

ORIGINAL CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Strachey.

TRIBHOVANDA'S MANGALDA'S AND ANOTHER (ORIGINAL PLAINTIFFS),
APPELLANTS, v. F. YORKE SMITH AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1896.

August 21, '8.

Hindu law—Undivided family—Ancestral property—Self-acquired property made ancestral by agreement—Operation of such agreement—Effect of such agreement on accumulations and accretions of the property.

APPEAL from B. Tyabji, J.⁽¹⁾ The plaintiffs (appellants) brought this suit against the executors of the will of Sir Mangaldás Nathubhoy praying for a declaration that the said will was inoperative and void as far as it purported to dispose of certain ancestral property and for a declaration that certain immoveable properties specified in the plaint and all their accumulations and accretions were ancestral property and devolved upon the plaintiffs and their heirs according to Hindu law irrespectively of the said will, and for an account of such accumulations and accretions, and for a declaration that as against the plaintiffs and their heirs the said accumulations and accretions did not form part of the self-acquired property of the said Sir Mangaldás Nathubhoy, and that no part thereof was or could be validly disposed of by the will of the said Sir Mangaldás Nathubhoy.

The plaintiffs, who claimed the said properties and their accumulations as ancestral, were the two eldest sons of Sir Mangaldás Nathubhoy. It appeared that in 1831 they had entered into a certain agreement with their father, in the recitals to which Sir Mangaldás had expressly admitted that the said properties were ancestral. This agreement had remained in force, and its terms had been duly observed by the plaintiffs, up to the death of Sir Mangaldás on the 9th March, 1890.

In the interval, however, *viz.*, in 1883, by a decree made by the High Court in a partition suit brought by a third (the youngest) son of Sir Mangaldás, the said immoveable properties had been

* Suit No. 114 of 1895. Appeal No. 913.

(1) I. L. R., 20 Bom., 316.

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declared to be not ancestral property, but the self-acquired property of Sir Mangaldás.

In 1890 Sir Mangaldás died, and by his will, which was dated 27th January, 1888, he left the residue of his self-acquired property to the University of Bombay.

The main question in the suit was as to the effect of the agreement of 1881. The plaintiffs contended that the properties thereby admitted to be ancestral continued to be ancestral or at all events then became ancestral property in the hands of Sir Mangaldás, and that being ancestral all their accumulations and accretions were also ancestral, and that being so they were not included in the residue of his property bequeathed to the University.

The lower Court (B. Fyaji, J.) held upon this point that under the agreement only the *corpus* of the properties in question were ancestral property and that the accumulations and accretions thereof passed as self-acquired property under the residuary bequest in the will. The lower Court dismissed the suit. The case is fully reported in I. L. R., 20 Bom., 316.

The plaintiffs appealed, and the Appeal Court (Farran, C. J., and Strachey, J.) reversed the decree, holding that all accumulations and accretions to the properties in question subsequent to the agreement of the 28th June, 1881, were ancestral property and passed, as such, to the sons of Sir Mangaldás Nathubhoy at his death. An account was ordered to be taken of such accumulations and accretions.

Attorneys for the appellants (plaintiffs):—Messrs. *Nann and Hormasji*.

Attorneys for the respondents (defendants):—Messrs. *Little and Co.*, Messrs. *Roughton and Byrne*, and Messrs. *Craigie, Lynch and Owen*.