APPELLATE JURISDICTION (*a*)

Special Appeal No. 374 *of* 1863.

VARADIPERUMÁL UDAIYAN.....*Appellant.*

ARDANÁRI UDAIYAN and others.....*Respondents.*

By the law current in the Madras Presidency an undivided Hindu is entitled during his life-time to the separate enjoyment of his self-acquired immoveable property ; but on his death without male issue, such property, unless it has been previously disposed of, devolves on his surviving co-parceners, and his widow is only entitled to maintenance.

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THIS was a Special Appeal from the decree of H. M. S. Græme, the Acting Civil Judge of Salem, in Appeal Suit No. 105 of 1862, dismissing an appeal from the decision of the Principal Sadr Amin of Salem in Original Suit No. 7 of 1858. This suit was brought to recover a moiety of the Sandamangalam and Tálur Muttás and of certain nanjey and punjey lands in the zila' Salem. The first defendant was a Hindu widow, and the plaintiff sued as the undivided cousins of her deceased husband. It was proved that the property was the self-acquisition of the deceased aunt that he died undivided and without male issue, and the only important question raised was, whether his property went on his death to his widow or to his surviving co-parceners. The Principal Sadr Amin, citing Mr. Justice Strange's Manual of Hindu Law, Sec. 319, held that the plaintiffs, as the surviving co-parceners of the deceased, must be regarded as his rightful heirs in whichever way the property left by him was acquired. The widow purported to adopt a son, who was made a supplemental defendant.

Tirumalachariyar, for the appellant, the supplemental defendant, cited2, Macnaghten's Hindu Law, 32: 1, Sel. Dec., 100 : *The Mitakshara*, i, sec. 4, §§ 1—6 ; but chiefly relied upon a vyavastha, dated the 16th September 1845 of Bhimasenáchárlu and K. Gopála Cástri, the then pandits of the late Madras Sadr Court, of which the following is a translation :—

"If A, an undivided brother, who died leaving no male issue, as stated in the question, had—by his proficiency in Vedas or by service, or by his own ability, and without the use of his father's estate, or of the property common to himself and his brother—acquired the land alleged to have been

(*a*) Present : Frere and Holloway, JJ.

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purchased by him as his "self-acquisition,"—such land, according to the law, appertained only to the acquirer; after his death, his widow alone, and not his surviving undivided brother, is entitled to succeed to it.

"If, on the other hand, A had required the said land, by the use of the paternal estate, or of the wealth jointly acquired by himself and his brother,—then, B his undivided brother, alone would be entitled to succeed to the said land according to the Hindu law; the widow of A having right to receive only maintenance, and nothing more.

"*Authorities.*

"Yájnavalkya:—"Whatever else is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the coheirs. Nor shall he, who recovers hereditary property, which had been taken away, give it up to the parceners: nor what has been gained by science."[Book II, cl. 118, 119].

"Manu:—"What a brother has acquired by his labour without using the patrimony, he need not give up to the coheirs; nor what has been gained by science." [Chap. IX. 208.] "Vyása:—"What a man gains by his own ability, without relying on the patrimony, he shall not give up to the coheirs."

"Yajnavalkya:—"The wife and the daughters also, &c., &c."

"Kátyáyana:—"What belonged to the paternal grandfather, or to the father, and anything else [appertaining to the coheirs, having been] acquired by themselves; must all be divided at a partition among heirs."

"The commentary of the above texts, as contained in the Hindu law-books Vijnaneçvareyam, Smrtichandriká, &c., is also sufficient authority in the matter."

Mayne, for the respondents, the plaintiffs. None of the authorities cited apply, except the pandits' vyavastha, and that is not supported by the authorities on which it professes to rest. The first passage from Yájnavalkya and those from Manu and Vyasa simply mean that an undivided brother has during his life-time the right to enjoy separately such property as he himself may have acquired, but after

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his death, if he leave no male issue, and if he have not alienated, it will belong to the surviving co-parceners, [HOLLOWAY, J. :—That certainly appears to be the law.] The other quotations have nothing to do with the question (*a*). A childless widow inherits, according to the Mitákshará, only when her husband has died separated : 1, Sir Thomas Strange's *Hindu Law*, 121 : Strange's *Manual*, 2d ed., § 377.

Tirumalachariyar replied.

FREERE, J. :—This appeal must be dismissed. The authority of the vyavastha is nothing as compared with that of the concurrent opinions of Sir Thomas and Mr. Justice Strange.

HOLLOWAY, J. :—I have always understood that in this Presidency at least the law was clearly that the immoveable property of an undivided member of a Hindu family may go to his surviving co-parceners, whether such property was self-acquired or ancestral. During his life he is entitled to the separate enjoyment of his self-acquired immoveable property, with the right, if he have no male issue, to alienate the same. On his death without male issue such property, if not previously alienated, devolves on his co-parceners. But his widow, whether childless or not, has no title to any thing but maintenance. The propositions laid down by the appellant's vakil come within Lord Denman's category of law taken for granted. The Mitákshará has, no doubt, like all Hindu law-books, the advantage of containing statements of the most discordant character ; but it is clear that its author was of Dhareçvara's opinion, *Mitaksh.*, II, i, 8): The rule deduced from the texts that the wife shall take the estate regards the widow of a separated brother." And it may be reasonably inferred that an author who lays down that a widow inherits when her husband was divided, was also of opinion that she would not inherit when the deceased was undivided.

The appeal is dismissed with costs.

Appeal dismissed.

(*a*) But see Manu (?) cited 2, Strange's *Hindu Law*, 250, from a copy of a paper in the hand-writing of Sir Wm. Jones : If the husband has been a coheir and died before partition, his brother and the next order inherit his undivided share, but his wife takes all his divided property:" and the opinion of Kistnamácháryar, a Mofussil pandit, cited Ib., 231.

The judgment of the Lords of the Judicial Committee of the Privy Council in *Kattama Nauchear* v. *The Rajah of Shivagunga*, delivered 30th November 1863 principally rests on the passage last cited, which the Reporter has been unable to find in Manu or elsewhere.