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 v.  
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 GENERAL OF  
 BENGAL.

tion, if correct, would bring these sections into direct conflict with sections 5 and 15, 27 and 43 of the Act, which recognise and regulate rights of succession as between husband and wife. It seems impossible to adopt a construction which would create the anomaly of rights which are abolished or prohibited from arising by certain sections of the Act being treated as existing rights by other sections. In my opinion therefore sections 4 and 44 read together should be understood as laying down a general rule as to the immediate effect of marriage in respect of moveable property belonging to each or either of the married persons not comprised in an ante-nuptial settlement, and not as laying down a rule intended to affect the law of succession. The result is that I must hold that section 44 has no application to the present claim, and that the plaintiff is entitled to the whole of the fund.

Attorneys for the plaintiff : Messrs. *Morgan & Co.*

Attorneys for the defendant : Messrs. *Dignam & Co.*

C. E. G.

## APPELLATE CIVIL.

*Before Mr. Justice Ghose and Mr. Justice Gordon.*

CHUNDRABATI KOERI (PETITIONER) v. MONJI LAL AND ANOTHER  
 (OBJECTORS.) \*

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 March 11.

"Family," Meaning of—Married daughter of lunatic—Maintenance—Hindu family—Act XXXV of 1858, section 13.

The word "family" in section 13 of Act XXXV of 1858 (which provides for the maintenance of the lunatic and his family) does not include a married daughter of the lunatic living with her husband apart from her father, but includes only persons living with the lunatic as members of his family and dependent on him for their maintenance.

ISRI PERSHAD, an inhabitant of the District of Bhagalpore, was a lunatic, so found under the provisions of Act XXXV of 1858. His wife Brijabati died on the 11th March 1894. He had two daughters, named Lagan Dai Koeri and Mussumut Chundrabati Koeri, the latter being the petitioner in this case.

\* Appeal from Original Order No. 139 of 1895, against the order of W. J. Badcock, Esq., District Judge of Bhagalpore, dated the 4th of March 1895.

Her husband was originally appointed guardian of the person of the lunatic, but had ceased to be so some time before the application (the subject-matter of this order and appeal) was made. On the 7th December 1894 the petitioner applied to the District Judge under section 13 of Act XXXV of 1858 for maintenance for herself and her children out of the lunatic's estate, on the ground that she and her husband were without means. The objectors opposed the application, and asserted that the petitioner was the illegitimate daughter of the lunatic.

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On the 4th March 1895 the District Judge made an order refusing the application. He declined to try the issue as to the petitioner's legitimacy, but refused the application, on the grounds that the manager of the lunatic's property was not a party to the application, and that a married daughter of a Hindu lunatic, living apart from her father, was not entitled to maintenance out of her father's estate.

The petitioner appealed to the High Court.

Babu *Karuna Sindhu Mookerjee* (with him Babu *Lakshmi Narain Singh*) for the appellant.—The appellant is a member of the lunatic's family within the meaning of section 13 of Act XXXV of 1858. "The sister, or step-sister, is entitled to maintenance until her marriage, and to have her marriage expenses defrayed. After marriage her maintenance is a charge upon her husband's family; but if they are unable to support her, she must be provided for by the family of her father" (Mayne's Hindu Law, 5th Ed., paragraph 408); *à fortiori* a daughter is entitled to support from her father, if her husband is without means.

As to the manager not being made a party; it is the province of the District Judge to fix an allowance for the maintenance of the lunatic and his family.

Dr. *Ashutosh Mookerjee* for the respondents.—No order can be made on the manager, as he is not a party to an appeal. The petitioner is not entitled to maintenance—*Itata Shavatri v. Itata Narayanar Nambudiri* (1).

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The judgment of the Court (GHOSE and GORDON, JJ.) was as follows :—

We think this appeal must fail; in the *first* place, because the person who has been appointed manager to the estate of the lunatic, Babu Isri Pershad, under the provisions of Act XXXV of 1858, has not been made a party respondent in this appeal; and in the *second* place, because there is no authority for the contention that a married daughter living with her husband and separate from her father is entitled to a separate maintenance being allowed to her against her father's estate, when that estate is taken charge of by the Court under the provisions of the said Act. Section 13 of the Act provides for the maintenance of the lunatic and of his family. The word "family" we understand to include persons living with the lunatic as members of his family, that is to say, persons actually depending upon him for their maintenance. The appeal must accordingly be dismissed, but we make no order as to costs.

H. W.

*Appeal dismissed.*

*Before Mr. Justice Banerjee and Mr. Justice Gordon.*

1896  
February 10.

ABDUL KHALIQ AHMED *alias* KONAI MIA AND OTHERS (PLAINTIFFS) v.  
ABDUL KHALIQ CHOWDHRY AND OTHERS  
(DEFENDANTS).\*

*Partition, Imperfect form of—Partition of lands in different estates—Jurisdiction of Civil Courts—Assam Land and Revenue Regulation (I of 1886), section 154, clause (e), section 96.*

In a suit for partition, without division of revenue, of certain lands held jointly by the parties in four different estates governed by the Assam Land and Revenue Regulation (I of 1886), *held*—

That, although the division asked for may not include all the lands of each of the four estates, still such division would result in a division of each of those estates, the lands left out forming one portion and the lands sought to be divided forming another. The suit therefore was one for an "imperfect partition" within the definition in section 96 of the Assam Land and Revenue Regulation, and section 154, clause (e) of that Regulation, barred the jurisdiction of Civil Courts in such a suit.

\* Appeal from Original Decree No. 169 of 1894, against the decree of Babu Joy Gopal Sinha, Subordinate Judge of Sylhet, dated the 5th of February 1894.