Appellate Jurisdiction. (*a*)

Special Appeal No. 455 *of* 1871.

CHALLA PA'PI REDDI and another.....*Special Appellants.*
CHALLA KOTI REDDI *alias* KOTAPPA...*Special Respondent.*

Suit to recover a share of the property of the plaintiff's maternal grandfather. The facts found were as follows:—Plaintiff's mother and 1st defendant's mother were sisters, daughters of one M., who, having no male issue, selected, in pursuance of a special custom, the 1st defendant's father as a son-in-law who should take his property as if a son. On the death of M. the 1st defendant's father entered into possession of the property and, afterwards, during the minority of his son (1st defendant) associated with himself the plaintiff, on promise of a share. In accordance with this agreement the plaintiff joined the 1st defendant's family and continued for many years aiding in the management and improvement of the property, until, a short time before the present suit was brought, the 1st defendant turned the plaintiff out of doors and refused to give him the promised share. Upon these facts *Held*, by HOLLOWAY and INNES, JJ.—That the 1st defendant's father was what is called, in English law, a purchaser, and had all the powers of disposition existent over self-acquired property. That, also, there was a complete adoption or ratification of the father's contract by 1st defendant, and that he ought to be held to it.

By INNES, J.—That the right of 1st defendant's father to dispose of property self-acquired might depend upon whether 1st defendant was or was not in being at the date of the acquisition.

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THIS was a Special Appeal against the decision of J. Wilkins, the Judge of the Court of Small Causes at Masulipatam, on the Principal Sadr Amín's side, in Regular Appeal No. 82 of 1871, confirming the decree of the Court of the District Munsif of Gantúr in Original Suit No. 142 of 1868.

The suit was brought for the recovery of moveable and immoveable property worth Rupees 996-12-7, and falling to the ⅓rd share due to plaintiff out of the estate of Duggampudi Musalireddi, plaintiff's maternal grandfather, now in the possession of 1st defendant.

The plaint set forth as follows :—

" The 1st defendant's mother Bakkammah, and the plaintiff's mother Subbamma are uterine sisters. The 1st defendant's father went and lived (Illatam) in the house of their father Duggampudi Musalireddi. Subsequently on the

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extinguishment of the said Musalireddi's family, the estate fell into the possession of the 1st defendant's father, who having no other issue than the 1st defendant, and having none to look after the affairs of cultivation, and as the plaintiff also was an heir to the estate of the said Musalireddi by virtue of his being Musalireddi's daughter's son, took the plaintiff above 25 years ago on the condition of giving him also a share in the said property. The plaintiff therefore continued from that time to assist the 1st defendant's father in carrying on cultivation, &c., and improved the property. On the death of the 1st defendant's father, a dispute having arisen between the plaintiff and the 1st defendant, the plaintiff demanded of the latter his share, and the 1st defendant executed three years ago a karárnáma to the effect that the plaintiff should reside with 1st defendant only for 10 years, and that afterwards the 1st defendant should take two shares to himself and give one share to plaintiff. While so, the 1st defendant, about 15 or 20 days back, unlawfully turned plaintiff out of door through the instigation of the 2nd defendant, and took possession of the said document. The plaintiff, therefore, sues to recover his ⅓rd share, according to the terms of that karárnáma."

The 1st defendant denied the plaintiff's claim, and the fact that the plaintiff was brought to his (defendant's) house on the condition of giving him a share, as also the fact of the execution of a karárnáma agreeing to give the plaintiff a third share, and alleged that as the existing property came to his possession by purchase, the plaintiff could have no manner of right thereto; that in order to liquidate a debt contracted from him (1st defendant) the plaintiff entered his (defendant's) house as a servant, but was driven out by 1st defendant for bad conduct, and that of the ground and houses specified in the plaint, he (1st defendant) had already sold some to the 2nd defendant.

The 2nd defendant stated that he purchased of the 1st defendant two pieces of land four years ago and continued since to enjoy the same, having built a house thereon, and that he ought not to have been included in the suit.

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The District Munsif found that the property in question, originally belonged to Musalireddi. That the 1st defendant's father had succeeded to the property as son-in-law, by virtue of a special custom, and that he had taken the plaintiff into his house and executed a karárnáma promising him a share, as alleged in the plaint. The Munsíf, therefore, adjudged to plaintiff the one-third share claimed by him with costs from the 1st defendant, declared that the sale to the 2nd defendant should operate only against the share of the 1st defendant, and exonerated the 2nd defendant from liability.

From this decision the defendants appealed.

