, would flow from the ruling of the Privy Council. For example it was asked, what would be the

(1) I.L.R., 25 Mad., 678 at p. 687. (2) I.L.R., 27 Mad., 300.
(3) I.L.R., 23 Calc., 670 at p. 679. (4) I.L.R., 25 Mad., 149 at p. 155.

position of grandsons by several daughters? Would they take the grandfather's property as ancestral property with rights of survivorship *inter se?* The answer is that they belong to different families and there could be no joint property with right of survivorship between them. In the Privy Council case the grandsons were brothers and were members of a joint family. And again if there were two grandsons by one daughter and one grandson died leaving a son, before the property devolved, would the property devolve on the grandson and great-grandson jointly or would the grandson, being one degree nearer, exclude the great-grandson. In regard to this question it is sufficient to say that the solution will probably be found in considering the basis of the Privy Council decision suggested by the Full Bench, viz., the view of the ancient Hindu law that a son of an appointed daughter (putrikaputra) became by a fiction of law a son's son to his maternal grandfather and a member of his family, ceasing to be a member of his father's family, while under the present law a daughter's son, though not ceasing to be a member of his father's family is regarded as equal to a son's son of his maternal grandfather, entitled to perform his obsequies and take his property. But the grandson of an appointed daughter under the old law or of a daughter under the modern law is not regarded as equal to a son's son. In this view the ordinary rule of Hindu Law would prevail and the nearer grandson would exclude the more remote great-grandson.

We dismiss the appeal with costs.