

1870.  
 May 13.  
 R. A. No. 80  
 of 1869.

it was not taken from or through the debtor. I have no doubt that the decree of the Lower Court must be reversed so far as it seeks to fasten the debt upon the income of the Polliem.

The rents due to the deceased even if recovered after his death will of course be assets. So will all private property which has descended from the deceased to the minor.

*Appeal allowed.*

### Appellate Jurisdiction. (a)

*Referred Case No. 11 of 1870.*

IYAHVIEN *against* CHITHAMBARIEN.

A Court of Small Causes has not power to do more in execution of a decree against a member of an undivided member of a Hindu family than issue process for the attachment and sale of the defendant's undivided right, title and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition.

1870.  
 May 16.  
 R. C. No. 11  
 of 1870.

**T**HIS was a case referred for the opinion of the High Court by M. Cross, the Judge of the Court of Small Causes at Negapatam, in Suit No. 667 of 1869.

The case stated was as follows :—

This is an application by plaintiff, in execution of his decree, to attach the undivided moveables of the defendant and his co-parceners and sell so much of them as will satisfy the decree, leaving to the defendant and his two co-parceners to adjust such sum in their accounts when they enter upon a division of their property.

Defendant is the junior member of an undivided family and this decree is against him only.

In the course of its execution plaintiff attached certain moveables to which the other co-parceners preferred a claim under Section 246, pleading that it was undivided property and could not be attached for satisfaction of a decree against a single co-parcener.

The Court held claimant's objection to be valid and allowed their claim leaving it optional with plaintiff to sell so much of defendant's third share in the family property as would adjust his claim.

(c) Present : Scotland, C. J. and Holloway J.

Plaintiff accordingly had defendant's third share in certain moveable property offered for sale, and as there was no purchaser for such share, plaintiff's present application has been made.

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The Court is of opinion that, as the defendant's family is undivided, it is not competent for it to order the sale of so much of the undivided family property as will satisfy the decree against a single co-parcener, and it accordingly disallows plaintiff's application contingent upon the opinion of the High Court respectfully solicited under Section I, Act X of 1867 whether it is right in so disallowing plaintiff's application.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—We are of opinion that the Court of Small Causes had not power to do more in execution of the decree than issue process for the attachment and sale of the defendant's undivided right, title and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition of the share.

### Appellate Jurisdiction. (a)

*Referred Case No 28 of 1870.*

G. MUNIAPPAH NAIDU *against* M. IYASAMY MUDELY.

An Appellate Court can remand a case a second time on account of error, defect or irregularity of procedure in passing a decree or order, provided the error, defect or irregularity be such as to affect the merits of the case or the jurisdiction of the Court.

When a suit has been regularly heard and determined, and on appeal the decree is reversed, the Appellate Court has the discretionary power to remand the case only if the decree should have been upon a preliminary point and have the effect of excluding the consideration of evidence essential to the rights of the parties.

THE following case was referred for the opinion of the High Court by H. P. Gordon, Acting Judge of the Court of Small Causes of Chittoor, in Suit No. 111 of 1868.

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of 1870.

This suit was brought by the transferee of in Abkarry lease (plaintiff and respondent) to recover from appellant (a sub-renter) the following sums, viz., Rupees 32-12-0,

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