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The result of our judgment is that the decrees of the Lower Courts dismissing the suit must be reversed, but at present the Court cannot pass the final decree in the appeal unless the respondent consents to abandon his objection to the reasonableness of the allowance found by the Court of First Instance only. Should the objection be abandoned, there will be a decree reversing the decrees of the Lower Courts and ordering the payment by the defendant of the sums found by the Court of First Instance together with the plaintiff's costs in this and the Lower Court. Should the respondent still rely upon the objection, the Civil Court must be required to return its finding on the issue :—

Whether the sum of Rupees 5 monthly is a fair and reasonable allowance for the plaintiff's maintenance while living with her own family ; and whether the sum allowed for arrears of maintenance is properly payable and, if not, then what are the reasonable and proper sums to be allowed ?

We are not to be understood as deciding that the plaintiff has no legal claim beyond the amount of income of the piece of land proportionate to her husband's share as co-parcener. The law is probably so, but at present a decision on the point is not necessary as the Court of First Instance appears to have assessed the sums found proportionately to the share of the plaintiff's husband. The finding of the Civil Court may render a decision necessary.

Appeal allowed.

Appellate Jurisdiction. (*a*)

Special Appeal No. 246 *of* 1869.

KAMAKSHI.....*Special Appellant.*

NAGARATHNAM.....*Special Respondent.*

By Hindu law on the death of one of two sisters to whom the joint hereditary office of dancing girls attached to a pagoda had passed on the death of their mother the share of the deceased sister in the office devolves on her daughter and not on the surviving sister by survivorship.

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THIS was a Special Appeal from the decision of J. D. Goldingham, the Acting Civil Judge of Madura, in Regular Appeals Nos. 255 and 258 of 1868, confirming the Decree of the Court of Small Causes of Madura, on the Principal Sadr Amin's Side, in Original Suit No. 46 of 1867.

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

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The plaintiff sued to establish her right to a moiety of the dancing mirassi in Muttummal Arakattali or endowment in the Meenatchi pagoda together with the privilege of receiving in every alternate year a present of cloth for her services in Villapuram Mantagapadi feast, and to recover from the defendants 1 to 4 the manibum land attached thereto, viz. $1\frac{97}{8}$ cawney of lakraj nunjah land annually yielding Rupees 81-6-0 together with Rupees 244-2-9, being damages for loss of produce. Plaintiff stated that her mother and 1st defendant were sisters who inherited the property of their grandmother Muttummal, the original proprietress of the dancing mirassi in question, and held it jointly till 1860, when they divided only the personal property among them; and at such division an agreement was entered into between them to the effect that she (1st defendant) should pay plaintiffs' mother Rupees 150 as compensation for the additional value of the half of the house which was to be taken as her share, and that each of them should perform the duties of the dancing mirassi office in turn and enjoy the emoluments thereof. In July 1863 the first defendant not only took illegal possession of the plaintiff's share of the manibum land, but also refused to pay her or her mother who died in July 1865 the said sum of Rupees 150. The plaintiff further stated that the two cloths due to her in the said Mantagapadi feast for the years 1864 and 1866 were withheld from her by the order of the defendants 7 to 10, the huckdars of the said endowment, who have deposited the same with the 5th and 6th defendants.

The 1st defendant stated that she was the adopted daughter of Muttummal and the sole heir to her property, and that the plaintiff's claim was barred by the Law of Limitation.

The following issues were settled :—

1st. Whether the plaintiff's mother and 1st defendant succeeded jointly to the property of Muttummal or the 1st defendant only.

2ndly. Whether there was joint possession up to 1860 and agreement for division.

3rdly. Whether the claim is barred by the Statute of Limitation.

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On the first issue the Principal Sadr Amin found that Kamakshi, 1st defendant, and Sitalakshimi, mother of plaintiff, succeeded jointly to the property of Muttummal.

The following was his judgment on this issue :—

The original owner of the mirasi, Muttummal, died in 1811. She had no female children but two grand-daughters by a son. Kamakshi, the 1st defendant, and Sitalakshimi, the mother of the present plaintiff. They were both therefore equal heirs. The 1st defendant sets up an adoption by Muttummal and claims to have succeeded to her property to the exclusion of her younger sister Sitalakshimi. In support of this she produces two Zillah Court decrees of 1811 and 1815. In both of these she is recognized as the heir of Muttummal, not however as adopted daughter, but merely as grand-daughter which is the only relationship she then set up. She was the eldest, and the simple omission of Sitalakshimi's name as a co-plaintiff is poor evidence that she was excluded.

The razinamah III said to have been entered into by plaintiff's mother is most suspicious; it purports to have been entered into by Kamakshi, and Sitalakshimi, November 16th, 1864. Kamakshi is described as the adopted daughter of Muttummal, and it is intended by this to estop plaintiff the daughter from denying it. The plaintiff was herself the 2nd defendant in that suit, but was not included in the razinamah, and from the documents (C. D. E. and F.) it is clear that she made several though unsuccessful attempts to have it set aside. By the endorsement of the Munsif, it is clear that Sitalakshimi was not in a state to give a valid consent, and there can be little doubt but that she was imposed upon. The disputes between the parties arose in 1863, and the object of the razinamah is apparent—it was not till after 1863 that it occurred to Kamakshi to set up a title to the exclusion of her sister. In the income Tax Register (A) Kamakshi acknowledges her sister a half sharer in the house and land. This was in 1861 before the quarrels arose.

