

R. JAMMA
v.
RAMAKRISH-
NAYYA.

B. Sitwama Rau for appellant.

Balakrishna Rau for *K. Narayana Rau* for respondent.

JUDGMENT.—No evidence was taken in the case. It was disposed of upon the petitions of the parties. The decision in *Mahadeva Pandia v. Rama Narayana Pandia* (1) is strongly in favour of the view that the money connected with insurance the premia for which were paid out of the salary of the deceased is *prima facie* his separate property. In a summary inquiry like the present, the proper course is to follow this view leaving the party, the brother, who sets up that it is joint property to establish it by suit having regard specially to the fact that the brother's claim is based solely upon the assumption that the education of the deceased was at the expense of the family. We set aside the orders of the District Judge and direct that the certificate be issued to the appellant on her giving security to the satisfaction of the District Judge of South Canara. Each party will bear his own costs in these appeals.

APPELLATE CIVIL.

*Before Sir S Subrahmania Ayyar, Officiating Chief Justice,
and Mr. Justice Sankaran Nair.*

1905
July 31.
August 10,
16.

KANNAMBATH IMBICHI NAIR AND ANOTHER (SECOND AND
THIRD COUNTER-PETITIONERS), APPELLANTS,

v.

MANATHANATH RAMAR NAIR AND ANOTHER (PETITIONERS),
RESPONDENTS.*

Appeal against order of District Court granting sanction—Criminal Procedure Code, Act V of 1898. s. 195. cls. 6, 7—Power of High Court on such appeal.

An appeal lies to the High Court against an order of the District Judge granting sanction under clauses 6 and 7 of section 195 of the Code of Criminal Procedure. Where such order has revoked the sanction granted by the Munsif

(1) 13 M.L.J., 75.

* Civil Miscellaneous Appeal No. 115 of 1905, presented against the order of L. G. Moore, Esq., District Judge of South Malabar, in Miscellaneous Petition No. 197 of 1904, presented against the order of M.R.Ry. T. V. Anantan Nair, Principal District Munsif of Calicut, in Miscellaneous Petition No. 764 of 1904 (Small Cause Suit No. 260 of 1903),

for prosecution under certain sections of the Indian Penal Code but granted sanction to prosecute under other sections, it is competent to the High Court on appeal, therefrom, not only to revoke the sanction granted but also to grant the sanction refused.

KANNAM-
BATH
IMBICHI
NAIR
v.
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NATH
RAMAR
NAIR.

THE respondents, as plaintiffs, brought a suit for money against the appellants and others in the Munsif's Court of Calicut. The appellants pleaded a discharge by payment to the fifth defendant in that suit and produced a receipt (exhibit 1) purporting to be signed by the fifth defendant in support of their plea. The receipt was found to be a forgery and a decree was passed for the amount claimed by the plaintiffs.

On the application of the plaintiffs (respondents) sanction was granted by the Munsif to prosecute the appellants under sections 464 and 193 of the Indian Penal Code.

On appeal the District Judge revoked the sanction under these sections, but granted, instead, sanction to prosecute under section 192 of the Indian Penal Code.

The appellants first put in a revision petition under section 622 of the Code of Civil Procedure, which was, however, admitted and treated as an appeal under section 195 of the Code of Criminal Procedure.

Mr. W. Barton and B. Govindan Nambiar for appellants.

O. V. Anantakrishna Ayyar for respondents.

ORDER (SANKARAN NAIR, J).—An application was made for sanction to prosecute the petitioners under section 463, 471 and 493, Indian Penal Code, and the Munsif granted sanction for prosecution as prayed for. There was no application before him for sanction to prosecute the petitioners for an offence under section 192, Indian Penal Code, though he discusses the applicability of that section to the facts before him.

The District Judge in appeal has revoked the sanction granted by the District Munsif, but has granted sanction to prosecute the petitioners for an offence under section 192, Indian Penal Code.

I am of opinion that in this case an appeal lies to this Court against the order of the District Judge under clauses (6) and (7) of section 195 of the Code of Criminal Procedure.

Mr. Barton applies that this petition may be treated as an appeal. I am inclined to allow the request, and as appeals have to be heard by a Bench of two Judges I direct this to be posted accordingly.

KANNAM-
BATH
IMBICHI
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v.
MANATHA
NATH
RAMAR
NAIR.

The case came on for hearing before a Bench constituted as above. Their Lordships delivered the following

JUDGMENT:—For reasons stated in the order dated the 31st July 1905, Mr. Barton's application to revoke the order of the District Judge was treated as an appeal.

We have now heard Mr. Barton and are unable to agree with his contention that we have only to deal with the objection against the order sanctioning prosecution under section 192, Indian Penal Code. Under the provisions of the Criminal Procedure Code, section 195, the Appellate Court has power to revoke any sanction granted by the Court against whose order the appeal is made, as also to grant sanction refused by it. The District Judge apparently came to the conclusion that the signature to the receipt as well as the thumb marks therein were really affixed by the first defendant and probably this is correct. There can, however, be no doubt that the payment of Rs. 150 and odd recited in the receipt is untrue. The question as to this payment was the crucial one, and as the petitioners stated on affirmation, positively, that they saw the payment made, we think the offence for which sanction for prosecution should be given is that of giving false evidence under section 193, Indian Penal Code. The order of the District Judge will be modified accordingly.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

KANNAN NAMBIAR, PLAINTIFF,

v.

ANANTAN NAMBIAR AND OTHERS, DEFENDANTS.*

Jurisdiction—Subsequent extension of powers will not apply to a suit previously instituted.

A suit rightly instituted as an original suit in a District Munsif's Court must remain for trial as an original suit in such Court and a District Court, by a

* Referred Case No. 14 of 1904 stated under section 646-B of Act XIV of 1882 by M.R., Ry. A. Venkataramana Pai, District Judge of North Malabar, in Small Cause Suit No. 92 of 1904 (*vide* Referred Case Nos. 15 to 20 of 1904.)