1862. *November* 8 *S. A. No.* 546 of 1861.

conducted by him on the public highway, his right so to make use of the highway could only be questioned by the magistrate, who, for preservation of the peace, might, if he saw sufficient grounds, interdict the procession. The defendants clearly had no such authority.

We therefore reverse the decree of the Principal Sadr Amin and affirm that of the District Munsif, as against the first and second defendants, who will be held liable for all damages awarded to the plaintiff by the decree of the District Munsif. The Principal Sadr Amin has absolved the remaining defendants from liability, on the ground that they are not shown to have participated in the acts of the first and second. With this decision on a question of fact we are not called upon to interfere.

The costs in appeal and special appeal are to be paid by the first and second defendants.

Appeal allowed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 652 *of* 1861.

TÁYUMÁNA REDDI.....*Appellant.*

PERUMÁL REDDI and others.....*Respondent.*

A father-in-law, although of the Reddi caste, cannot disinherit his heir in favour of his son in-law.

Special Appeal No. 89 *of* 1854, affirmed.

1862. *November* 8. *S. A. No.* 652 of 1861.

THIS was a special appeal from the decree of T. I. P. Harris, the Civil Judge of Trichinopoly, in Appeal Suit No. 53 of 1861, affirming a decree in favour of the plaintiff by the District Munsif of Turaiyur. The plaint set forth that one Rámalingáchchi Reddi, having no male issue, and having given the plaintiff his only daughter in marriage, had in accordance with the custom of his caste, executed a deed marked A on the 23rd Vaikási of Krodhi (13th June 1844), by which he conveyed all his property to the plaintiff absolutely : that the plaintiff continued thenceforward to enjoy the property of Rámalingáchchi, and to protect him : that

(*a*) Present Phillips and Frere, J J.

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Rámalingàchchi died in Avani of Chittárrti (July 1859) : that within four days afterwards the defendants, (the first and third of whom were the brothers of the deceased, and the fourth claimed to be his paternal nephew and adopted son) forcibly took away certain jewels, cattle, corn and cotton, of the value of rupees 300, formerly belonging to Rámalingáchchi and comprised in the deed A ; and that the suit was instituted to recover that property, and also to obtain a declaration of the plaintiff's right to a certain land valued at rupees 300 and to a 'house-ground' valued at rupees 165, which were also comprised in the same conveyance.

Branson for the appellant, the fourth defendant. The fourth defendant is Ramalingáchchi's nephew and heir : the deed A is invalid ; and the alleged custom is not established or admitted : it is, moreover, illegal : *Special Appeal No.* 89 *of* 1859 (*a*).

Tirumalachariyar for the respondent, the plaintiff.

The Court delivered the following.

JUDGMENT :—The plaintiff laid claim to the estate of his father-in-law Rámalingáchchi Reddi, who died in 1859, under a deed executed by the latter in 1844, by which he conveyed his property to his son-in-law, the plaintiff.

The fourth defendant, the paternal nephew of the deceased, resisted the plaintiff's claim, on the ground that he, the fourth defendant, had been adopted by the deceased, and was in possession of his property, as his legal heir and representative.

The District Munsif was of opinion that the fourth defendant had failed to prove the adoption in question. He further observed that the plaintiff was allowed to be the son-in-law of the deceased, and that the fourth defendant had admitted the existence among persons of the Reddi (*b*) caste, of the practice of constituting a son-in-law heir to the property of his father-in-law. The District Munsif accordingly passed judgment in favour of the plaintiff, and this decision was confirmed in appeal by the Civil Judge.

(*a*) M. S. D. 1859, p. 250.

(*b*) "The name of the principal caste of Telinga cultivators," Wilson's Glossary.

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The fourth defendant preferred a special appeal against this judgment.

We are satisfied that the decree in this case, being at variance with known and fundamental rules of Hindu law, cannot be sustained. The admission said to have been made by the fourth defendant is no admission of the legality of the practice to which the lower courts have alluded ; and that this custom has not the force of law has been expressly declared by the decree of the late Sadr Court in Special Appeal No. 89 of 1859, at page 250 of the published decrees for that year.

We are of opinion that independent of the adoption pleaded by the fourth defendant, he is entitled to succeed to the property of his paternal uncle, in preference to the plaintiff, the son-in-law of the deceased, notwithstanding the conveyance in favour of the plaintiff.

It has been urged by the counsel for the special respondent, the plaintiff, that the fourth defendant's father was divided from his brother, the plaintiff's father-in-law, and that the children of plaintiff by his wife, the daughter of the deceased Ramálingáchchi Reddi, are therefore the legal heirs to the property. This division is, however, denied by the fourth defendant, and the question was not tried in this case, which turned upon wholly different points. We therefore decline now to determine the case on these grounds.

We accordingly reverse the decree of the Civil Judge, and dismiss the plaintiff's claim with all costs.

Appeal allowed.