Rs. 50 and reverse the decision of the lower Court and give the plaintiff a declaration that his suspension was illegal and a decree against defendants Nos. 1, 2, 4 and 6 who must be considered as parties to the suspension, for Rs. 50 damages and for costs here and below calculated on that amount.

VENKATA NARAYANA PILLAI v. PONNUSAWMI NADAR.

WALLIS, C.J.

N.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Bakewell and Mr. Justice Kumaraswami Sastriyar.

ASA BEEVI AND TWO OTHERS (DEFENDANTS NOS. 5 TO 7), APPELLANTS,

1917, September, 11 and 12.

v.

S. K. M. KARUPPAN CHETTY (PLAINTIFF), RESPONDENT.*

Muhammadan Law—Contingent right to inherit, transfer or renunciation of, whether prohibited.

A transfer or renunciation of a contingent right of inheritance is prohibited under Muhammadan Law.

Mussummant Khanum Jan v. *Mussummant Jan Bee-bee* (1827) 4 S. D. A., 210, followed.

Kunhi Mxmod v. *Kunhi Moidin* (1896) I.L.R., 19 Mad., 176, considered.

Mussamut Hurmutt-Ool-Nissa Begam v. *Allahdia Khan and Hajee Hidayat* (1871) 17 W.R., 108 (P.C.), explained.

APPEAL under clause 15 of the Letters Patent against the judgment of SADASIVA AYYAR, J., in *Asa Beevi* v. *Karuppan Chetty*(1).

The following statement of facts is taken from the judgment of SADASIVA AYYAR, J. :—

"One Pachakanni had two children, a son and a daughter, by his wife Vellayammal. The son's name was Mira Moideen and the

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* Letters Patent Appeal No. 47 of 1917.

(1) Second Appeal No. 1471 of 1915 against the judgment of R. GOPAL RAO, the Temporary Subordinate Judge of Sivaganga, in Appeal No. 301 of 1914, preferred against the decree of N. KAILASAM AYYAR, the Additional Distric Munsif of Sivaganga, in Original Suit No. 96 of 1913.

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daughter's name is Nagoor Ammal. Pachakanni married two other wives. About 25 years after her marriage, Vellayammal and her son Mira Moideen executed a release deed, Exhibit I, on the 28th April 1902, in favour of Pachakanni. The daughter Nagoor Ammal did not join in this release deed, Exhibit I. Under this release deed, Exhibit I, Vellayammal and her son Mira Moideen received Rs. 500 from Pachakanni. The operative portion of the deed is 'as we have received the said Rs. 500 we make a release of the rights and connections of ourselves and our heirs to all the properties or liabilities of yours and your heirs.' It is not denied that, on the true construction of this document, the mother and the son released their rights of inheritance also to Pachakanni.

Pachakanni died about the middle of 1908. Shortly afterwards his son Mira Moideen and his daughter Nagoor Ammal by his first wife sold their father's properties to the plaintiff as if they were the sole heirs of their father, ignoring the release deed, Exhibit I, by which one of them had relinquished his interest in the inheritance and ignoring also the fact that the father had left a widow at his death. Defendants Nos. 5, 6 and 7 represent the heirs of the second wife of Pachakanni who was the only heir left by him at his death (besides his daughter and his son by his first wife). The fourth defendant is the alienee from one of the heirs of the widow. Defendants Nos. 1 to 3 disclaimed all interest.

The District Munsif found (*a*) that Nagoor Ammal, one of the plaintiff's vendors, was not proved to be the legitimate daughter of Pachakanni by his first wife Vellayammal; (*b*) that the other vendor of the plaintiff had given up all rights of inheritance in his father's properties by Exhibit I; and (*c*) that the plaintiff therefore got no title under his sale-deed, Exhibit A. On these findings the District Munsif dismissed the suit with costs.

On appeal, the learned Subordinate Judge held (*a*) that Nagoor Ammal was the legitimate daughter of Pachakanni, (*b*) that the release deed, Exhibit I, was legally inoperative both under the Muhammadan Law and by and on the analogy of section 6 of the Transfer of Property Act and that therefore the plaintiff was entitled to $\frac{7}{8}$th share under the Muhammadan Law in Pachakanni's estate, such $\frac{7}{8}$th ($\frac{7}{12}$ and $\frac{7}{24}$) being the sum of the fractional shares belonging to his two vendors in that estate."

Defendants Nos. 5 to 7 preferred a second appeal to the High Court which was heard by SADASIVA AYYAR and SPENCER, JJ.

