

## APPELLATE CIVIL.

*Before Mr. Justice Oldfield and Mr. Justice Bakewell.*

1917,  
January  
9 and 16.

VAITHILINGA ODAYAR AND ANOTHER (DEFENDANTS),  
APPELLANTS,

v.

AYYATHORAI ODAYAR AND THREE OTHERS (PLAINTIFFS,  
NOS. 1 AND 2 AND DEFENDANTS NOS. 3, 5 AND 6), RESPONDENTS.\*

*Caste Disabilities Removal Act (XXI of 1850)—Descendant of Hindu convert to  
Christianity, whether relieved by the Act.*

The Caste Disabilities Removal Act does not apply to descendants of persons relieved by the Act. The descendants of a Hindu convert to Christianity have, therefore, no interests in the property of their unconverted relatives.

*Bhagwant Singh v. Kalu* (1889) I.L.R., 11 All., 100, dissented from.

APPEAL against the order of P. S. SETHA AYYAR, the Subordinate Judge of Mayavaram, in Appeal No. 56 of 1915, preferred against the decree of B. SUBBA RAO, the District Munsif of Tiruvalur, in Original Suit No. 352 of 1913.

The plaintiffs (first and second respondents) are the great-grandsons of one Swaminatha Odayar. They brought a suit to recover certain properties as reversionary heirs to one Chinna Thillai Odayar who was the last male-holder thereof. Chinna Thillai Odayar was the grandson of Velayuda Odayar, a brother of the plaintiff's great-grandfather, Swaminatha Odayar. Swaminatha Odayar became a Christian and the plaintiffs are born Christians; while Velayuda and his descendants including Chinna Thillai Odayar and his widow remained as Hindus. The defendants among other pleas contested the suit on the ground that the plaintiffs not having been first converts to Christianity and having been born Christians could not claim any reversionary rights in the properties of a Hindu. That plea was upheld by the Court of First Instance and the suit was dismissed. The lower Appellate Court reversed the decision and remanded the

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\* Appeal Against Order No. 231 of 1916.

suit for disposal according to law. The defendants preferred this Civil Miscellaneous Appeal against the order of remand.

VAITHILINGA  
v.  
Ayyathorai.

*T. V. Muttukrishna Ayyar* for the appellants.

*V. Purushothama Ayyar, T. R. Venkatarama Sastriyar* and *K. Aravamuda Ayyangar* for the respondents.

OLDFIELD, J.—The plaintiffs, Christians, sued to recover the estate of a deceased Hindu, as his reversioners, that is, they claimed in virtue of their own relationship to him, not through any earlier reversioner such as Swaminatha Odayar, the member of their branch of the family, who first embraced Christianity. The lower Appellate Court following the ruling in *Bhagwant Singh v. Kallu*(1) held that they were relieved from all religious disability by Act XXI of 1850 and remanded the suit for decision on its merits. The question is whether this decision is right.

The persons relieved by the Act are those, who (1) renounce, (2) have been excluded from the communion of, a religion and (3) deprived of caste. Renunciation and deprivation are applicable only to rights which have accrued, and therefore are irrelevant in the case of plaintiffs, who were born Christians, before the succession opened. They therefore are not covered by descriptions (1) and (3). As regards (2) there is more difficulty. For the word "exclude" is applied in ordinary parlance to refusal of rights newly claimed and also deprivation of rights already enjoyed, the meaning as given in Webster's Dictionary being: " (1) to shut out; to hinder from entrance or admission; to debar from participation or enjoyment; the opposite of to admit and (2) to thrust out; to expel." It is an argument against the interpretation of "exclude" in the Act in the first of these senses that it is used in the context between two terms, which as I have pointed out, express a different idea. It is further material that, if the Legislature had intended the result entailed by plaintiff's contention, the perpetual right of the descendants of a convert to rely on the law of his birth for purposes of inheritance from unconverted relatives, it could and would have effected it by shorter and more explicit language.

These arguments are supported by the fact that plaintiffs' contention entails consequences repugnant to reasonableness and

(1) (1889) I.L.R., 11 All., 100.

VAITHILINGA consistency. In the case of the original convert his status will be  
 v. fixed at the date of his conversion and his original law will be  
 AYYATHORAI. invoked only in order to determine whether his relationship  
 — entitles him to inherit, not whether that relationship exists. No  
 OLDFIELD, J. anomalies therefore, beyond the initial one involved in the  
 application of his original law, will be entailed; with his descend-  
 ant the case is different. He, having to establish both the  
 points referred to above, will find the concession involved in  
 plaintiffs' interpretation of the Act illusory, since his descent will  
 have to be traced through some Christian marriage which will  
 not be valid according to the law under application and can be  
 established, only if the claimant is allowed to apply both his  
 abandoned and his present law, as may suit each portion of his  
 case. And, if it be said that this is contemplated, the suggestion  
 is so startling that a clearer expression of it than the Act contains  
 may fairly be required.

The only decision of a High Court on the point, *Bhagwant Singh v. Kallu*(1), is no doubt in plaintiffs' favour. It is based on considerations first, of the preamble and then of the body of the Act. In respectfully dissenting from it, I observe first, that the preamble sets out a part only of section 9 of the Bengal Regulation VII of 1832 to which it refers. Reference to the whole and to section 8, of which it is a continuation, shows that (1) their object was to settle all cases of conflict of laws, one omitted portion restricting the operation of section 8 to "*bona fide* profession" of the religion in question at the time of the trial and the whole having no special reference to the particular case of conversion and (2) the settlement consisted, not only in exempting either party from disabilities entailed by the Hindu or Muhammadan Law but also, as provided in the other omitted portion, in applying the principles of justice, equity and good conscience. This recognized, the attempt to identify the purpose of the Act with that stated in the preamble or to explain the one with reference to the other must be abandoned. As regards argument from the body of the Act, the Court, I think, overlooked the fact that protection is in terms given only to one person, the one who has renounced or been excluded; and

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(1) (1889) I.L.R., 11 All., 100.

with all due deference, it was not justified in extending it by construction to others.

As the Act will not bear the construction proposed by plaintiff the appeal must be allowed, the District Munsif's decision dismissing their suit being restored with costs throughout.

BAKEWELL, J.—I agree. With regard to the construction of Act XXI of 1850, the plaintiffs are not “excluded from the communion of any religion or deprived of caste” by reason of their own conduct or by anything except what was done or suffered by their remote ancestor. The consequence of his act is that his descendants form part of a community separated from his other relations by the observance of a different religion and other usages and governed by a different system of law.

In my opinion the words “having been excluded” and “being deprived of caste” connote an act directed against a particular person and do not apply to an individual who is not a member of a particular community because by reason of his birth he is included within another community.

The plaintiffs and defendants belong to different communities governed by different laws of inheritance and the former desire to bring themselves within both systems in so far as they can derive benefit from so doing and argue that the provisions of the Mitakshara which exclude them have been repealed.

I do not think that the wording of the Act supports this contention.

S.V.

VAITHILINGA  
v.  
Ayyathorai.  
—  
Oldfield, J.

BAKEWELL, J.