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ually, after the death of the principal defendant, Rámlá Thákursidás, compromised. The Bill in that suit prayed that the alleged agreement, releases, and undertaking of August 1860 should be declared fraudulent and void, and be set aside, that the copartnership consisting of the plaintiffs, the defendants Lakshumandás Rádhákisan the minor, and Rámlál Thákursidás in the Bombay branch firm, should be declared to be dissolved from the 31st May 1860, or the 5th June 1860; that an account should be taken of the dealings of that branch firm, and of the moveable and immoveable property of that branch firm in the possession of the defendant Rámlál, &c., &c.

1861. Aug. 30.

In the late Supreme Court, Equity Side.

RA'MCHANDRA DA'DA' NA'IK.....*Plaintiff.*

DA'DA' MAHA'DEV NA'IK, LAKSHUMAN DA'DA' NA'IK, and KESHAV DA'DA' NA'IK.....*Defendants.*

Hindu Law—Partition—Moveable ancestral property—Immoveable ancestral property—Ancestral business—Supreme Court—Jurisdiction.

On this side of India a son (Hindú) has no right to enforce partition of ancestral moveable property in the hands of his father, or to claim a separate share in an ancestral business against his father's will, although the son alleges that his father is prejudiced against him, and intends to deprive him of his succession to such property and business.

Semble, that such son cannot enforce partition of immoveable ancestral property under similar circumstances.

The late Supreme Court had no power to decree a partition of ancestral property situate beyond the limits of its jurisdiction.

THE Bill stated that Mahádev Náráyan Náik, deceased, a resident of Shápur, in the independent state of Sángli, in the Southern Maratha Country, during his lifetime and up to the time of his death carried on an extensive business as a shroff at Shápur, having branches at various places, and amongst others at Bombay, where he carried on the same business under the name of Mahádev Náráyan Shápurkar, by his munim, Kharsetji Ejiarji.

Mahádev Náráyan Náik died intestate in the year 1847, leaving two sons, Harbá Mahádev Náik and Dádá Mahádev Náik, and seven grandsons, namely, Vithobá Rághobá (the son of Rághobá Mahádev, who had predeceased his father), Shrinivás Venktesh and Eshvant Venktesh (the sons of

Venkṭesh Mahádev, who had also predeceased his father), Govind Harbá (the son of the above-named Harbá Mahádev Náik), and Rámchandra Dádá Náik, Lakshuman Dádá Náik, and Keshav Dádá Náik, the sons of the defendant Dádá Mahádev Náik, his heirs and next of kin according to Hindú law him surviving.

Mahádev Náráyaṇ Náik at the time of his death was possessed of moveable and immoveable property, consisting of a family-house at Shápur, of the value of about Rupees four thousand, cash, *hundis*, notes, gold, silver, capital employed in his said business, and outstandings to the extent of Rupees 2,51,000, or thereabouts, and joys and jewels of the value of about Rupees 10,000.

Mahádev Náráyaṇ Náik, with his sons and grandsons, formed at the time of his death an undivided Hindú family in food, worship, and estate, and after his death his sons and grandsons became entitled in coparcenary, according to Hindú law, to all the property left by him.

As the said Harbá Mahádev Náik, the eldest son of the intestate, was dumb, and therefore incapable of carrying on business, the defendant, Dádá Mahádev Náik, as the only other surviving son of the intestate, possessed himself of the estate, and undertook the management of the business of the estate, on behalf of the undivided Hindú family, and realised large profits thereby, and the same were added to, and formed part of, the ancestral estate of the family.

Shortly after the death of the intestate, disputes arose between Dádá Mahádev Náik as such manager, and Viṭhobá Rághobá, Shrinivás Venkṭesh, and Eshvant Venkṭesh, who alleged that Dádá Mahádev Náik did not keep proper books of account of the estate and business. In consequence of these disputes, Dádá Mahádev Náik, in the year 1851, in consideration of the sum of Rupees 54,000 paid by him to Viṭhobá Rághobá, and of the sum of Rupees 47,000 paid by him to Shrinivás Venkṭesh and Eshvant Venkṭesh, obtained from them respectively releases of all claims in respect of the ancestral property and business; and Viṭhobá Rághobá and Shrinivas Venkṭesh and Eshvant Venkṭesh thenceforth ceased to be members of the undivided family.

