SANKARAN-NAIR AND ABDUR RAHIM, JJ.

THANDAVA-ROYA PILLAI v. SHUNMUGAM PILLAI.

based on the ground that, as two brothers were in joint management, the son was entitled to succeed his father in such management. It has been decided in *Sri Raman Lalji Maharaj* v. *Sri Gopal Lalji Maharaj*(1) that even the divided members of a Hindu family are not entitled to claim rights of exclusive management and superintendence in rotation for any definite period as decreed by the Subordinate Judge in this case. This decision has been approved in *Ramanathan Chetty* v. *Murugappa Chetty*(2). *A fortiori*, such a claim would be untenable before partition. In *Ramanathan Chetty* v. *Murugappa Chetty*(2) the dispute arose after partition and the rights of the parties were based upon an arrangement made by them. We are, therefore, of opinion that the decree of the lower Court must be reversed. We accordingly set it aside and dismiss the suit with costs throughout.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Abdur Rahim.

1908. September 22, 23.

PALANI KUMARASAMIA PILLAI AND ANOTHER (DEFENDANTS), APPELLANTS IN BOTH,

v.

UDAYAR NADAN AND OTHERS (PLAINTIFFS), RESPONDENTS IN BOTH.*

Civil Procedure Code, Act XIV of 1882, ss. 483, 491, 561—Where attachment made on insufficient grounds, party injured can recover general damages—A memorandum of objections under s. 561, if not moved, ought to be dismissed.

An order of attachment under section 483 of the Code of Civil Procedure, found by the Court, under section 491, to have been made on insufficient grounds, must necessarily cause damage to the credit and reputation of the party against whom the order is made; and such party is entitled, in a suit for damages, to general damages for loss of credit and reputation where the attachment is obtained maliciously and without reasonable and probable cause:

Quære.—Whether in such a suit malice and want of reasonable and probable cause must be proved.

(1) (1897), I.L.R., 19 All., 428.

(2) (1904), I.L.R., 27 Mad., 193 at p. 201.

* Second Appeals Nos. 1431 and 1432 of 1905.

The Court has jurisdiction over a memorandum of objections presented under section 561 of the Code of Civil Procedure, although it is not stamped or moved by the respondent at the hearing of the appeal, and where it is not so stamped or moved the proper order is to dismiss it, with or without costs, at the discretion of the Court.

SECOND APPEALS against the decree of W. W. Phillips, District Judge of Tinnevelly, in Appeal Suits Nos. 544 and 545 of 1904, respectively, presented against the decree of B. Cammaran Nair, Subordinate Judge of Tuticorin, in Original Suit No. 28 of 1903.

The first plaintiff is the father of minor plaintiffs Nos. 2 and 3. A suit for money was brought against the plaintiffs by the defendant, who, on certain allegations, applied for and obtained an order for attachment before judgment of certain fibre belonging to plaintiff. On notice of attachment being given, the plaintiff appeared and showed cause and the attachment was withdrawn.

The plaintiffs, on the allegation that the attachment was applied for maliciously and without reasonable and probable cause, sue to recover Rs. 2,586, *i.e.*, Rs. 2,000 as damages for loss of credit and reputation and Rs. 586 for other losses.

The District Munsif found that the attachment was malicious and without reasonable and probable cause and awarded Rs. 120 for loss of credits and Rs. 280 for other items, with full costs. Both parties appealed to the District Court The defendant's appeal was dismissed; on the appeal of the plaintiff the District Judge upheld the finding that the attachment was malicious and without reasonable and probable cause and modified the decree by awarding sums aggregating Rs. 506.

The defendants appealed to the High Court. The plaintiffs (respondents in the High Court) put in a memorandam of objections under section 561 to be stamped and moved at the hearing of the appeal.

Sir *V. Bhashyam Ayyangar* and *T. V. Muthukrishna Ayyar* for appellants.

P. R. Sundara Ayyar and *A S. Balasubrahmania Ayyar* for first respondent.

JUDGMENT—*In Second Appeal No.* 1431 *of* 1905.—It is not necessary for us to decide whether, in a case where the Court finds under section 491 of the Code of Civil Procedure that an attachment under section 483 was applied for on insufficient grounds, the party against whom the order for attachment was made in a suit for compensation must prove that the defendant acted maliciously.

