APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

VENKATA SUBBA RAO (PLAINTIFF), APPELLANT, 1902. February 11.

v.

PURUSHOTTAM AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Hindu Law—Exclusion from inheritance—Lameness of a member of an undivided family—Effect on right of inheritance.

Lameness which is not congenital is no bar to the right of inheritance which a member of an undivided Hindu family ordinarily possesses.

Whether lameness which is congenital would be a bar—*Quære.*

SUIT to recover possession of certain property which plaintiff contended had been awarded to him at a partition; or, if the Court should hold that there had been no partition, for the allotment of a half share in the property. Plaintiff was the nephew (brother's son) of first defendant, and he alleged that a partition of ancestral property had been effected some years before suit, but that first defendant had subsequently refused to recognise it and prevented plaintiff from dealing with or occupying the lands. Second defendant was the minor son of first defendant. First defendant denied the alleged partition, and also pleaded that inasmuch as plaintiff was a lame man he was incapable of inheriting and, in consequence, could not maintain a suit for partition. This question was raised in the sixth issue. The District Munsif dealt with it as follows:—"The plaintiff is not able to move on his legs. He has to move on his haunches. With some difficulty he was able to stand for a minute or so supporting himself with his hands on two almirahs. The first defendant says that he lost the use of his legs when 7 or 8 years old and by the plaintiff's side it is stated that he got the affection much later than that. In any case plaintiff's lameness is not congenital and the question is whether such lameness disqualifies him from inheritance. No authority has been cited which is free from doubt. The text of Manu runs 'Eunuchs and outcastes, persons born blind or deaf, madmen, idiots, the dumb, and

* Second Appeal No. 713 of 1900 against the decree of S. Gopalachariar, Subordinate Judge of Kistna, in Appeal Suit No. 589 of 1899 against the decree of A. Ramaswami Sastri, District Munsif of Masulipatam, in Original Suit No. 482 of 1899.

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such as have lost the use of a limb are excluded from a share of the heritage.' Mitakshara also is to the same effect. The Sanscrit expression used in Manu to denote such as have lost the use of a limb is 'Nirindruja' which seems to have been by some held as meaning such as have lost the sense of smell, but there seems to be a consensus of opinion that it includes one who has lost the use of a limb. But whether such loss is to be a congenital one or not has not been clearly laid down. Deafness, dumbness and blindness do not disqualify one from inheriting unless they are congenital. It is argued for plaintiff therefore that lameness not congenital is no disqualification. Sir Thomas Strange and Grady favour plaintiff's contention. In his Tagore Law lectures, Rajakumar Sarvadhikari says (p. 960) 'that supervening deficiency in a limb organ, or sense does not work disinherition; but congenital defects, if incurable, are grounds of disqualification.' He who wants to exclude a coparcener ought to clearly prove liability to execution. There being no direct authority on the point arising in this case, and it by no means being certain that the lameness of the plaintiff is an incurable one, I hold that his lameness is no disqualification." He found that there had been no previous partition, but that there was other joint immoveable property which should have been included in the claim, and, on this ground, namely, that it was a claim for partial division, dismissed the suit.

Plaintiff appealed to the Subordinate Judge, who also found against the alleged previous partition. On the question whether it was a suit for partial division he disagreed with the District Munsif and held that it was not, and that the suit was maintainable. On the question whether plaintiff's lameness debarred him from inheriting he first found, on the evidence, that plaintiff had not been born a cripple, and that he had the use of both his legs for the first ten or fifteen years of his life; also, that he had, at the time of suit, lost the use of both legs, and that his condition was obviously incurable; also that the common ancestor of plaintiff and first defendant had died before plaintiff became a cripple. He referred to *Fithick Chundu Chatterjee* v. *Juggut Mohinee Dabee*(1); also to the Mitakshara and Smirithi Chandrika and to the Hindu Law texts of Manu, Vishnu, Narada, Dayabhaga, Dayakrama, Sangraha, Datta Chandrika, Vyavahara Mayugu, Vivada Ratnagara, Vivada

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Chintamani; and to the modern text-books. The effect of these was, he considered, not to limit the disqualification to one who had been born a cripple. He added:—"The only authority that is against this view is Jagannatha, the compiler of Colebrooke's 'Digest' who, as is pointed out by Dr. Jolly in the Tagore Law Lectures for 1883, seems to have had before him a wrong text of Narada. The true text of Narada is to be found in verse 22, page 194 of volume 23 of the Sacred Books of the East. What should be read as 'Jota Unmatta' has been read as 'Janma Unmatta,' and hence the material difference made by Jagannatha. The few text writers who support the plaintiff's contention are simply followers of Jagannatha. As the matter would receive full consideration at their Lordship's hands I do not think it necessary to dilate on it. For the same reason I omit to refer to the several decisions which relate to other disqualifications such as blindness, deafness and dumbness, insanity, leprosy, &c., which have been cited as throwing light upon the correctness or otherwise of the view that one born lame would alone be disqualified. My conclusion is that plaintiff, by reason of his lameness, that is, inability to use both his legs for the last 15 or 20 years, which is apparently remediless, is disqualified for a share. On this ground and not on the technical ground taken by the District Munsif, I affirm his decree and dismiss the appeal, but in the circumstances of the case, without costs."

Plaintiff preferred this second appeal.