In the year 1857 Harbá Mahádev Náik, being dissatisfied with the management of the ancestral property and business,

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commenced proceedings in the Court of Sángli for an account and partition. Dádá Mahádev Náik however came to an amicable settlement by giving to Harbá Mahádev Náik a six-annas share in the family-house at Shápur, and paying him Rupees 65,000 in cash; in consideration whereof Harbá Mahádev Náik executed a release of all claims in respect of the ancestral property and business, and thenceforth the said Harbá Mahádev Náik and his heirs ceased to be members of the said undivided family.

After the execution of these releases, Dádá Mahádev Náik and his three sons, as surviving members of the original family of Mahádev Náráyaṇ Náik, became solely entitled in coparcenary to all the residue of the ancestral property and business with the accretions thereof.

After the execution of the releases, Dádá Mahádev Náik as head of the family, continued in the possession of the residue of the ancestral property and in the management of the ancestral business, which he carried on at various places, and amongst others at Bombay, with the family funds, under the original firm of Mahádev Náráyaṇ Shápurkar, on behalf of the family.

Until a comparatively recent period, the plaintiff and the defendants resided together in the family-house at Shápur as an undivided Hindú family, and the plaintiff and the defendants, Lakshumaṇ Dádá Náik and Keshav Dádá Náik, used to assist their father in carrying on the business, acting generally as Mehtás, but neither the plaintiff nor his two brothers were allowed to take any part in the management of the business, or to keep books of account, and in fact none of the regular or customary books of account of a shroff were kept by Dádá Mahádev Náik. There was a book called Bode Kháta, in which entries were made by Dádá Mahádev Náik alone, and which he retained in his own custody, and did not allow either the plaintiff or his other two sons at any time to inspect.

The plaintiff having attained to years of discretion, and being dissatisfied with the manner of keeping the accounts of the business, on many occasions expostulated with his father, and urged him to allow account books to be kept; but his father refused, and finally excluded the plaintiff altogether from any participation in the affairs of the business, and commenced a series of persecutions against him.

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In June 1858 Dádá Máhádev Náik, being greatly incensed against the plaintiff, in consequence of his respectful remonstrances, applied to the Mámlatdár of Shápur for an order to eject the plaintiff from the family-house and from the shop, on the pretence that he was divulging the secrets of the business to strangers. The Mámlatdár declined to make the order, but directed both parties to give securities to keep the peace, which was done.

Subsequently to this order the plaintiff continued to reside in the family-house with his father, until August 1858, when the latter announced that the sum of Rupees 49,000 had been stolen from the family-house, and applied to the Mámlatdár to assist in discovering the robbers, and offered a large reward for the recovery of the property, informing the Mámlatdár that he did not know whom to suspect. The Mámlatdár failed to discover the property alleged to be missing or the alleged robbers.

About two months after the alleged robbery Dádá Máhádev Náik left Shápur, and went to reside in Belgám (which is distant about a quarter of a mile from Shápur), and then proceeded to give information of his alleged loss to the English authorities at Belgám, and applied to them for their assistance in tracing the robbers, the reward for the recovery of the property still being offered; and he then stated that he suspected the plaintiff, his nephew, Shrinivás Venkṭesh, and other persons, of having effected the said robbery.

In consequence, the plaintiff, Shrinivás Venkṭesh, and one Nágesh Báburáv were seized at Shápur, and imprisoned at Belgám, and in order to obtain their release were compelled to deliver up gold and other property of the value of half a lakh of rupees, or thereabouts. Upon obtaining their release the plaintiff, Shrinivás Venkṭesh, and Nágesh Báburáv, respectively brought actions in the Supreme Court against the Cantonment Magistrate, which actions in December in that year, before they came on for trial, were compromised by the payment of a very large sum of money, towards which Dádá Mahádev Náik (though not a party to any of the said actions) contributed upwards of ten thousand rupees.

