

*Special Appeal No. 97 of 1864.*BHIMA'PPA'.....*Appellant.*MARIA'PPA'.....*Respondent.**Service land—coparceners—bequest—Reg. XVI. of 1827, Sec. xx.—  
Act XI. of 1843.*

*Held* that the interest enjoyed by one of a body of coparceners, in possession of land attached by way of emolument to an hereditary office, cannot be bequeathed to one or more of the other coparceners: as the estate held by each sharer is only a life interest, subject to the right of the Collector, under Act XI. of 1843, to assign a fit remuneration from the rent and profits for the maintenance of the person appointed to conduct the duties of the office.

1866.  
July 26.  
S. A. No. 97  
of 1864.

THIS was a special appeal from the decision of A. L. Spens, Assistant Judge of the Dhárwár District, in Appeal Suit No. 298 of 1862, reversing the decree of the Principal Şadr Amín of Dhárwár.

The appellant and two others, sons of Malláppá, sued their uncle, the defendant, Mariáppá bin Tammáppá, for a half share of certain lands attached to the shetsandí watan of Náválar, claiming one-third as the sons of one of three brothers, viz., Malláppá, Ningáppá, and Mariáppá, the sons of Tammáppá; and the remainder upon a document passed to them by Ningáppá, deceased, on the 16th of August 1858.

The defendant answered that the deed was a forgery; but the Principal Şadr Amín, holding the claim proved, decreed in favour of the plaintiffs.

The Assistant Judge, in appeal, laid down the points for decision as follow:—(1) Had Ningáppá, deceased, any authority to pass document No. 1 without Mari Tammáppá's consent; (2) The portion of the land mentioned in the plaint being Government service land, could Ningáppá alienate this land, his own rights in the land ending with his life: (3) Is the watanpatra proved.

On these issues he found: (1) That immoveable property vested in a united family could not be alienated without the consent of the heirs; (2) That Ningáppá had no right to

alienate any portion of a service watan. No decision on the third point was, therefore, necessary; and the decree of the Principal Śadr Amín was reversed.

The special appeal first came on for hearing on the 22nd of July 1864, before TUCKER and JANA'EDAN VA'SUDEVJI, JJ., when the following issues were framed, and sent down to the lower court for trial:—(1) Was Ningáppá, at the time he executed the deed (No. 1), filed with the plaint, united in interest with his brother the defendant, and his nephews the plaintiffs; (2) Was the land which forms the subject of the present dispute hereditary service land, and had the said land been apportioned between the several sharers at the time when Ningáppá executed the abovementioned deed; (3) What is the value of a sixth share of the land, which the plaintiff claims, in excess of the portion to which he would have been entitled under the ordinary rules of descent.

The following finding was returned by J. R. Daniel, Assistant Judge:—

On the first issue, I find that at the time Ningáppá executed the deed, he was united in interest with his brother Mari Tammáppá, the defendant, and also with his nephews the plaintiffs. \* \* \*

“On the second issue, I find that the land which formed the subject of dispute was hereditary service land; but that at the time when Ningáppá executed the deed, the land had not been apportioned among the several sharers. \* \* \*

“On the third issue, I find that the value of a sixth-share of the land which the plaintiffs claim in excess is Rs.  $4\frac{1}{2} \times 18 =$  Rs.  $76\frac{1}{2}$ .

The appeal came on for further hearing this day.

*Dhirajlál Mathurádás* and *Vishvanáth N. Mandlik* for the appellant.

*Vishnu Moreswar Kelkar* for the respondent.

PER CURIAM (TUCKER and GIBBS, JJ.):—The plaintiffs in this suit claim two-thirds of a moiety of the lands, appurtenant to the shetsandí watan of Náválár, on the grounds

at one-third of the said moiety had descended to them by inheritance, and that another third had been bequeathed to them by their uncle Ningáppá.

It has been found by the lower appellate court that the lands claimed are attached to an hereditary office; and that at the time the alleged bequest was made, the moiety in which the plaintiffs claim to share had vested in a united Hindú family, the members of which were the plaintiffs, the defendant, and the deceased Ningáppá.

The alleged bequest is to be found in a covenant entered in a deed of settlement (exhibit No. 1) executed by the deceased Ningáppá, who appears during his lifetime to have been the manager of the joint estate, and to which deed the defendant was no party.

We are of opinion that the lands attached to hereditary offices are entailed estates, the holders of which are simply tenants for life, who cannot alienate or encumber such estates beyond the term of their natural lives. This has been distinctly declared to be the law when such estates have vested in a single person, by the interpretations published by the late Court of Şadr Divání Adálat, on Reg. XVI. of 1827, Sec. xx., under date the 3rd of February 1831, and the 5th of December 1834 (a), which declaration of the law has governed all subsequent decisions on the subject.

It is now contended that, though the sole incumbent of a hereditary office cannot alienate or encumber the lands which attach to it beyond the period of his life, yet that when the estate has vested in a body of coparceners, one of the parceners may bequeath his interest to another parcener, though he could not alienate it to a stranger.

This argument is founded on the words of Reg. XVI. of 1827, Sec. xx., cl. 2: "Official emoluments enjoyed by a co-sharer of any district or village office shall not leave the family in which the office is vested; and if they revert to a sole proprietor or occupant of the office, they shall thenceforth follow the provisions of the preceding clause," by which

(a) Harrison's Code, Vol. II., p. 757-758.

they "shall be considered strictly as the official remuneration of the person filling the office, and as such shall not be subject to alienation by any incumbent."

1866.  
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S. A. No. 97  
of 1864.

We consider, however, that the estate which each parcener holds in his particular share cannot be larger than the estate possessed by the whole body of coparceners in the entire property; and that this last estate being a life-estate only, the estate of each parcener in his particular share is similarly limited: consequently, there is no power of bequest; inasmuch as there is nothing to bequeath, either in the one case or the other.

Setting aside, then, the supposed bequest, it would seem that on the decease of Ningáppá, the plaintiffs and the defendant became each entitled to a half-share in the joint estate which had descended to their branch of the family, which amounts to a moiety of the entire watan, and which has passed into the possession of defendant, subject to the right of the Collector to assign the whole or any portion of this estate as a provision for the fit maintenance of the person appointed, under Act XI. of 1843, to perform the duties of the office.

It has not been asserted that any provision for the officiating incumbent has been made; but, subject to such provision, plaintiffs will be entitled to share with the defendant, the enjoyment of the land, and to recover from him the half of any lands appurtenant to this watan which may have passed into his possession, and which have not been included in the provision for the officiating incumbent. The decree of the Assistant Judge will therefore be modified, by declaring the plaintiffs entitled to this extent.

*Decree amended.*