SADASIVA AYYAR, J., agreed with the Subordinate Judge and

holding that the renunciation of the contingent right of inheritance was prohibited by the Muhammadan Law and that there was no estoppel created by such renunciation beforehand though the renunciation had been for a consideration, dismissed the second appeal; while SPENCER, J., allowed the second appeal holding on the authority of *Mussamut Hurmutt-Ool-Nissa Begam* v. *Allahdia Khan and Hajee Hidayat*(1), that the renunciation was not repugnant to Muhammadan Law, that it was good as a family settlement and that an estoppel was created by receipt of consideration, and gave a decree to the plaintiff to the extent of three-eighths of the deceased's estate. In the result the second appeal was dismissed with costs under section 98, Civil Procedure Code.

Defendants Nos. 5 to 7 preferred this Letters Patent Appeal.

A. Krishnaswami Ayyar (with *E. Duraiswami Ayyar*) for the appellants.—I contend for the view of SPENCER, J. Section 6 of the Transfer of Property Act does not in terms apply to Muhammadans. The Muhammadan Law alone applies. A release or renunciation of a right to inherit to a living propositus, for a consideration is valid under that law. I rely on *Mussamut Hurmutt-Ool-Nissa Begam* v. *Allahdia Khan and Hajee Hidayat*(2). See also *Kunhi Mamod* v. *Kunhi Moidin*(3) and *Nasir-ul-Haq* v. *Fazil-ul-Rahman*(4). The case against me is *Sumsuddin* v. *Abdul Hussain*(5). This point did not directly arise in *Marangami Rowther* v. *Nagur Meera Labbai*(6). There is at least a personal estoppel so far as the executant of the release is concerned : *Har Chandi Lal* v. *Sheoraj Singh*(7), *Rangappa Naik* v. *Kamti Naik*(8), *Raghupathy* v. *Kannamma*(9), *Nachiappa Gounden* v. *Rangasami Gounden*(10), *Muhammad Hashmut Ali* v. *Kaniz Fatima*(11) and *Barati Lal* v. *Salik Ram*(12). Tyabji's Muhammadan Law, page 285; Ameer Ali in his Muhammadan Law, Volume 2, page 50, doubts the correctness

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(1) (1871) 17 W.R., 108 (P.C.). (2) (1871) 17 W.R, 108, at p. 112 (P.C.).
(3) (1896) I.L.R., 19 Mad., 176. (4) (1911) I.L.R., 33 All., 457.
(5) (1907) I.L.R., 31 Bom., 165. (6) (1913) 24 M.L.J., 258 at p. 262.
(7) (1917) I.L.R., 39 All., 179 at p. 184 (P.C.).
(8) (1908) I.L.R., 31 Mad., 366 at p. 371.
(9) (1912) 23 M.L.J., 363. (10) (1914) 28 M.L.J., 1.
(11) (1915) 13 A.L.J., 110. (12) (1915) 13 A.L.J., 1141.

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of *Kunhi Mamod* v. *Kunhi Moidin*(1). *Sri Jagannada Raju* v. *Sri Rajah Prasada Rao*(2), does not touch the present question.

C. V. Anantakrishna Ayyar for the respondent.—Under Muhammadan Law there can be no release of a prospective heirship or reversionary right to the owner or to the other heirs; such a renunciation is null and void: *Mussummant Khanum Jan* v. *Mussummant Jan Bee-bee*(3); Macnaughten's Precedents, page 89 (Precedent No. 11) and Wilson's Anglo-Muhammadan Law, page 268. *Kunhi Mamod* v. *Kunhi Moidin*(1) is wrong and is also distinguishable. In *Muhammad Hashmut Ali* v. *Kaniz Fatima*(4) no rule of Muhammadan Law or authorities are quoted. There is no specific decision of this point in *Mussamut Hurmutt-Ool-Nissa Begum* v. *Allahdia Khan and Hajee Hidayat*(5), and it deals only with a release of a vested right after the inheritance opened. See Ameer Ali's Muhammadan Law, Volume 2, pages 50 and 51. See also *Marangami Rowther* v. *Nagur Meera Labbai*(6) and Tyabji's Muhammadan Law, page 568.

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JUDGMENT.—We agree with the conclusion arrived at by Mr. Justice SADASIVA AYYAR in this case on the ground that a transfer of an expectancy of this kind is not permitted by the Muhammadan Law. That was decided in accordance with the opinion of the numerous law officers consulted in *Mussummant Khanum Jan* v. *Mussummant Jan Bee-bee*(3). Case No. 11 cited at page 89 of Macnaughten's Principles and Precedents of Muhammadan Law is to the same effect. This view has also been taken by the text-writers on Muhammadan Law. (Sir Roland Wilson's Digest of Anglo-Muhammadan Law, page 268, and more particularly Volume 2, pages 50 and 51 of the third edition of Mr. Ameer Ali's Muhammadan Law where the subject is more fully dealt with.) Mr. Tyabji's Principles of Muhammadan Law is to the same effect.