On the return of the plaintiff to Shápur he found that his father with his family (including the defendants, Lakshuman Dádá Náik and Keshav Dádá Náik) was residing at Belgám,

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where he was carrying on the ancestral business. The plaintiff applied to his father to return to Shápur, and either to allow him, the plaintiff, to take part in the conduct of the said business, or to assign him a proper maintenance out of the family funds, or offered to proceed to Belgám and take up his abode with his father, and assist him in carrying on the business at Belgám; but his father refused to accede to any of these propositions, or to allow to the plaintiff any maintenance out of the family funds; and the only benefit which the plaintiff then and afterwards derived from the ancestral property was, that he was allowed to dwell in the family-house.

The plaintiff, in or about the month of November 1860, applied to the authorities of Shápur to compel Dádá Mahádev Náik to pay over or secure to the plaintiff the share of the ancestral property to which he was, according to Hindú law, entitled; but as Dádá Mahádev Náik was then resident at Belgám, out of their jurisdiction, the authorities decided that they were unable to give the plaintiff any assistance.

Dádá Mahádev Naik afterwards declared, with reference to the property, that, on his death, the plaintiff would take nothing.

Dádá Mahádev Náik, with a view to defraud the plaintiff of his just right in respect of the ancestral property, was for some years in the habit of bestowing large sums of money and valuable presents of gold and jewels upon his two other sons, the defendants, and upon his daughter, Chandrábái, and her husband, Vásudev Virkobá Náik, to an amount far exceeding what was necessary for their maintenance, or befitting their position in life; and the plaintiff charged that these presents were made by his father to diminish the value of the ancestral estate; and that the bestowal of such presents was a wilful dissipation and misappropriation of the estate in consequence of the feelings of enmity entertained by his father against the plaintiff.

Dádá Mahádev Náik sometimes pretended that the whole of the property was his own separate property, and that he had full power and right to use, apply, and dispose of the same; and at other times he admitted that the said property, or some part thereof, was ancestral property; but pretended that he was entitled to employ the same in his business, and to use and dispose of the same during his life, according to

his own unfettered discretion; and that the plaintiff and the other defendants were not entitled to take any part in the management of the business, or to interfere with him in so employing or using and disposing of the property.

The plaintiff charged that the whole property possessed by his father was ancestral; and that the plaintiff was, according to Hindú law, entitled to a share thereof, under the circumstances set forth, at once and during the lifetime of his father; and the plaintiff further charged that in respect of the ancestral business, he was a partner in the same together with the three defendants, and entitled to an account.

The plaintiff charged that by reason of the negligence of his father, the ancestral estate was in danger of being wasted and dissipated; and that further or otherwise than might be requisite for carrying on the business, and for providing a suitable maintenance for the members of the family, his father had no power to use or dispose of the property or any part thereof without the consent and permission of the plaintiff and his other two sons.

The plaintiff further charged that Dádá Mahádev Náik was perverted in mind, and influenced by wrath against the plaintiff.

It was stated that the defendants were Hindú inhabitants of Belgám, but by reason of their carrying on business in Bombay jointly with the plaintiff under the firm of Mahádev Náráyaṇ Shápurkar, by means of their Munim, Kharsetji Ejiarji, were subject to the jurisdiction of the Supreme Court.

The plaintiff prayed (*inter alia*),

That it might be declared that the whole of the property possessed by Dádá Mahádev Náik was ancestral property, and divisible among the plaintiff and defendants as members of an undivided Hindú family.

For a declaration that the plaintiff was entitled to claim an immediate partition of the ancestral property.

