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as to the lands set apart for charitable purposes and now apparently in possession of the 1st defendant. The decree of the Civil Court as to them therefore remains unaffected. The respondent, the plaintiff, is entitled to the costs of this special appeal; and she must have her costs in the Courts below proportionate to the decree now made in her favor in this Court.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 230 *of* 1866.

KOYILOTHPUTENPURAYIL MANOKI KORAN NÁYAR, and 3 others... } *Special Appellant.*

PUTHENPURAYIL MANOKI CHANDA NÁYAR, and 3 others..... } *Special Respondents.*

It is the unquestionable law of Malabar that tarawád property is inalienable except in cases of adequate family necessity. In such cases alienations will be upheld; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one. The assent of the senior Anandravan is some (but rebuttable) evidence that the purpose was proper.

Semble that, considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries.

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THIS was a special appeal from the decree of A. W. Sullivan, the Civil Judge of Tellicherry, in Regular Appeal No. 139 of 1864, reversing the decree of the Court of the District Munsif of Badagherry, in Original Suit No. 1355 of 1861.

O'Sullivan for the special appellants, the plaintiffs.

G. E. Branson for the 2nd, 3rd and 4th special respondents, the defendants.

The facts sufficiently appear in the following

JUDGMENT:—This suit was brought for a declaration that certain alienations of family property, made by a deceased head of the family with the assent of the next senior member, were invalid.

The tarawád consisted, as is not uncommon, of more than one branch, and the District Munsif decided that the

(*a*) Present:—Holloway and Innes, J. J.

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alienation was invalid because there was no written assent of any member of the plaintiffs' branch of the tarawàd.

The Civil Judge reversed this decree, because he considered that it lay upon the plaintiffs to make out their affirmative allegation that the alienation was not bonâ fide.

He was required to determine whether the alienation was made for proper purposes or in fraud of the family, and he finally decided that there was no proof that the alienation was for proper family purposes.

We think it necessary in this case to explain with some particularity the grounds of our judgment. The fact that the property was tarawâd property is undisputed. It is the unquestionable law of Malabar that such property is inalienable ; that the eldest member holds it for the support of the members of the family. It is equally clear that, on the establishment of an adequate family necessity, alienations will be upheld ; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one. The alienation in the present case was, on its face, an improper one, inasmuch as it is not pretended that there existed the slightest consideration for Chanda Náyar's agreement, except the desire to provide for the maintenance of the members of the family.

The proper mode of providing such maintenance was from the income, and a case is scarcely conceivable in which a mere voluntary alienation of the corpus, subject to the claims of all the members, to some of those members could be upheld. Equal dealing is the duty ; all are qually entitled to support, and such an alienation is manifestly a fraud upon the rule of law. This would be sufficient for the disposal of the present case. It was a voluntary alienation to two members of the family of that which the Karnavan was bound to conserve in his own hands and transmit, so far as possible unimpaired, to his successor for the maintenance of all the members of the family.

In this particular case, therefore, it is not strictly necessary to deal with the opinion expressed by the Munsif as to the signature by the next senior member. As however the effect of such signature does not seem to have been very

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clearly apprehended, it will be well to make a few observations upon it.

Prima facie it lies upon the purchaser of family property to shew the alienation was made for proper purposes. The assent of the senior Anandravan is some evidence that the purpose was proper, and may have more or less effect upon the conclusion according to the circumstances of the case. Such signature would, however, by no means prevent the dissentient members from shewing that both the Karnavan and his apparent successor have really violated their duty. It would, however, render it unquestionably difficult to give relief against bona fide purchasers not affected with notice. At the same time, the state of Hindu families is so well known, the consulting of all the members so easy, that it would perhaps not be difficult to conclude that there is an obligation upon a purchaser to inquire, and that he would be affected with notice by much slighter evidence than a purchaser in other countries. The reason for requiring the assent of the member next in age is the supposition that he, at all events, is interested in guarding in its entirety the property of which he is to succeed to the management. When, however, as in the present case, he, as well as the Karnavan, belongs to the branch improperly benefited, the reason of the rule no doubt fails, and little or no weight ought to be attached to his junction. It is peculiarly important in a country like Malabar, in which a Karnavan's duty is in habitual conflict with his private affections and interests, that the Courts bound to maintain the law should not deviate from established principles.

It is not however the law that assent can be proved by the signature only ; although undoubtedly Courts having experience of the extreme love of documentary evidence prevalent among the people of Malabar, would probably be slow to give credit to oral evidence that a man who had not signed had been present at the execution and assented. It is, however, no absolute rule of law that there must be written assent, as this Court has laid down in a reported case (*b*).

(*b*) I. M. H. C. Reps 359.

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of 1866.

The decree of the Civil Judge will be reversed. The plaintiffs' costs, both in the Lower Courts and in appeal, will be paid by 2nd and 3rd defendants.

Appeal allowed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 9 *of* 1867.

A. ÁDINARÁYANA SETTI .....*Special Appellant.*

F. J V. MINCHIN.....*Special Respondent.*

Where the objection is taken for the first time in special appeal that a document, which, according to Act X of 1862, ought to have been stamped, has been admitted by both the Lower Courts unstamped, the High Court is bound to take notice of the objection (although not one of the grounds set forth in the petition of appeal) and to require payment of the stamp duty and penalty, or to reject the document.

1867.
April 6.
S. A. No 9
of 1867.

THIS was a special appeal from the decision of E. B. Foord, the Civil Judge of Berhampore, in Regular Appeal No. 7 of 1866, modifying the decree of the Court of the District Munsif of Berhampore, in Original Suit No. 405 of 1864.

Sloan for the special appellant, the defendant.

Prichard for the special respondent, the plaintiff.

The facts sufficiently appear in the following

JUDGMENT :—In this case three objections have been raised on the part of the appellant. First, that the Lower Courts in holding the defendant liable proceeded on a misconstruction of the terms of the written contract A. This objection was not however persisted in, and it is enough to say that we think the defendant had clearly incurred a liability under it. The second objection is, that the defendant has been improperly decreed to pay the balance claimed by the plaintiff after deducting Rupees 76-4-0, the sum credited to the defendant in the suit, without an issue having been recorded or evidence heard on the part of the defendant as to the amount. We can give no weight to this objection. The plaintiff put in evidence an account of the sums claimed,

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