On the other hand, reliance has been mainly placed on the decision of the Privy Council in *Mussamut Hurmutt-Ool-Nissa Begum* v. *Allahdia Khan and Hajee Hidayat*(5) by which Mr. Justice SPENCER appears to have been mainly influenced in

(1) (1896) I.L.R., 19 Mad., 176.
(2) (1916) I.L.R., 39 Mad., 554.
(3) (1827) 4 S.D.A., 210.
(4) (1915) 13 A.L.J., 110.
(5) (1871) 17 W.R., 108 at p. 112.
(6) (1913) 24 M.L.J., 258 at p. 262.

dissenting from the conclusion come to by Mr. Justice SADASIVA AYYAR. On examining that case, we do not think that their Lordships intended to lay down that a Muhammadan could renounce his right of inheritance before that right had become vested on the death of the person to whom he was entitled to succeed. In that case there had been very great delay in putting forward the plaintiff's claim to succeed as heir of the deceased and their Lordships observe at page 112:

"They may further remark that, according to the Mnhammadan Law, there may be a renunciation of the right to inherit, and that such a renunciation need not be expressed but may be implied from the ceasing or desisting from prosecuting a claim maintainable against another."

Having regard to the words 'right to inherit' and the words 'prosecuting a claim' which claim would only arise after the succession had opened, we think that these observations of their Lordships may be taken as dealing with a renunciation after the right of inheritance has vested, and are not authority for the proposition that a prior renunciation is authorized by the Muhammadan Law. Mr. Ameer Ali in the passage referred to deals with renunciation after the inheritance has vested.

Reliance has also been placed on a decision of this Court in *Kunhi Mamod* v. *Kunhi Moidin*(1). That decision has been questioned by all the text-book writers who have since dealt with the subject. As pointed out in Wilson's book, the recital that all the law officers were not agreed in *Mussummant Khanum Jan* v. *Mussummant Jan Bee-bee*(2) is not accurate. Further, the respondent was not represented and therefore the case was not so fully argued. The learned Judges also proceeded upon the footing that the right of inheritance had vested. We are not prepared to accept this case as an authority for the proposition that under the Muhammadan Law a right of inheritance can be renounced before it vests. The decision in *Mussummant Khanum Jan* v. *Mussummant Jan Bee-bee*(2) has since been referred to with approval by this Court in the judgment of BENSON and SUNDARA AYYAR, JJ., in *Marangami Rowther* v. *Nagur Meera*

(1) (1896) I.L.R., 19 Mad., 176. (2) (1827) 4 S.D.A., 210.

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Labbai(1), and the same view appears to have been expressed by Sir LAWRENCE JENKINS, C.J., in *Sumsuddin* v. *Abdul Hussain*(2), though the judgment in that case proceeded upon the construction of the provisions of the Transfer of Property Act. Reliance has also been placed upon the decision in *Muhammad Hashmat Ali* v. *Kaniz Fatima*(3), but there is no discussion of the authorities in that case.

On the whole, we think that there is a large preponderance of authority in favour of the view that a transfer or a renunciation of the right of inheritance before that right vests is prohibited under the Muhammadan Law. The rules of Muhammadan Law are not affected by the Transfer of Property Act and it is, therefore, unnecessary to consider whether this transfer or renunciation would not also be invalid under the provisions of section 6 of the Transfer of Property Act itself.

For these reasons, the Letters Patent Appeal fails and is dismissed with costs.

N.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Bakewell and Mr. Justice Kumaraswami Sastriyar.

1917, September 12.

VEMA RANGIAH CHETTY (DEFENDANT), APPELLANT,

v.

V. M. VAJRAVELU MUDALIAR (PLAINTIFF), RESPONDENT.*

Provincial Small Cause Courts Act (IX of 1887), Sch. II, art. 7—Suit involving apportionment of rent, whether a suit of small cause nature—Transfer of Property Act (IV of 1882), ss. 2 (d) and 36, applicability of, to transfer in execution.

A suit the determination of which involves apportionment of rent by the Court, falls within article 7 of the second schedule of the Provincial Small Cause Courts Act and is exempted from the cognizance of a Provincial Small Cause Court.

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(1) (1913) 24 M.L.J., 258. (2) (1907) I.L.R., 31 Bom., 165.
(3) (1915) 13 A.L.J., 110.
* Letters Patent Appeal No. 57 of 1917.