For an account

That Dádá Máhádev Náik might be decreed to pay to the plaintiff the amount of his share, or to give security to answer for the same, and in the latter alternative that the said defendant might be decreed to pay or secure to the plaintiff for his maintainance an amount equal to the

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interest, at the rate of nine per cent. per annum, on the estimated money value of his share.

To this Bill the defendants demurred on the grounds: (1) that a son has no right to a partition of ancestral property during his father's life and against his father's will; (2) that if such right exists under special circumstances, they were not to be found in this case; (3) that any such right is confined to immoveable property; (4) that the immoveable property of which partition was sought, was not within the jurisdiction of the Court; (5) that maintenance was only claimed as consequential to the partition sought; (6) that the partnership stated in the Bill was not copartnership in the usual sense of the word, so as to entitle the plaintiff to relief as a copartner in trade.

The demurrer was argued before SAUSSE, C.J., and ARNOULD, J., on 2nd August 1861, and subsequent days.

Westropp, for the defendants, contended that there had never been a case in the Supreme Court of Bombay in which a Bill was filed for such a partition as was claimed. He contended that such partition against the will of the father could only be enforced in case of the father's civil death or degradation; and cited Vyavahára, Mayukha, ch. iv. sec. 4, paras. 4 and 6; I. Strange H. L., p. 179, 184; Manú, ch. ix., paras. 204—220; Steel's Summary, pp. 61, 213, 216; Miták. sec. 2; *Baee Gunga* v. *Dhurumdass Nursudass* (*a*).

Green, on the same side, cited *Kennedy* v. *Earl of Cassillis* (*b*); *Bayley* v. *Edwards* (*c*); I. Strange H. L., pp. 17, 18, 22 159, and 176; Dáya-bhága, ch. i.

Anstey, with *White* and *Scoble*, in support of the Bill, commented on the authorities quoted, and cited in addition—*Baboo J. Doss* v. *Bindabun Doss* (*d*); *Woomischunder P. Chowdry* v. *Isser Chunder P. Chowdry* (*e*); 2 Strange H. L. 316—322; *Rungama* v. *Atchama* (*f*); Sutherland on Adoption, and I. Morley Dig. 442.

Westropp was heard in reply.

Cur. adv. vult.

(*a*) Bellasis Rep. p. 16. (*b*) 2 Swanston 313. (*c*) 3 Ibid. 703.
(*d*) 3 Moo. Ind. App. 175. (*e*) 2 Mor. Dig. 66.
(*f*) 4 Moo. Ind. App. I.

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30th August 1861.—SAUSSE, C. J. :—I do not think that the Court is called upon to decide the first and second causes of demurrer; because the right to compulsory partition, if it exist at all, does not extend to moveable property, and because the only immoveable estate of which a partition is claimed appears upon the face of the Bill not to be within the jurisdiction of this Court; therefore, there is no property with respect to which this Court can be called upon to grant the relief prayed by the plaintiff.

The highest authorities recognised in Hindú law* hold that as between a father and his sons in the distribution of paternal or other ancestral estate the father takes the moveable property absolutely, or subject only to certain conditions, none of which have been broken upon the facts appearing on this record.

The only authority that contravenes that proposition is that of the Mayukha, ch. iv., s. 5, which contends that the father is only entitled to the use of the moveables, but not so far as gift or alienation. The reasoning is based upon very limited views, and is not at all satisfactory to my mind, even if it were not opposed to the great weight of authority I have referred to.

The suit must then fail so far as it seeks to enforce a contributory partition of the ancestral moveable property against the will of the plaintiff's father.

The only immoveable ancestral property mentioned in the Bill is stated to be situated in the independent territory of Sánglí, and out of the jurisdiction of this Court.

The case of *Sir G. Carteret* v. *Sir William Pottey* (*g*) is an authority to show that a Court of Equity will not enforce a partition of real or immoveable estate situate beyond its jurisdiction. It is very clear that this Court would not in such a case have power to bring into operation the machinery by which alone it effects a partition of landed property.

