APPELLATE JURISDICTION (*a*)

Regular Appeal No. 1 *of* 1862.

RANGASVÁMI AYYANGÁR .....*Appellant.*

VANJULATÁMMÁL and others.....*Respondents.*

A sale by a Hindu widow of land inherited by her from her husband is valid only when made of necessity, and for certain purposes ; but on this point, where the plaintiff in a suit to set aside such a sale, has relied in the Court below solely on the ground that the land had been devised inconsistently with the exercise of the widow's power of sale, the Appellate Court will be satisfied with evidence less complete and positive than would otherwise have been required.

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THIS was a regular appeal from the decree of E. W. Bird, the Acting Civil Judge of Negapatam, dismissing the Original Suit No. 2 of 1860, which was brought for the recovery of certain málguzári lands valued at rupees 13,816-11-5.

Branson for the appellant, the plaintiff.

Sadagopacharlu for the respondent, the first defendant.

The facts of the case sufficiently appear from the following judgment.

The plaintiff sued as the adopted son of one Aravamudayyangár, who died in 1843, for the recovery of the village of Chettipálam, which formed part of the estate of the deceased. The plaintiff rested his case on the ground that in 1845, during his minority, the second and third defendants, the widows of the deceased, had illegally sold the village to Annávayyangár, the father-in-law of the first defendant.

The Acting Civil Judge was of opinion that the sale in question had been made boná fide for the liquidation of family debts, and that the plaintiff himself on attaining his majority had ratified the sale by a deed of release, dated the 29th August 1857, and marked No. 1. The Acting Civil Judge accordingly dismissed the suit with costs.

The plaintiff has now appealed against this decision.

We observe that in his original plaint the plaintiff contested the sale in favour of the vendee Annávay-

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yangár, who is now represented by the first defendant, solely on the ground that by a will executed by the deceased Aravamudayyangar, the adoptive father of the plaintiff, the village in question had been specifically allotted for charitable purposes. It being apparent, however, that no legal act of endowment had taken place, and that the case must therefore be governed by the rules of Hindu law, the councel for the plaintiff, on the hearing before the High Court, virtually abandoned this ground as untenable, and rested his case chiefly on the argument that by Hindu law no such sale by the widow is good and valid unless executed under the pressure of necessity and for certain specified purposes. We fully recognize the correctness of this rule, but are at the same time of opinion that we may justly and reasonably be satisfied with less complete and positive evidence on this point than would have been required from the first defendant, if this ground had been taken by the plaintiff in the first instance. Adverting to the fact that the sale was not originally disputed on this ground, we think that the first defendant has adduced sufficient proof to show that the sale was made bona fide for the payment of debts, and for the benefit of the general estate, as asserted by the first defendant.

With respect to the deed of release No. I, which was signed by the plaintiff on coming of age, it is to be remarked that in this document, which purports to be a receipt for the family-estate then delivered to the plaintiff, the names of the villages then constituting the estate, seven in number, are distinctly specified, and it is patent on the face of the document that the village now in dispute is omitted from the list. The plaintiff in this document further expresses himself fully satisfied with the mode in which the estate had been managed during his minority, and ratifies the acts of the executors. He must therefore be taken to have distinctly assented to the alienation of the village in question. We consequently affirm the decree of the Acting Civil Judge, and dismiss this appeal with costs.

Appeal dismissed.