On the second issue he found that there was joint possession up to 1860, but the plaintiff had not proved that there was then any agreement to divide the lands.

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As the parties were joint up to 1860, the question of limitation is settled.

The Principal Sadr Amin's decree was that the $\frac{97}{384}$ cawney of land mentioned in the plaint be made over to the plaintiff, and she is declared entitled to receive the cloth every alternate year. The question of mesne profits from July 1864 for three years was reserved for adjustment at the execution of the decree.

Upon Appeal the Civil Judge confirmed this decision.

The 1st defendant appealed specially to the High Court against the decree of the Civil Court of Madura, on the ground.

1. That both Courts have been wrong in applying the ordinary rules of inheritance among females to a personal office such as that of a dancing woman.

2. That the presumption as to joint enjoyment does not apply to the perquisites of such an office.

Mayne, for the special appellant, the 1st defendant.

Rama Row for *Srinivasa Chariar*, for the special respondent, the plaintiff.

The Court delivered the following

JUDGMENT:—This is a suit to establish the plaintiff's right, as co-parcener with her mother's sister, the 1st defendant to the office of dancing girl attached to the Meenatchee pagoda, which is found to be an hereditary joint office, and to a moiety of the emoluments of the office. Both the Lower Courts have decreed in favor of such right, and the question raised in this appeal brought by the 1st defendant is whether on the death of one of two sisters to whom the office had passed by right of succession from their mother, the share of the deceased sister devolved on her daughter (the plaintiff), or the office with its emoluments passed in their entirety to the surviving sister (the 1st defendant).

There is no doubt that in Madras the issue of a dancing woman are her legal heirs, and the Hindu law of inheritance appears not to warrant any distinction between the descent of her property and the descent of paternal property, except that daughters are placed before sons in the order of succes-

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sion as in the case of the succession to stridhanum, and this without any qualification. Now as the property in dispute was not stridhanum of the plaintiff's mother and her sister, the 1st defendant, (and for this position the recent decision of this Court in *Sengamathammal* v. *Valayuda Mudali*, 3, *Madras H. C. Reports*, 312, is a direct authority) the general rule must, we think, be considered to be that the children of dancing women take by descent the estate of co-parceners in their mother's property; their daughters as a class first, and on failure of daughters their sons as a class. There would not be a doubt about this being the nature of the estate in the case of sons succeeding, and in reason and principle we can see nothing on which to found any distinction as to the estate of inheritance which daughters take. The ordinary law of inheritance must, it appears to us, govern in both cases alike.

The objection on the part of the appellant that the 1st defendant and her sister took a joint estate with rights of survivorship was sought to be supported by an argument of analogy drawn from the rules of inheritance in the case of several widows being heirs and of the succession of several daughters to the stridhanum of their mother. We are not prepared to lay down that in the latter case the right of survivorship to the exclusion of the children of a deceased sister exists, but assuming that it does the argument appears to us to be of no force. There is obviously no analogy between the present case and that of widows inheriting the estate of their husband, and as to the law of succession to stridhanum we think it a sufficient answer that it is a peculiar law, and its positive restriction to maternal property acquired in a particular manner precludes its being extended by analogy to a widely different kind of maternal property, the descent of which may be regulated by the ordinary law of inheritance.

It was urged further that the right of survivorship between sisters inheriting "ex-parte materna" was given by the general law, and the case already mentioned was cited in support of the argument. But that case is not an authority for so much. It decides only that property inherited by daughters from their mother is not stridhanum and passes

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on the death of one of the daughters without children to her surviving sister. The question of the right of inheritance of sons and daughters on the descent of property "ex-parte materna" is alluded to, but no opinion is expressed upon it, and it is upon the question whether maternal and paternal property vests in daughters under the same or different rules of succession, that a daughter's right of survivorship to the exclusion of her deceased sister's children depends.

In the present case that question is set at rest, for there appears to be no doubt that the daughters of dancing women like the parties to the suit take the place of sons, and our decision, founded upon this view of the law, is that, in the absence of any further positive rule, daughters must be regarded as sons and held to take estates of inheritance from their mother similarly to sons under the general law of inheritance, and so regarding the parties in the present case it is clear that the 1st defendant did not, as co-parcener, acquire by the general law the right of succession to the exclusion of the plaintiff, and that the plaintiff was entitled to succeed to the share of her mother.

For these reasons we affirm with costs the decree of the Civil Court declaring the plaintiff's right to the office and to an equal share of the benefits of its endowment and perquisites.

Special Appeal dismissed.

Appellate Jurisdiction. (a)

Regular Appeal No. 116 *of* 1868.

VENKATACHELLA PILLAY and another ... { *Appellants (Defendants.)*

CHINNAIYA MUDALIAR ... ... { *Respondent (Plaintiff.)*

The right of a co-parcener to alienate his vested interest in the property held in co-parcenery is limited to the extent of the co-parcener's share in the particular property which is the subject of the alienation.

In a suit to recover a moiety of a village which was a portion of the joint family property and which had been sold by the managing member without the assent of the plaintiff's father and not for family purposes, the entire village being less in quantity and value than the share of the managing member.

Held, that the plaintiff was entitled to the relief prayed.

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