WHITE, C.J., AND ABDUR RAHIM, J.

KUMARASAMIA IYLLAI v. UDAYAR NADAN.

In the present case the lower Appellate Court finds on the facts that the first defendant acted maliciously and without reasonable and probable cause.

The lower Appellate Court awarded the plaintiff Rs. 256 by way of special damages and a further sum of Rs. 250 for general damages for loss of credit and reputation. Sir V. Bhashyam Ayyangar has contended that general damages are not recoverable. He conceded that he had not been able to find any authority in support of this contention. It seems to us that an order under section 483, Civil Procedure Code, where the application has been made on insufficient grounds, must necessarily cause damage to the credit and reputation of the party against whom the order is made, and we think general damages are recoverable. The principle of the decision in *Quartz Hill Gold Mining Company* v. *Eyre*(1) is, in our opinion, applicable to a case of this sort.

The second appeal is dismissed with costs.

On behalf of the first respondent a memorandum of objections was filed in this Court and a copy of the memorandum served upon the appellants under section 561 of the Civil Procedure Code. Mr. Sundara Aiyar, who appeared for the respondent, did not move his memorandum of objections, and he contended that, in these circumstances, the Court had no jurisdiction to make any order with regard to it. His contention was that there was nothing before the Court with which it could deal judicially. A party may file his memorandum of objections without stamping it as it is not one of the documents to which section 6 of the Court Fees Act applies. Under section 16 of the Act the Court cannot hear the objection until the proper stamp fee has been paid by the respondent. In the present case the memorandum of objections was not stamped, but though not stamped, it is before the Court and the Court, in our opinion, has jurisdiction to deal with it, and the Court cannot be deprived of this jurisdiction because the respondent refrains from moving it. To hold otherwise might work serious hardship to an appellant. On receiving a copy of the memorandum of objections an appellant may incur costs in connection with the memorandum in order that he may be prepared to fight it. Rule 88 of the Appellate Side rules expressly provides that, when a memorandum has been filed, the appellant may file an additional

(1) (1883), 11 Q.B.D., 674.

list of documents which he desires to have translated and printed. If the Court has no jurisdiction to deal with a memorandum of objections which has not been moved an appellant may have to pay out of his own pocket costs which he has incurred on account of the memorandum of objections, which the respondents, for his own purposes, refrains from moving. The practice as to the form of order when a memorandum of objections has not been stamped and has not been moved does not seem to be uniform, but orders dismissing the memorandum, in such circumstances, have been made, and we are of opinion there is jurisdiction to make the order. If there is jurisdiction for making an order dismissing a memorandum of objections, there is of course jurisdiction to make an order dismissing it with costs. The memorandum of objections in the present case is dismissed with costs.

In Second Appeal No. 1432 of 1905.—This second appeal is dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Wallis and Mr. Justice Pinhey.

KULLAN

v.

EMPEROR.*

1908. November 4, 5, 17.

Criminal Procedure Code of Act V of 1898, s. 339—Full and true disclosure by approver—No condition precedent to pardon—Procedure on trial of approver.

Under section 339 of the Code of Criminal Procedure of 1898 the making of a full and true disclosure by the approver is not a condition precedent to the pardon, but making an incomplete and false disclosure is a condition subsequent by which the pardon, which has become operative before such disclosure, is forfeited. There is no necessity for withdrawing the pardon and such withdrawal has no effect.

Queen-Empress v. *Ramasami* [(1901) I.L.R., 24 Mad., 321], considered.

Queen-Empress v. *Sudia* [(1892) I.L.R., 14 All., 336], followed.

Queen-Empress v. *Nattu* [(1900) I.L.R., 27 Calc., 137], followed.

Where a pardon is tendered and the approver is afterwards put on his trial, he ought to be asked if he relies on the pardon as a bar to his trial; and if he does so rely, the prosecution should first prove that the pardon

*Criminal Appeal No. 579 of 1908.