APPELLATE CIVIL.

Before Mr. Justice Sundaram Chetti and Mr. Justice Pakenham Walsh.

1933, November 2.

N. K. THAJ MAHOMED SAIB (PLAINTIFF), PETITIONER,

v.

T. BALAJI SINGH, MINOR BY GUARDIAN, RAO SAHIB T. TAKUR SINGH (FIRST DEFENDANT'S LEGAL REPRESENTATIVE), RESPONDENT.*

Provident Funds Act (XIX of 1925), ss. 3 (2) and 4 (1) (a)—Hindu father deceased—Provident Fund amount standing to credit of, paid over to his son under sec. 4 (1) (a)—Liability of, for decree-debt of deceased.

A Provident Fund amount, which stood to the credit of a deceased Hindu at the time of his death, and which was paid over to his son, as a dependant, under section 4 (1) (*a*) of the Provident Funds Act (XIX of 1925), cannot be regarded as the assets of the deceased in the hands of his son, and is not liable to be proceeded against for the realisation of a decree-debt due by the deceased. Section 3 (2) of the Act vested the fund in the son, and consequently it became the property of the son.

Hindley v. *Joynarain Marwari,* (1919) I.L.R. 46 Calc. 962, followed.

PETITION under section 115 of Act V of 1908, praying the High Court to revise the judgment of the Court of Small Causes, Madras, dated 19th February 1929 and delivered in New Trial Application No. 158 of 1928 in Execution Petition No. 4395 of 1928 in Suit No. 17734 of 1925.

L. A. Govindaraghava Ayyar and *L. S. Veeraraghava Ayyar* for petitioner.

L. V. Krishnaswami Ayyar for respondent.

Cur. adv. vult.

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* Civil Revision Petition No. 1203 of 1929.

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SUNDARAM CHETTI J.

The JUDGMENT of the Court was delivered by SUNDARAM CHETTI J.—This is a civil revision petition against the order of the Full Bench of the Madras Small Cause Court, in an application filed by a decree-holder for attachment of the Provident Fund amount which stood to the credit of the deceased judgment-debtor (who was employed under Government as an Assistant Superintendent of Police) at the time of his decease, and which was paid to his minor son, as a dependant, under section 4 (1) (*a*) of the Provident Funds Act XIX of 1925. The question for consideration is whether the amount so paid over to the son of the deceased judgment-debtor is liable to be attached as the assets of the deceased in the hands of his son. The answer depends upon a proper construction of the wording of section 3 (2) of the Act, having due regard to the scheme of the Act also. The relevant portion of that clause in section 3 is :

"Any sum standing to the credit of any subscriber to, or depositor in, any such Fund at the time of his decease and payable under the rules of the Fund to any dependant of the subscriber or depositor . . . *shall* . . . *vest in the dependant*, and shall, subject as aforesaid, be free from any debt or other liability incurred by the deceased or incurred by the dependant before the death of the subscriber or depositor."

Under clause (*a*) of sub-section (1) of section 4 the payment should be made to the dependant, if the sum had vested in him under the provisions of section 3. There is no doubt that, so long as the money remains as a compulsory deposit in the Government, it is immune from attachment, as expressly declared by section 3. That is not the point arising for decision in this case, nor does the question whether such fund, after it is paid over to

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the subscriber or depositor, is still immune from attachment for his own debts, arise for decision. What we have to consider is the effect of the statutory vesting of the fund in the dependant under section 3 (2). It is by reason of such vesting that the money has to be paid to the dependant on the death of the subscriber or depositor. In the present case, the dependant is the minor son to whom the money was so paid. This statute has vested that fund in the son, and consequently it has become the property of the son. This fund cannot therefore be deemed to have devolved on the son by right of inheritance. That being so, how can it be regarded as the assets of the deceased depositor in the hands of his son? A son is not liable under Hindu Law to pay his father's debt except from out of his share in the ancestral or joint family properties. The fund in question which belonged to the son (as a dependant specified in the Act) by reason of the statutory vesting, which is a special mode of acquisition by him, cannot be proceeded against, even after it was paid over to him, by a creditor for the realisation of a decree-debt due by the father. There is an elaborate discussion as to the scheme of the Act in the judgment of RANKIN J. reported as *Hindley* v. *Joynarain Marwari*(1). In respect of section 4 (1) the learned Judge has observed thus at page 969:

> "It ensures that money payable to a widow or child as such directly shall not, even in their hands, be treated as assets of the deceased's estate."

We are in entire agreement with this view. The same opinion was expressed by a Division

(1) (1919) I.L.R. 46 Calc. 962.

Bench of the Calcutta High Court in *The Secretary of State for India in Council* v. *Mrs. Mary Murray*(1) and the learned Judges stated that the widow was not bound to apply for Letters of Administration to recover the Provident Fund amount as the money belonged to her on account of the statute providing that it would vest in her. On this ground, we confirm the order sought to be revised, and dismiss this petition with costs.

A.S.V.

PRIVY COUNCIL.

J.C.*
1934,
January 30.

POPURI RAMAYYA, APPELLANT,

v.

PUTCHA LAKSHMINARAYANA, RESPONDENT.
[AND CONNECTED APPEALS.]

[ON APPEAL FROM THE HIGH COURT AT MADRAS.]

Madras Tenancy—Jurisdiction of Civil Court—"Estate"—Enfranchised Inam—Unproduced Grant—Presumption—Indian Evidence Act (I of 1872), sec. 114—Code of Civil Procedure (Act V of 1908), sec. 9; O. VII, r. 1 (f)—Madras Estates Land Act (I of 1908), sec. 3, sub-sec. 2 (d) and sec. 189.

The inamdar of an agraharam village sued to recover rents from tenants therein. The inam had been granted in 1810 and had been enfranchised. The plaintiff did not produce the grant; the defendants had not sought by discovery to ascertain its existence or whereabouts. There was no evidence as to its terms. The defendants contended that it was to be presumed as a fact that the grant was of the land-revenue alone, and

(1) (1929) 33 C.W.N. 1148.

* *Present*: Lord THANKERTON, Lord ALNESS, and Sir GEORGE LOWNDES.