

ORIGINAL CIVIL.

Before Mr. Justice Ameer Ali.

BEEJRAJ v. BHYROPERSAUD.*

1896
June 25.

Practice—Suit, Revival of—Civil Procedure Code (Act XIV of 1882), section 372—Succession Certificate Act (VII of 1889), section 4—Succession—Survivorship—Mitakshara Law.

On the death of the plaintiff, his sons, who were members of a joint Hindu family, governed by the Mitakshara School of Law, of which their father, the deceased plaintiff, was a managing member, applied for the revival of the suit:

Held, that it was not necessary that either letters of administration, or a certificate under Act VII of 1889, should be obtained in order to entitle the applicants to ask that they may be permitted to proceed with the suit.

THIS was an application, made on summons before the Judge in Chambers, for the revival of a suit on the death of the plaintiff in the names of his sons. The suit was filed to recover money due to the firm of Bhagechand Beejraj, which was carried on by the plaintiff. On the 16th January 1895, a decree was made referring the matter to an account. On the 20th April 1896, the plaintiff died at Jeypore intestate, leaving him surviving four sons, Joraormull Batia and three others. An affidavit of Joraormull Batia was filed setting out the above facts and stating that the plaintiff and his four sons "were members of a joint Hindu family governed by the Mitakshara School, and as such were co-parceners and interested in, and entitled to, the ancestral business carried on in the name of Bhagechand Beejraj, although such business during the lifetime of the said Beejraj was managed by him."

Mr. Rutter, in support of the application, cited *Raghavendra Madhav v. Bhima* (1).

Babu Ashutosh *Dé contra* submitted that it was necessary for the applicants to obtain letters of administration, or a certificate under Act VII of 1889, to enable them to proceed with the suit.

* Original Civil Suit, No. 233 of 1893.

(1) I. L. R., 16 Bom., 349.

AMEER ALI, J.—This is an application on summons for revival of a suit on the death of the plaintiff. The defendant's attorney contends that the applicants, not having obtained letters of administration, or a certificate under Act VII of 1889, are not entitled to ask that the suit may be revived as against them. In my opinion it is not necessary that either letters of administration, or a certificate under Act VII of 1889, should be obtained in order to entitle the applicants to ask that they may be permitted to proceed with this suit. They are members of a Mitakshara family, of which the deceased plaintiff was a managing member. As such, they had, jointly with the deceased, a subsisting interest in the subject-matter of the suit. It follows that, on the death of the plaintiff, his interest passed to them by survivorship, and not by succession. This view is in accordance with the decision of the Bombay High Court in the case of *Raghavendra Madhav v. Bhima* (1).

The present case, however, is unprovided for, except by section 372 of the Civil Procedure Code. The application, therefore, should have been in the form indicated in that section, namely, that the suit be continued by the applicants. I shall proceed under that section and make an order for the continuance of the suit by the applicants.

Attorney for the applicants : Mr. Rutter.

Attorney for the defendant : Babu Ashutosh D6.

F. K. D.

MATRIMONIAL JURISDICTION.

Before Mr. Justice Ameer Ali.

THOMAS v. THOMAS. *

Divorce—Alimony—Alimony "Pendens Lite"—Jurisdiction—Application for Alimony after Decree Nisi.

1896
May 29.

The Court has jurisdiction to grant alimony *pendens lite* in a suit by the husband for dissolution of marriage on an application made by the wife after a decree *nisi* has been pronounced.

THIS was an application, after decree *nisi*, for alimony for the period prior to decree *nisi*, and for the costs of the suit.

* Suit No. 1 of 1895.

(1) I. L. R., 16 Bom., 349.