

APPELLATE JURISDICTION (a)

*Special Appeal No. 404 of 1866.*RIDNAMMA.....*Appellant.*VENKATARÁMAPPA and 4 others.....*Respondents.*

One Venkanna Gandu died leaving no son but two widows—Krishnamma and Rindamma. A dispute having arisen, Krishnamma brought a suit against Rindamma and obtained a decree dividing equally between them the lands of the deceased husband. Krishnamma took possession of her moiety and held same till her death when Rindamma took possession.

In a suit by the sons of the deceased daughter of Krishnamma against Rindamma for the share formerly held by Krishnamma:—

Held, that they were not entitled in preference to the surviving widow.

1866.
December 15.
S. A. No. 404
of 1866.

THIS was a special appeal from the decision of the Principal Sadr Amin of Bellary in Regular Appeal No. 183 of 1864, confirming the decree of the Court of the District Munsif of Náráyanadevarkere, in Original Suit No. 94 of 1864.

Miller, for the special appellant (defendant).

The facts sufficiently appear in the following

JUDGMENT:—The plaintiffs sue as the heirs of one Krishnamma for a moiety of certain lands, which formerly belonged to one Venkanna Gandu.

Venkanna Gandu at his death left no son, but 2 widows—the above named Krishnamma and the defendant Rindamma. A dispute having arisen between the widows, Krishnamma brought a suit against Rindamma in the Court of the District Munsif of Náráyanadevarkere (No. 47 of 1860), and a decree was passed in that suit dividing between them in equal shares the pttah lands of their deceased husband. Krishnamma was put in possession of her moiety and held the same until her death, when the defendant took possession of Krishnamma's share.

The plaintiffs are the sons of the deceased daughter of Krishnamma; and the question is whether they are entitled now to the share which she held, in preference to the

(a) Present: Bittleston, Acting C. J., and Ellis, J.

surviving widow. Both the Lower Courts have held that they are so entitled, but we do not concur in these decisions.

1866.
December 15.
S. A. No. 404
of 1866.

The Principal Sadr Amin is certainly wrong in saying that the share of each widow must, on her death, go to her heirs and not to her husband's. Whether there be one widow or more than one, the rule of the Hindu Law is the same, that the next heirs of the husband take upon the determination of the widow's life estate. The only question in this case is, whether the division which took place between the widows makes any difference. We assume that upon the death of the husband the widows became jointly entitled; and that they might agree to divide the estate and hold separately distinct shares of it during their joint lives. Further, we are not prepared to say that they might not enter into such an agreement as would bind each to an absolute surrender of all interest in the other's share, so as to let in the next heirs of the husband immediately upon the death of that other; but there is no such agreement in this case. Indeed there does not appear to have been any agreement between the widows, but one obtained a decree against the other for a division. Whether that decree was right so far as it affected only the interests of the parties to that suit, in other words, whether one of two widows taking jointly the estate of the deceased husband can compel such division, it is not necessary now to consider, for the decree cannot and does not assume to do more than decide how, as between themselves, the widows are to hold and enjoy the estate. It dealt only with the joint estate, and the joint estate ceased on the death of Krishnamma. Then the whole estate of the husband vested in the surviving widow; and neither Krishnamma's claim for division nor the decree for division could touch that. Both the Lower Courts appear to have thought that the effect of the decree was to convert Krishnamma's life estate into an absolute estate as to the moiety assigned to her, so that upon her death it passed to her heirs; but in this we think they were mistaken. The plaintiffs may have a good title as next heirs of the husband upon the death of the defendant, the surviving widow, but at present they have no title, and we direct that this suit be dismissed with costs.

Appeal allowed.