The Principal Sadr Amín in his judgment said—

"The preliminary objection urged against this suit is that the document referred to by the plaintiff in support of his claim not having been registered, it cannot be taken as evidence, and hence the plaintiff ought to have been nonsuited.

This document was not produced, but is alleged to have been made away with by the 1st defendant. The plaintiff allows that it was never registered.

It is alleged in the plaint that this document was executed to plaintiff by 1st defendant, agreeing that plaintiff should reside with him for 10 years, and that after the expiration of that term, or earlier in case of dispute, the plaintiff is to be entitled to one-third share of the property of their mutual maternal grandfather, Duggampudi Musalireddi, which 1st defendant inherited from his father, Musalireddi's son-in-law. The plaintiff charges 1st defendant with having turned him away three years after the agreement, and hence sues for his one-third share, according to the terms of the said written agreement, consisting of real and personal property, the former of which exceeds one hundred rupees.

The plaintiff shows by his plaint that he also had a right, by being a grandson of Musalireddi, to a share in his

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said property. He alleges that Musalireddi from domestic bereavement transferred the possession of his property to his son-in-law, 1st defendant's father, who, having no one else but his minor son, 1st defendant, and as plaintiff was also an heir of Musalireddi, took plaintiff about 25 years ago on condition of giving him a share in the property, and that he assisted in the management and improvement of the property, and that 1st defendant executed the agreement sued upon after the death of his father.

There is no doubt that the agreement referred to ought to have been registered under Act XVI of 1864, and that, not being so registered, it cannot be received as evidence, and that the plaintiff's claim so far as it is supported by that document cannot stand.

The question, then, is whether the plaintiff has not a right independent of the document referred to, *i. e.* of his co-share with 1st defendant as Musalireddi's grandson, and as orally admitted by 1st defendant's father when he was admitted into the family twenty-five years ago, and by the promise of a share, and having moreover contributed towards the improvement of the estate. This point was laid down in the issues by the Original Court and the evidence gone into.

The 1st defendant submits that the plaintiff cannot sue as Musalireddi's heir, as his daughters are still alive.

These females have offered no objections either to 1st defendant's or plaintiff's right or enjoyment. It is urged by plaintiff that, in the absence of sons, Musalireddi took to him his son-in-law, to whom he made over all his property, and that this son-in-law, in consequence of his own son, the 1st defendant, being a minor, and in consideration of plaintiff being an equal co-sharer, admitted the plaintiff into his family on a promise to allow him a share, and that plaintiff joined in the management and improvement of the estate for upwards of twenty years.

The plaintiff at this time had not only a reversionary right to the estate through his mother, but was at once taken

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into co-parcenary with the son-in-law of Musalireddi who had been entrusted with the property, with the promise and engagement to allow him a share. This has been clearly established by evidence adduced by plaintiff and examined by the Court, and it is equally proved that plaintiff had, since then and up to shortly before the suit, been in the enjoyment of the property with the 1st defendant.

Such being the case, the document upon which plaintiff bases his claim was merely a confirmation of a previous contract orally entered into by 1st defendant's father. By this oral contract, independently of the subsequent document, the plaintiff possessed a share of the property, and he has been in the enjoyment of his share conjointly with 1st defendant, although without a regular division, until he was turned out by the 1st defendant a few days before institution of the suit.

Hence although the plaintiff may not be able to establish his share by the written document of 1st defendant, which renewed and established the original oral contract entered into by 1st defendant's father, the plaintiff does not forfeit his right, but still holds his share by virtue of the original oral contract, the proof of which has been established by witnesses according to the issue framed by the Court, which right he might have claimed at any time so long as he was not barred by adverse possession, which must be reckoned from the time he was turned away by 1st defendant. Hence his claim is not barred, and his suit for one-third is both reasonable and just.

Hence there is no ground for disturbing the finding of the District Munsif, and his judgment is therefore confirmed, and appellant charged with costs."

Against this decision the defendants preferred a Special Appeal.

Sloan, for the special appellants, the defendants.

J. H. S. Branson, for the special respondent, the plaintiff.

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The Court delivered the following judgments,

HOLLOWAY, J.—The objection that the oral agreement is not found to have specified the share is of no weight. In the absence of such specification, the meaning is plainly—"I admit you to the rights of a co-sharer."

