

APPELLATE JURISDICTION (a)

*Special Appeal No. 286 of 1862.*SVÁMIYÁR PILLAI *Appellant.*CHOKKALINGAM PILLAI..... *Respondent.**Special Appeal No. 299 of 1862.*CHOKKALINGAM PILLAI..... *Appellant.*SVÁMIYÁR PILLAI *Respondent.*

A suit cannot be brought on behalf of a Hindu minor to secure his share in undivided family property, unless there is evidence of such malversation as will endanger the minor's interests if his share be not separately secured.

THESE were special appeals from the decree of V. Sandara Náyudu, the Principal Sadr Amin of Negapatam, in Appeal Suit No. 113 of 1861, affirming the decree of J. H. Shunker, the District Munsif of Tranquebar, in Original Suit No. 509 of 1859.

1862.

December 9.

Ss. A.A. Nos.

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1862.

Venkattarayalu Nayudu for Svámiyár Pillai, the plaintiff.

Sadagopacharlu for Chokkalingam Pillai.

The facts sufficiently appear from the following.

JUDGMENT :—This suit has been brought to obtain on behalf of a Hindu minor the possession of his share in undivided family property, and judgment to that effect has been passed by the District Munsif, whose decision has been affirmed by the Principal Sadr Amin.

We think that such a suit as the present cannot legally be maintained unless there is evidence of such malversation as to place the minor's interests in risk if his share be not separately secured to him. In the present instance such malversation has not been alleged. It may be a question to what particular share the minor may be entitled, but this being raised affords no warrant for claiming a partition in his name. When he comes of age it will be for him him-

(a) Present Strange and Frere, JJ.

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self to claim, should he elect to do so, what may be his due. In the meanwhile there can be no valid objection to the property remaining in its normal state of a joint inheritance.

We therefore reverse the decrees below and dismiss the suit with costs.

Appeal allowed.

ORIGINAL JURISDICTION (a)

Original Suit No. 15 of 1862.

JEYASANKIRA-DEVI against NAGANNÁDA-DEVI.

Act VIII of 1859 sec. 313 does not apply where a reference is agreed to at and during the hearing.

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DURING the hearing of this case the parties agreed to refer all matters in dispute between them to arbitration. Thereupon a question was raised as to whether, under Act VIII of 1859, sec. 313, it was necessary to file written authority to apply for an order of reference.

Act VIII of 1859, sec. 312 empowers the parties to apply for such an order, and sec. 313 provides that "the application shall be made by the parties in person or by their pleaders specially authorized in that behalf by an instrument in writing, which shall be presented to the Court at the time of making the application, and shall be filed with the proceedings in the suit."

SCOTLAND, C. J. :—We think that section 313 applies where the case is not before the Court and being finally heard at the time of making the application; and that it does not properly apply when the reference is agreed to by all the parties present in open Court at and during the course of the final hearing. No written authority therefore need be filed.

BITTLESTON, J. concurred.

Branson for the plaintiff.

The Advocate General and *Arthur Branson* for the defendants.

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