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The evidence proved the purchase from Rairu Náyar, and also that the plaintiff was present at such purchase and offered no objection thereto. But though it did not appear that the instrument of sale was signed by any of the vendor's anandravans, the District Munsif dismissed the suit, and on appeal the Officiating Sub-Judge affirmed his decree.

Mayne for the appellant, the plaintiff, contended that the sale of tarawád property was invalid without the signatures of the chief anandravans as well as that of the káranavan, and that the fact that the plaintiff was present without making objection did not supply the defect. He cited Strange's *Manual of Hindu Law*, 1st ed. § 378. "The karanavan can alienate all moveable property, ancestral or self-acquired, at his discretion. But as to immoveable property, whether self-acquired or ancestral, he must have the *written* assent of the chief anandravans."

PER CURIAM :—The sale by a káranavan of tarawád land requires, no doubt, the consent of the anandravans. But the signature of the chief anandravan, if sui juris, is sufficient evidence of the assent of himself and the rest to the sale, and throws the burden of proving dissent therefrom on him who alleges such dissent. The anandravans' assent, however, may be proved by means other than the signature of the senior; and in the present case, where the Court has found that the plaintiff, an anandravan, was present and assented to the sale, he clearly has no ground for this appeal.

Appeal dismissed.

ORIGINAL JURISDICTION. (*a*)

THE SECRETARY OF STATE *against* MIR MUHAMMAD HUSAIN and others.

An interpleader suit is not improperly constituted merely because one of the defendants does not claime the whole of the subject-matter. *Hoggart v. Cutts*, (Cr.& P. 197) observed upon.

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THIS was an interpleader suit arising out of claims made by the several defendants on the whole or part of a sum of rupees 4,123-6-9 payable to the parties entitled thereto under a series of transactions which began with an

(*a*) Present: Scotland, C. J. and Bittleston, J.

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agreement dated the 4th July 1859 and entered into by Captain Rawlins, the Garrison Engineer of Fort St. George, Madras, on behalf of the plaintiff, for the supply of building materials for the Department of Public Works. Muttusvámi, the third defendant, only claimed Rupees 1,517-0-8 part of the sum of Rupees 4,123-6-9. The other defendants, (except one who disclaimed) severally or jointly claimed the whole of the latter sum. The Court decreed in favour of the first and second defendants, and the only question was as to whether the plaintiff was entitled to his costs.

Stokes, for the seventh, eight and ninth defendants.

The plaintiff to an interpleader suit has no right to his costs if the suit be improperly instituted: *Crawford* v. *Fisher* (*a*), *Cook* v. *Earl of Rosslyn* (*b*). To warrant an interpleader suit each of the defendants must claim the whole fund: *Hoggart* v. *Cutts* (*c*): Seton on Decrees 3rd ed. 965, which is not the case here, where Muttusvámi only claims rupees 1,517-9-8.

SCOTLAND, C. J.:—As a general rule it is clear that the plaintiff in a properly instituted interpleader suit is entitled to his costs. In such case, indeed, it has been ruled that he is entitled to a lien for his costs on the fund, and is not forced to take his chance of getting them from the defendant against whom the Court decides (*d*). Then are the circumstances here such as to warrant us in saying that the plaintiff acted unreasonably or improperly in filing the present bill? Clearly not. [His Lordship here stated the circumstances which led to the suit and proceeded thus:] But Mr. Stokes objects that in order to warrent an interpleader suit each of the defendants must claim the whole of the subject-matter of the suit. That very argument appears to have been used, and used unsuccessfully, in *Hamilton* v. *Marks* (*e*), and it would require very conclusive authorities to induce me to assent to a doctrine so inconvenient and unreasonable. The only case cited on the point was *Hoggart* v. *Cutts* (*f*),

(*a*) 1 Hare 436.

(*b*) 7 Jur. N. S. 1070 and see a case from Cha. Rep. 257 cited in 2 Cox 279.

(*c*) Cr. & P. 197, 204.

(*d*) *Campbell* v. *Salomons*, 1 Sim. & S. 462 per Sir John Leach, V. C.

(*e*) 5 DeG. & S. 638, 642, 643.

(*f*) Cr. & P. 197.

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the marginal note to which seems, no doubt, to support Mr. Stokes' contention. But that note(*a*) does not appear warranted by the facts of the case. There Thodey, a defendant, sold an estate, which the first defendant Cutts purchased, paying a deposit. Then Hoggart, the plaintiff, an auctioneer, by Thodey's direction, put up the estate again, and Vickers, another defendant, bought it and payed a deposit. The question was who was entitled to the deposits ? Clearly this and other questions could not be decided in that suit of *Hoggart* v. *Cutts* as between Cutts and Vickers on the one hand and Vickers and Thodey on the other. " The bill," said Lord Cottenham, " is a proper bill as between *Hoggart*, *Cutts* and *Thodey* : there can in that suit be no question about *Hoggart's* conduct. He is a mere auctioneer employed to sell the estate, and has a right to make *Cutts* and *Thodey* determine between themselves which of them is entitled to a fund in which he claims no personal interest. The suit, however, cannot be sustained as to *Vickers* also ; and if I am to decide which of the defendants *Cutts* or *Vickers*, is to be dismissed from the suit, I have no hesitation in retaining *Cutts*, because he is the first purchaser, and because the case as to him is the more simple." The bill was therefore dismissed as to Vickers. That was the decision in *Hoggart* v. *Cutts*, and I think that it neither justifies the marginal note nor supports Mr. Stokes' argument.

BITTLESTON, J., concurred.

DECREE.

Tax costs of plaintiff and, deducting therefrom rupees 82-4-0, pay the balance of such costs as between party and party out of the fund in court, and pay the residue to the first and second defendants or their solicitors.

(*a*) " Where a fund in the hands of a stakeholder was contested by three parties, one of whom claimed the whole of it, and the other two claimed it in certain proportions, and the stakeholder filed a bill of interpleader against the three claimants, the Court, at the hearing, dismissed the bill with costs as against one of the parties claiming a part of the fund, and decreed that the other two parties should interplead as to the other part."