

SUNDARA
 AYYAR
 AND
 SPENCER, JJ.
 MARADEVI
 v.
 PANMAKKA.

house and other family properties. The principles on which maintenance should be calculated are laid down in the judgments of this Court in *Nārāyani v. Govinda*(1) and *Kunhammatha v. Kunhi Kutti Ali*(2).

On the conclusion we have come to it will be unnecessary for the lower Appellate Court to decide whether the defendant left the family house, as alleged by the plaintiffs. But the question how long any of the plaintiffs resided away from the family house and the circumstances under which he or she did so will have to be decided in order that a conclusion may be come to on the question whether the claim to maintenance for the period in question or any portion thereof can be held to have been waived by any or all of the plaintiffs.

With these observations we reverse the decree of the lower Appellate Court and remand the appeal for fresh disposal in the light of our remarks. The costs in this Court will abide the result.

APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim and Mr. Justice
 Sundara Ayyar.*

1912,
 January 24.

S. KRISHNAMA CHARLU AND ANOTHER (RESPONDENTS
 AND COUNTER-PETITIONERS), APPELLANTS,

v.

S. VENKAMMAH (MINOR BY GUARDIAN AND FATHER)

AND

R. LAKSHMANA CHARLU—(PETITIONER), RESPONDENTS.*

*Succession Certificate Act (VII of 1887)—Certificate to a minor can be granted—
 Sec. 9, no bar.*

A succession certificate can be granted to a minor.

Per curiam: Section 9 of the Succession Certificate Act (VII of 1887) presents no difficulty to the grant in such a case.

Kali Coomar Chatterjee v. Tara Prasunno Mookerjee [(1879) 5 O.L.R., 517-9] and *Ram Kuar v. Sardar Singh*, (1893) I.L.R. 20 All., 352 followed.

Ex-parte Mahadeo Gangadhar, [(1904) I.L.R. 28 Bom.], 344 and *Gulabchand v. Moti*, [(1901) I.L.R., 25 Bom., 523], considered.

(1) (1884) I.L.R., 7 Mad., 352.

(2) (1884) I.L.R., 7 Mad., 283.

* Appeal Against Order No. 19 of 1911.

APPEAL against the order of J. W. HUGHES, the District Judge of Kurnool in Civil Miscellaneous Petition No. 166 of 1909.

B. Narasimha Row for the appellants.

The Hon. Mr. *T. V. Seshagiri Aiyar* for the respondents.

ABDUR
RAHIM AND
SUNDARA
AIYAR, JJ.

KRISHNAMA
CHARLU
v.
VENKAMMAH.

JUDGMENT.—The question raised before us in this appeal is whether a succession certificate can be granted to a minor on an application made by him through his natural guardian. We answer the question, which is not absolutely free from difficulty, in the affirmative. Apart from section 9 of the Succession Certificate Act VII of 1889 which we shall consider generally, there is nothing in the Act which precludes a minor from applying for a certificate, while we find that sections 8 to 13 of Probate and Administration Act V of 1881 prohibits grants of probate and letters of administration to minors. If the minor is the heir of the deceased, as is the case, the property will vest in him and he would be the person entitled to institute suits to recover debts due to the estate. Section 4 of the Succession Certificate Act lays down that no Court shall pass a decree against a debtor of the deceased person in favour of a person claiming to be entitled to the effects of the deceased except on the production by the person so claiming of a certificate issued under the Act. Now if where a minor is so entitled, the certificate were to be granted to his guardian as suggested in *Ex parte Mahadeo Ganyadhar* (1) the requirements of section 4 would not be satisfied; and if the certificate could not also be granted to the minor as held in *Gulabchand v. Moti* (2) the result would be that no suit could be instituted at all during the minority of the heir, a result which could not have been contemplated by the legislatures. Section 9 no doubt lays down that whenever the Court considers it desirable to take security from the applicant, it shall require him to execute a bond with two sureties, and it is argued that, as a minor cannot execute such a bond, it must be held he is incompetent to apply for a certificate. But we think that execution of the bond by the guardian on behalf of the minor applicant would bind the minor and thus satisfy the provisions of section 9. In our opinion, therefore, this section does not present any serious difficulty. We may observe with reference to the Bombay decisions that the

(1) (1904) I.L.R., 28 Bom., 344.

(2) (1901) I.L.R. 25 Bom., 523.

ABDUR
RAHIM AND
SUNDARA
ATTAR, JJ.
KRISHNAMA
CHARLU
v.
VENKAMMAH.

attention of the learned Judges who decided these cases, does not appear to have been drawn to the difficulty that would arise in collecting debts of the minor heir of a deceased person, if this view of the law were to be accepted as sound.

On the other hand the Calcutta and Allahabad High Courts have held in *Kali Coomar Chatterjea v. Tara Prosunno Bhookerjea*(1) and *Ram Kuar v. Sardar Singh*(2) that a certificate can be granted to a minor. We think this is the correct view and dismiss the appeal with costs.

APPELLATE CRIMINAL.

Before Sir Charles Arnold White Chief Justice, Mr. Justice Sankaran Nair and Mr. Justice Ayling.

*In re P. VENKATA REDDY (ACCUSED IN CALENDAR CASE No. 1 OF 1911 ON THE FILE OF THE JOINT MAGISTRATE'S COURT OF GODAVARI), PETITIONER.**

1911.
October
6, 10 & 13.
1912.
February
28 & 29,
and
March 15.

Indian Penal Code (Act XLV of 1860), sec. 499—Defamation—Absolute privilege, doctrine of, applicable under sec. 499—Accused, statement of, in course of judicial proceedings.

A person charged with an offence was on his trial asked by the Magistrate what he had to say and in reply made a statement defamatory of one of the prosecution witnesses.

Held: that the statement was absolutely privileged and that he was not liable to be punished in respect thereof for an offence under section 499, Indian Penal Code. Although the English doctrine of absolute privilege is not expressly recognized in the section, it does not necessarily follow that it was the intention of the legislature to exclude its application from the law of this country.

PETITION under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the judgment of F. W. R. ROBERTSON, the Joint Magistrate of Godavari, in Calendar Case No. 1 of 1911.

The facts of this case are set out in the order of SPENCER, J. *B. Narasimha Rao* for the petitioner.

J. L. Rozario, Acting Public Prosecutor on behalf of Government.

(1) (1879) 5 C.L.R., 517.

(2) (1898) I.L.R., 20 All., 352.

* Criminal Revision Case No. 216 of 1911.