But even were this Court to entertain this suit in this respect on other grounds, the Bill does not disclose what is the law which regulates succession to landed estate in the

* I. Strange, II. L. pp. 20, 261 ; Miták. ch. I., sec i., paras. 21 to 27 ; Dáyabhága, ch. II., paras. 22, 23 ; 2 Colebrooke's Dig., p. 113 ed. of 1801; Bk. II., ch. IV., secs. 13 & 14 ; Dáyá-Krama-Sangraha, ch. VI., para. 19.

(*g*) 2 Swans. 323, in Notes to *Kennedy v. Earl of Cassillis.*

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independent territory of Sáṅglí, and the case of *Elliot* v. *Lord Winter* (*h*) decides that every question relating to real estate must be determined by the law of the country where the estate is situate.

On these grounds the Court cannot give any relief respecting the partition which the plaintiff seeks.

I will add, that, as the jurisdiction assumed in this suit is constructive merely against the defendants, the Court should be cautious in not overstraining its powers of forcing upon parties who are substantially strangers to its jurisdiction the laws by which it is governed; but which may be very different from those which regulate rights in the subject-matter of the suit in a foreign state.

The main question intended to have been raised in this suit has been admitted at the bar to have been the right of a son to compel partition of ancestral property during his father's life against his will. Upon looking into all the available authorities on this subject, I think the law must be taken to be either that no such right exists at all, or that it exists upon the happening of certain contingencies, which are not alleged to exist in this case; and were I obliged to decide that point now, I would hold that no sufficient case had been made for a partition on the facts appearing upon the record.

I do not think that the abstract question of the right of a son to enforce maintenance (in a Hindú sense) from his father arises here. If I thought it did, I would overrule the demurrer; for there is no clearer duty imposed upon a Hindú father than that of giving "food, raiment and shelter," not only to a son, but to any member of his family.

The Bill no doubt contains the expressions that the defendant refused to give the plaintiff maintenance out of the family funds, and that he was without the means of subsistence; but I think that the character of the maintenance claimed is defined by the context to mean something that will represent the share in the ancestral property claimed by the plaintiff. Thus the excuse of the plaintiff for coming to this Court is that he had not been able to obtain at Shápur, in Sángli, his alleged share in the ancestral estate (it was not maintenance); and he further states that he is permitted to reside in the family-house at Shápur. Then, looking at the

(*h*) 6 Mad. 16.

portion of the prayer which asks for relief upon the ground of a right to maintenance, we find that it is not sought *quâ* maintenance in a Hindú sense, but as interest upon the plaintiff's share in the ancestral property. The amount of the share is made the measure of the maintenance claimed.

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For these reasons I have not overruled the demurrer upon this ground.

The only remaining ground for relief prayed is in respect of the partnership stated in the Bill. The character of that partnership is so defined in the Bill that any right to account fails upon the decision I have already made. The alleged partnership depends upon the plaintiff's right to a present possessory share in the family ancestral property, and, it having been decided that he has not such a right, the claim upon this ground also fails.

The main question was the plaintiff's right to a present compulsory partition of ancestral estate. He has failed as to the moveable property in point of law, and as to immoveable property upon the double ground, that the Court has no jurisdiction to entertain the question; and that, even if it had, a sufficient case for partition has not been made out upon the Bill. I therefore allow the demurrer with costs.

Demurrer allowed with costs.

Original Suit No. 385 *of* 1864.

1866.
Jan. 30

E. I. HOWARD .....*Plaintiff.*
M. MULL .....*Defendant.*

Libel—Comments on acts of public men—Newspaper—Privilege.

Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make his commentary a cloak for malice and slander.

A writer in a public paper has the same right, and it is his privilege to comment on the acts of public men which concern not himself only but which concern the public.

Where a writer makes the public conduct of a public man the subject of comment, and it is for the public good, the writer is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them.

THIS was a suit instituted by the plaintiff to recover from the defendant, who was managing proprietor of the "*Times of India*," damages for the publication by the defend-