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question then would have been whether the plaintiff or second defendant should bear those costs—not whether the first defendant or the second defendant should bear them, and so in part, the decision as to costs did proceed on a ground common to the second and other defendants.

We have no doubt that it was competent to the Civil Judge, under the circumstances, to modify the decree of the Lower Court by relieving the second defendant of, and charging the plaintiff with, costs which he, the second defendant, had reasonably incurred for the protection of his own interests, in a suit which the plaintiff had wrongfully brought. This appeal must be dismissed with costs.

*Appeal dismissed.*

### Appellate Jurisdiction (a)

*Special Appeal No. 407 of 1867.*

TIMMAPPA HEGGADE.....*Special Appellant.*

MAHALINGA HEGGADE.....*Special Respondent.*

The Pattam, or office of dignity in a family governed by the Aliya Santāna law, is indivisible, and, whether the family be divided or not, the Pattam, no special arrangement having been made about it, descends to the eldest male of the surviving members of the family.

The passage set out in a note to the case of *Munda Chetti v Timmaju Hensu* (1. M. H. C. Reps. 380) is not a correct interpretation of the original Canarese text of Bhutāla Pandiya's work.

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THIS was a special appeal against the decree of Srinivāsa Rāu, the Principal Sadr Amīn of Mangalore, in Regular Appeal No. 575 of 1865, reversing the decree of the Court of the District Munsif of Udipi, in Original Suit No. 379 of 1863.

*Sunjiva Rāu* for the special appellant, the plaintiff:

*Srinivāsa Chāryār* for the special respondent, the 1st defendant.

The facts sufficiently appear in the following

JUDGMENT:—This is an appeal from the decree of the Principal Sadr Amīn's Court of Mangalore, dismissing the suit. The plaintiff and the defendants are members of

(a) Present: Scotland, C. J. and Ellis, J.

divided branches of a family which is governed by the Aliyasantana system of law, and the object of the suit is to establish the right of the plaintiff to be installed in the "Pattam" or office of dignity in the family designated "Nagur Hegade," to which certain advantages and highly prized customary honors are attached.

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The family, it appears, are descendants of one Virama through two of her daughters, named Subbi and Manappu. The 1st defendant is the senior male descendant of Subbi, the elder of the sisters; but he is younger than the plaintiff, who is a descendant of Manappu and the senior of the whole family. In 1826 the two branches of the family became divided in interest, and have continued separate from that time. No arrangement, however, was then made in regard to the Pattam, but on one of the two occasions of succession to the office since the division, the successor seems to have been the eldest member of Subbi's branch, though there was alive at the time an older member of Manappu's branch. The Principal Sadr Amin, differing from the District Munsif, has decided against the plaintiff on the ground that the Pattam belongs to the eldest member of the senior branch and not the eldest member of the whole family. The question for our determination is, whether that decision rests on an unsound construction of the Aliya Santana Law of Inheritance.

The Principal Sadr Amin has proceeded on the rule of succession as given by Mr. Anderson, a former Civil Judge of Mangalore, in an appeal before him (No. 82 of 1843), and which is set out in a note to the case in this Court of *Munda Chetti v. Timmaju Hensu* (1 M. H. C. Rep. 380.) If that is a correct interpretation of the original Canarese text of Bhutala Pandiya's work, it clearly supports the decree of the Lower Appellate Court. The appellant contends that it is an incorrect rendering of the original, and that the decision of the District Munsif is in accordance with its true import. The passage of Mr. Anderson's Judgment which is relied upon was certainly acted upon by the judges who decided the case of *Munda Chetti v. Timmaju Hensu*; but no doubt was raised in the case about its accuracy, and the point determined was that the

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law did not allow compulsory division. It cannot therefore be said that the rule, as therein laid down, has received judicial sanction on the point raised in this case, and its substantial accuracy as respects non-division is not questioned.

No complete English translation of the text of Bhutála Pandiṃya is, we believe, extant, and the vernacular edition produced in the case is that published at the German Mission Press in Mangalore.

Whether this is a perfectly accurate transcript of the original we have not been able by means of collation to ascertain with certainty. But it is generally accepted and used as a book of reference, and although the Court has given some time for inquiry on this point, no different text has been produced. The Canarese Translator of the High Court has furnished to the Court a carefully prepared translation of the particular portions of the text, which is further certified as correct by one of the interpreters. The Vakil of the respondent, who is also acquainted with Canarese, is unable to dispute its correctness. It is as follows :—

“ The children of the senior and junior maternal aunts, “ the eldest female, the eldest male, shall stand (entitled) “ only to Ali\* Uli, but the children of the elder and younger “ (branch) can have no reason to enter into a division. “ The other living persons shall act in union. In this if “ misunderstandings arise between the elder and younger “ sisters, the elder shall provide the younger with a house “ and household articles and have the management, herself “ having a right (or claim) to Urisiri.† Thus Bhutála Pandi- “ yar made a rule and prohibited divisions of property. “ Bhutála Pandiṃyar wrote, and added the rule that to the “ Pattapatti (dignity) wherever it exists, the Ali Uli man “ (the surviving heir above alluded to) shall alone be “ entitled and not the other santana offspring, who will be “ entitled where the Uli (heir) is dead.” This differs materially from the version accepted by Mr. Anderson. So

\* “ Ali Uli means death, survivorship, and obtaining property, (see page 11, lines 7 and 8, also line 20, page 13 of Bhutála Pandiṃyar’s Aliyasantána Rules). Hence heirship.”

† “ Uri means fire, Siri means prosperity. By the use of this “ compound is meant a participation and liability in respect of all “ that is good and bad.”

interpreted, the rule does not, we think, make any distinction in favor of the senior sister's branch, but treats the descendants of both sisters as one united family and the right to the Yejamanship and to hold the Pattapatti or office of dignity as belonging to the eldest member. This strikes us as more consistent with the prohibition against the division of the family which it is the main purpose of the rule to declare, and which, in regard to compulsory division, this Court has decided to be the inflexible law of the Aliyasantana system of inheritance. The distinction between one branch and the other as respects an individual right attached to seniority in years, seems hardly reconcilable with the continuing status of non-division, and the equal community of interest of the branches. Probably if no division had been come to in this case beside the law, the right of the plaintiff would not have been questioned. Certainly the division seems the one circumstance which gives an appearance of support to the claim of permanent right on the part of the descendants of the senior sister.

We are of opinion, however, that the division does not really affect the question. The Pattam is indivisible and, no arrangement having been made relating to it, the right of succession remains, we think, just as if there had been no division of family property. Something was said in argument about the evidentiary effect of the former succession of a member of the senior branch in preference to an elder member of the junior branch. We have no satisfactory information as to the particular circumstances attending the single occurrence and by itself it can be given no effect.

Considering the import of the original text to be accurately given in the translation furnished by the officer of the Court, we are of opinion that, according to the true construction of the rule of law, the eldest male of the surviving descendants of Virama is entitled to the pattam of the family with its customary benefit and dignities.

The decree of the Lower Appellate Court must therefore be reversed and the appellant declared to be the rightful successor. The respondent (the 1st defendant) must pay the appellant's costs in this and both the Lower Courts.

*Appeal allowed.*

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