

SABAPATHY
MUDALIAR
v
SREETHA-
RAMIAH.

registration, but we cannot accede to this contention. It is next urged that having regard to the language of the proviso to section 14 of Act XX of 1847, the law in this country must be taken to be different from that accepted as the law of England subsequent to the decision of the House of Lords which settled it [*Jefferys v. Boosay* (1)]. In our opinion, however, the proviso in the Indian Act does not, in substance, differ from the proviso in the English Act (5 & 6 Vic., ch. 45, section 24). The effect of it is to protect copyright in unpublished works as also copyright where there is registry under the statute in the case of published works inclusive of cases in which there has been registry before the suit, though after the infringement complained of. The Calcutta case on which the Judge relies is not in conflict with our view for the work was in that case registered prior to the filing of the suit.

It follows that the plaintiff's suit was unsustainable. We therefore reverse the decree of the Judge and dismiss the suit. Having regard, however, to the fact that the plaintiff asked for registration and was, as far as we can judge, improperly refused, we direct that each party bear his own costs throughout.

APPELLATE CIVIL.

Before Mr. Justice S. Subrahmania Ayyar and Mr. Justice Benson.

1906.
January 22.

YELUMALAI CHETTI AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

SRINIVASA CHETTI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code-Act XIV of 1882, ss. 244, 318--Purchaser of undivided share must sue for partition by separate suit--Section 244 no bar to such suit.

The purchaser at a Court sale of the share of an undivided member of a joint Hindu family acquires only a right to sue for partition and for delivery of what may be allotted as the share of such undivided member. The Court cannot on a mere application for execution by such purchaser enforce his right by an order for partition. No such order can be made under section 318 of the Code of Civil

(1) 4 H. L., 815.

* City Civil Court Appeal No. 22 of 1905, presented against the decree of M.R.Ry.C. Jambulingam Mudaliar, City Civil Court Judge, Madras, in Original Suit No. 173 of 1904.

Procedure and the dismissal by the Court of an application by the purchaser under section 318 cannot be a bar to a suit by the purchaser for partition.

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Section 244 of the Code of Civil Procedure is no bar to such a suit.

FIRST plaintiff sued to recover possession of the plaint property basing his claim to one-half of it on a private sale-deed executed by first defendant in his favour on 13th August 1902 for a consideration of Rs. 1,100, and as to the other half on a sale-certificate in favour of first and second plaintiffs granted to them in pursuance of a Court sale by public auction held on 2nd January 1899 in execution of the decree in Suit No. 5483 of 1897 on the file of the Madras Court of Small Causes.

Second defendant pleaded that the suit was barred under section 244 of the Code of Civil Procedure, inasmuch as the application by the plaintiffs under section 318, Civil Procedure Code, to be put in possession of the property purchased at the auction sale was dismissed as being barred by limitation, and plaintiffs had not preferred an appeal against that decision.

The lower Court held that the suit as against the second defendant was barred by the rule of *res judicata* and by limitation.

Plaintiff preferred this appeal.

V. Krishnaswami Ayyar and V. Visvanatha Sastri for appellants.

M. Thangavelu Chettiar for second to fifth respondent.

JUDGMENT.—The facts of the case are as follows :—In execution of a decree for money obtained against the second defendant who is the father of defendants Nos. 3 to 5 and the undivided brother of the first defendant, the plaintiffs purchased the undivided half share of the second defendant in the house in dispute. Subsequently the first plaintiff purchased the first defendant's share also. The present suit is to recover possession of the entire house. In so far as the second defendant's share was concerned the suit was dismissed on the ground that the proper remedy was by execution of the decree under section 244, Civil Procedure Code. This view is not sustainable. The only right acquired by the Court-sale against the second defendant was a right to effectuate the sale by a suit for partition of the joint property of the co-parceners and the delivery to the plaintiffs of what might be allotted to the share of the second defendant at the partition.

It was not competent to the Court in the circumstances of this case, on a mere application for execution by the purchaser, to enforce the right of the purchaser by an order for partition.

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Consequently no orders of the kind contemplated by section 318, Civil Procedure Code, could have been passed in favour of the plaintiffs in the circumstances of this case. It follows that section 244 could not have been a bar to a suit brought by these plaintiffs for partition. The order therefore relied on by the Judge dismissing the application for the so-called delivery under section 318 does not affect the case. As after the purchase of the first defendant's right the first plaintiff became entitled to the whole house against both the co-parceners whose rights had passed to him the decree dismissing the suit as against the second defendant is wrong. His sons, defendants Nos. 3 to 5, are bound by the sale against their father, no case as to the nature of the debt entitling them to question the sale having been put forward.

We therefore modify the decree of the Judge by allowing the plaintiffs' claim in its entirety with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Moore.

1905
December 6.

NAMBIAMUTTIL POKKER (PLAINTIFF), APPELLANT,

v.

KITHAKKI KUNHIPATUMMA AND OTHERS (DEFENDANTS),
RESPONDENTS.*

Malabar Law—Karnavan right of, to sue member in possession for maintenance.

Where properties of a Tavazhi are in the possession of a member other than the Karnavan, the latter cannot sue such member for maintenance but only for possession of such properties.

SUIT for maintenance. The plaintiff alleged that the plaint properties items 1 to 65 belonged to a Tavazhi consisting of himself and the defendants. He alleged that the first defendant, who was a female, was in possession of some of the Tavazhi properties as the managing member of the Tavazhi and having paid for his maintenance for some time discontinued doing

* Second Appeal No. 1005 of 1903, presented against the decree of M.R. Ry. M. Achutan Nair, Subordinate Judge of North Malabar, in Appeal Suit No. 206 of 1901, presented against the decree of M.R. Ry. V. S. Krishna Ayyar, Acting District Munsif of Panur, in Original Suit No. 82 of 1900