P. S. Sivaswamy Ayyar and *P. Naghabhushanam* for appellant.—In this case it is admitted that the lameness with which the plaintiff is afflicted was not congenital. Yajnavalkya excludes from inheritance (see Yajnavalkya 2, 141) a "Pangu." "Pangu" is defined in Mitakshara as "Páda Vikala." The word "Vikala" means "*devoid or destitute* of." Therefore, "Páda Vikala" means one who has no feet. The reference is obviously to one who is born without feet. From the text of Manu (Manu 9, 20) it is clear that *blindness* and *deafness* must be congenital in order to operate as a ground of exclusion from inheritance. The same restriction must apply also to lameness. Surely, it could not be maintained that Yajnavalkya meant to lay down that a person who lost his legs, say, in the battle field, must be deprived of his inheritance. After all, some of these texts which set out the grounds of exclusion from inheritance must be deemed to have become obsolete. If a person

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suffered from some malady or infirmity which incapacitated him altogether for the business of life, that might be a reasonable ground of exclusion from inheritance. Such a person might possibly only have a right of maintenance. But here the plaintiff has had the use of his legs for some time, and can read and write and manage property, as has been shown by evidence. Narada declares (Narada 13, 21) that "*an enemy to his father*, an outcaste, an impotent person and one who is addicted to vice take no shares of the inheritance even though they be legitimate." It is doubtful now if the Courts would be prepared to follow this rule to the extent of excluding from inheritance a person who is not on friendly terms with his father. The only decision which can be found on the subject seems to favour the view that lameness, to disentitle one to inheritance, must be congenital (*Fithick Chundu Chatterjee* v. *Juggut Mohinee Dabee*(1)).

V. Ramesam for respondent.—It is submitted that lameness which is subsequently acquired is also a ground of exclusion. I rely on Manu IX, 201. The word used is 'Nirindruja' or those who have lost a sense or a limb (Colebrooke's 'Mitakshara' II, X, 3). Sir William Jones translates it as "such as have lost the use of a limb." The author of Mitakshara explains it thus:—Any person who is deprived of an organ of sense or action *by disease or other cause* is said to have lost that sense or limb (Mitakshara II, X, 4). Yagnavalkya uses the word 'Pangu' (Yagnavalkya II, 141), which the author of Mitakshara explains as "one deprived of the use of his feet" (Mitakshara II, X, 2). The word 'born' qualifies only 'deaf or dumb.' In *Baboo Bodhnarain Singh* v. *Baboo Omrao Singh*(2), the question whether lunacy, though not congenital, would exclude from inheritance was considered. [Bhashyam Ayyangar, J.—Have you found any case in which the point was raised?] None. In *Fithick Chundu Chatterjee* v. *Juggut Mohinee Dabee*(1) the point was not raised but conceded. [Bhashyam Ayyangar, J.—That shows that it is obsolete as a ground of exclusion. What do you say as to one who is an enemy of his father?] Physical disqualifications, which are definite, must be distinguished from moral disqualifications, which are indefinite.

JUDGMENT.—Even assuming that under the Hindu Law texts in case the lameness was congenital there would be a bar, a matter

(1) 22 W.R., 348. (2) 13 M.I.A., 519.

regarding which we give no opinion, it is admitted in the present case that the lameness was not congenital and that the plaintiff for years after his birth had the use of his limbs.

No case has been quoted where any Court has held that lameness congenital or otherwise is a bar to inheritance. In the only case that has been quoted, *Fitlick Chundu Chatterjee* v. *Juggut Mohinee Dabee*(1), the decision proceeds upon the assumption that lameness would be no bar unless it were proved that the person proposed to be excluded was a cripple from birth. Such being the case we cannot uphold the decision of the Subordinate Judge.

We must therefore set aside the decrees of both Courts and hold that there should be a partition and that the plaintiff is entitled to a one-half share in the lands and houses in Chinamutevi village (as per schedule A) with costs throughout and mesne profits amounting to Rs. 126 for the three years prior to the suit, and subsequent mesne profits up to the date of delivery of the plaintiff's share after partition, such profits to be ascertained in execution.

APPELLATE CRIMINAL.

Before Mr. Justice Bhashyam Ayyangar.

V. SHANMUGAM CHETTY, PETITIONER,

v.

PENNAPPA MUDALY AND OTHERS, COUNTER-PETITIONERS.*

1902. July 22.

Criminal Procedure Code—Act V of 1898, ss. 195, 435—Order by Sessions Judge staying proceedings pending reference to High Court for orders on proceeding relating to grant of sanction—Prosecution proceeding in Court outside jurisdiction of Sessions Judge—Legality.

Sanction was accorded by a Second-class Magistrate in the Sessions Division of South Arcot, for the prosecution of A on various charges. A then applied to the Deputy Magistrate of Cuddalore (in the same Sessions Division) who confirmed the sanction. A charge was laid against A in the Court of a Second-class Magistrate in the Sessions Division of Chingleput. A, however, petitioned the Sessions Judge of South Arcot to revise the sanction and stay proceedings

(1) 22 W.R., 348.

* Criminal Revision Petition No. 282 of 1902 praying the High Court to revise the order of the Sessions Judge of South Arcot, dated 7th July 1902, in Criminal Miscellaneous Petition No. 4 of 1902.