The finding is that defendant's father obtained his rights in pursuance of a special custom which entitled Musalireddi to select a son-in-law who should take his property as if a son. The custom, therefore, amounts to a power of disposition inconsistent with the ordinary rules of law. It is further found that during the minority of the 1st defendant, his father associated with himself the present plaintiff on promise of a share, and that the plaintiff has, in accordance with the agreement, been in the family ever since aiding in its management and improvement. The first question is whether a person, so coming in by exception to the ordinary rule of inheritance, is thereby placed in the position of a son, who at his birth becomes a joint tenant, with all the rights of such a son and with all the restrictions upon alienation which would exist as to his own son if it had been an estate of inheritance. It seems to me that no such restriction upon the powers of Musalireddi was created by his following the custom. It was suggested by Mr. Sloan, who always by his careful research assists the Court in matters of this kind, that the custom is the offspring of the doctrine of the appointed daughter. The power of complete disposition as against both a widow and daughters, has, rightly or wrongly, been upheld, and there would be great difficulty in saying that the son-in-law so affiliated could be in a better position. It would certainly not be in accordance with legal logic to apply to this exceptional heir, doctrines derived from the ordinary system from which it is a derogation. There is nothing illogical in saying that the person so affiliated shall inherit all of which the affiliator died possessed, but that he does not and cannot stand in the same position as one who became a joint tenant at the instant of birth. It seems to me that the 1st defendant's father was what we should in English law call a purchaser,

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and that he had all the powers of disposition existent over self-acquired property. I am quite aware that there is a doubt of the power of a father to alienate even self-acquired real property, but the tendency of the decisions, in accordance with reason, is to put all property upon the same footing. My conclusion, therefore, upon this part of the case is that a person succeeding to property by virtue of this customary rule and in supersession of the ordinary rules of law is a self-acquirer, and that the obligation of the father is one which the son is bound to satisfy, and that in so deciding the Lower Court is right: were it otherwise, on the findings that the plaintiff in accordance with the contract did join the family and did labour for many years, that the son on the death of the father took the benefit of those services and allowed their continuance, I should feel great difficulty in saying that there was not a complete adoption and ratification of the father's contract, from which it would be fraudulent now to seek an escape. As to that portion of the decree which declares that the portion sold is to be included in 1st defendant's share, it is impossible to say whether it is right or wrong. It will be right if the act was that of 1st defendant alone, and if he has taken the whole of the proceeds, wrong if the sale was made with the assent of the plaintiff while he was living in communion. To determine whether the decree should be modified on this point, I think that the following issues should be referred:—

(1.) Was the sale made before or after the severance of the communion by the act of the 1st defendant?

(2.) If before, was the sale made either with the plaintiff's assent or for proper family purposes?

INNES, J.—I agree entirely as to the view of the right acquired by 1st defendant's father through affiliation to Musalireddi. But with regard to the power of 1st defendant's father to dispose of property self-acquired, I think the right to do so may depend upon whether 1st defendant was or was not in being at the date of the acquisition as, at present, it, appears to me, upon the texts of

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Hindu Law which apply to the subject, that by birth a son acquires an inchoate right in what even at that date belongs to the father, whether self-acquired or family property. But I agree that, according to the findings, there was a complete adoption or ratification of the father's contract by 1st defendant, and that he ought to be held to it. Plaintiff is therefore a co-sharer in the property, and, for the solution of the other questions in the case, I agree in the issues proposed by Mr. Justice Holloway.

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Special Appeal No. 78 *of* 1871.

VENKATARA'YAR and two others.....*Special Appellants.*
SRI'NIVA'SA A'YYANGA'R and 5 others...*Special Respondents.*

It is not competent to the Archakas of a Pagoda of their own authority to make an alienation for the purpose of altering the form of worship in the Pagoda, or in contemplation of such alteration. Any assignment of the office must carry with it the duty of continuing the form of worship hitherto observed.

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SPECIAL Appeal against the decision of W. Hodgson, the Acting Civil Judge of Cuddalore, in Regular Appeal No. 195 of 1867, confirming the decree of the Court of the Principal Sadr Amín of Cuddalore in Original Suit No. 5 of 1866.

This was an action for the recovery of the office of Archakan (priest) and Stanigan, and certain mániam lands and other property attached to Latchmi Naráyana Perumal Kovil in the village of Addúr, and also for the Pagoda itself.

The plaintiffs stated that the temple in question was founded by their ancestors, and that the management thereof and its endowments, together with the offices of Archakan and Stanigan, were since vested in their family, and that in 1863 the first defendant made an unlawful alienation thereof to the prejudice of their (plaintiff's) interests. Hence this suit.

The 1st defendant was declared ex-parte.

(a) Present : Innes and Kindersley, JJ.