

## APPELLATE CIVIL.

*Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.*

KRISHNASWAMI NAIDU (PLAINTIFF), APPELLANT IN SECOND  
APPEAL AND RESPONDENT IN THE PETITION,

1915.  
October 28.

v.

SEETHALAKSHMI AMMAL, RESPONDENT IN THE SECOND  
APPEAL AND PETITIONER IN THE PETITION.\*

*Hindu law—Gift to the illegitimate son of an undivided collateral co-parcener, not ancestral property as between the donee and his son.*

Property given for maintenance to the illegitimate son of an undivided deceased collateral co-parcener is not "ancestral property" of the illegitimate son in which the son of that illegitimate son gets a right by birth.

*Nagalingam Pillai v. Ramashendra Teven* (1901) I.L.R., 24 Mad., 429 and *Hasarimal Babu v. Abaninath* (1913) 17 C.L.J., 38, distinguished.

SECOND APPEAL against the decree of J. S. JNANIYAR NADAR, the Temporary Subordinate Judge of Negapatam, in Appeal No. 706 of 1909, preferred against the decree of L. R. ANANTANARAYANA AYYAR, the District Munsif of Negapatam, in Original Suit No. 188 of 1908 and Civil Miscellaneous Petition praying the High Court to issue an order to take off from the file of the High Court the said Second Appeal No. 78 of 1912.

One Krishnaswami Naidu and one Subbarayulu Naidu were two undivided brothers. Krishnaswami Naidu had a concubine called Swornam by whom he had two illegitimate sons, viz., Rajagopal Naidu and Narayanaswami Naidu. Plaintiff is the son of Rajagopal Naidu. Sometime after Krishnaswami Naidu's death, his widow as guardian of her minor son and his undivided brother Subbarayalu Naidu executed in 1886 two deeds of gift to Swornam, Rajagopal Naidu and Narayanaswami Naidu, by one of which they gave them a small house worth Rs. 600 absolutely and by the other of which they gave them a shop worth Rs. 3,400, whose income was directed by the deed of gift to be utilized for the maintenance of the donees and for the performance of a charity in certain proportions.

After the death of Narayanaswami Naidu, his mother Swornam and Rajagopal Naidu for himself and as guardian of his minor son, the plaintiff, sold the shop to defendant's father in 1896 for Rs. 2,500.

\* Second Appeal No. 78 of 1912 and Civil Miscellaneous Petition No. 2177 of 1912.

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Thereafter the plaintiff filed this suit by his next friend, his mother, for recovery of half the shop and mesne profits, on the grounds that it was the joint family property of himself and his father and that the sale thereof was not for any purpose binding on him.

Both the lower Courts dismissed the suit on the ground that the shop which was a gift to his father and others for maintenance by the undivided collaterals of his (plaintiff's) father's natural father was in law his father's self-acquisition and not "ancestral property" in which the plaintiff had a right by birth. Thereupon the plaintiff preferred this Second Appeal.

*T. V. Muthukrishna Ayyar* for the appellant.

*T. R. Venkatarama Sastriyar* for the respondent.

The following judgment of the Court was delivered by

SADASIVA  
AYYAR AND  
NAPIER, JJ.

SADASIVA AYYAR, J.—Property given for maintenance to the illegitimate son of an undivided deceased co-parcener cannot be treated as the ancestral property of the illegitimate son in which the son of that illegitimate son gets a right by birth. *Nagalingam Pillai v. Ramachendra Teven*(1) quoted by the appellant's learned vakil was the case of a gift by a father to his son of property which would have, but for the gift, on such descent, descended to the son and been ancestral property in the son's hands, the learned Judges holding that a father making such a gift might be presumed to have intended his son to take it as if the son had inherited it. *Hazarimal Babu v. Abaninath*(2) was a case of gift again by a father for the maintenance of his sons and sons' descendants.

Without expressing an opinion as to whether *Nagalingam Pillai v. Ramachendra Teven*(1) was rightly decided, the two cases above noted are clearly distinguishable from the present case.

The lower Courts were therefore right in holding that the son of the illegitimate son did not obtain any right by birth in property given to his father for maintenance when that gift was not made by the father's father. The Second Appeal is dismissed with costs. The petition put in by the respondent is also dismissed with costs.

N.R.

(1) (1901) I.L.R., 24 Mad., 429.

(2) (1913) 17 C.L.J., 38.