

1877.

ANANTA
v.
RAMABA'I.

Thomas Strange distinguishes between infirmities, such as blindness, deafness, dumbness, &c., which to disqualify must be coeval with birth, (Vol. I., 152,) and disqualifying diseases such as leprosy, &c., (*Ibid.* pp. 154, 155, 156,) which the Hindu religion regards as visitations not only for sins committed in a preceding state, but also for sins committed in this life; and, therefore, such visitations are not necessarily congenital in order to disqualify. See also cl. 2, pl. cccxx. 3 Dig. p. 303, where the condition of congenitality is applied to insanity, blindness, or lameness by Narada, and not to obstinate or agonizing disease. He lays it down, as we deem correctly, as the result of the Hindu authorities, (see especially 3 Dig., pp. 303 to 322, ed. of 1801,) that the leprosy to disqualify must be of the sanious or ulcerous kind, which was, we think, the virulent or aggravated type of leprosy required by the Bombay and Madras cases already cited by us. We direct the Assistant Judge to try the following issues, viz. :—

1. Whether the leprosy of Ananta was of the sanious or ulcerous type generally regarded as incurable; and, 2nd, if the Assistant Judge shall determine the first issue in the affirmative but not otherwise, what is a proper maintenance for Ananta having regard to his condition of life and the nature of the property. Such maintenance should not exceed one moiety of the land sued for; but, in so saying, this Court does not intend to express any opinion whether or not the maintenance allotted ought to be equal in extent to such moiety.

The Court reserves all other questions in the cause, including the question of costs.

[APPELLATE CIVIL JURISDICTION.]

UMABA'I, WIDOW OF SHANKARRAV (PLAINTIFF AND APPELLANT)
v. BHAVU PADMANJI (DEFENDANT AND RESPONDENT).*

February 12.

Hindu Law—Blindness—Incapacity for inheritance.

Incurable blindness, if not congenital, is not such an affliction as, under the Hindu law, excludes a person from inheritance.

THIS was a special appeal from the decision of C. H. Shaw, District Judge at Belgaum, affirming the decree of A. M. Cantem, 1st Class Subordinate Judge at the same place.

* Special Appeal No. 312 of 1876.

1877.

UMABA'I
v.
BHAVU
PADMANJI.

Shankarrav, deceased, had obtained a decree against Padmanji, father of the defendant, Bhavu, and attached the house in dispute, as the property of his judgment-debtor. The attachment, however, was removed on the application of Bhavu, and Shankarrav was referred to a regular suit. The present suit, therefore, was instituted by Umabái, as heir of the deceased Shankarrav, to establish her right to sell the house in question. Bhavu, who was incurably blind, but had not been born blind, pleaded that the property was his own self-acquisition, and was not, therefore, liable to be sold in execution of a decree against his father. Both the lower Courts found that Bhavu had been separate from his father for many years, and that the house had been his (Bhavu's) separate property. They accordingly rejected the plaintiff's claim and made a decree in Bhavu's favour. In appeal, however, the District Judge observed regarding Bhavu's blindness, although there was no issue on the point:—"There can be no doubt that Bhavu Padmanji is incurably blind; the unfortunate man has appeared in Court, and the appearance of both eyes, like two balls of curd, proves his condition. Consequently, Steele, page 61, is an authority that Bhavu could not be included in any inheritance. Stokes' Hindu Law, page 107, seems to exclude persons *born* blind, and this it does not appear Bhavu was. But both Steele and Stokes show a person incurably afflicted is personally excluded from inheritance. Nothing, therefore, can be more reasonable to believe than that Padmanji may have provided separately for his son Bhavu, or, if he did not do so, that the maternal grand-mother of Bhavu (Kashi) did provide for him."

The special appeal was argued before WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J.

Bhairavnath Mangesh for the special appellant.

Vishnu Ghanasham for the special respondent.

WESTROPP, C.J. :—This Court does not agree in the opinion of the District Judge that Hindus, though not born blind, are, if they become incurably blind, thereby rendered incapable of inheritance. See *Murariji Gokaldas v. Parvatibai*⁽¹⁾ and *Amunta v.*

(1) I. L. R., 1 Bom. 177.

Ramabái,⁽¹⁾ in which latter case the incurable diseases, which incapacitate for inheritance, are mentioned. But, inasmuch as he has found as facts, that Padmanji and Bhavu were separate in estate, and that the house in dispute was purchased for Bhavu as his absolute property with funds supplied for the purpose by Kashi, his maternal grand-mother, the Court affirms the District Judge's decree with costs.

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[APPELLATE CIVIL JURISDICTION].

HONAMMA (DEFENDANT AND APPELLANT) v. TIMANNABHAT AND ANOTHER
(PLAINTIFFS AND RESPONDENTS).*

February 1.

Act XXI. of 1850—Hindu widow—Loss of caste—Incontinence—Forfeiture of rights or property—Starving maintenance.

Since Act XXI. of 1850 came into force, mere loss of caste does not occasion a forfeiture of rights or property.

A Hindu widow entitled to a bare or starving maintenance, under a decree made in a suit, brought by her for maintenance against the representatives of her deceased husband, is not to be deprived of the benefit of that decree by the fact that she has since its date been leading an incontinent life.

Rajah Pirthee Singh v. Ranee Raj Kower (20 Calc. W. R. 21 Civ. Rul.) distinguished.

THIS was a special appeal from the decision of G. M. Macpherson, District Judge at Kanara, reversing the decree of the Subordinate Judge of Honáwar.

The plaintiffs Timannabhat and Theshbhat brought this suit against Honamma, and alleged in the plaint that the defendant had obtained a decree against them for maintenance, but that she had forfeited her right thereto, as she had been leading an incontinent life since the date of that decree, and had in consequence been excommunicated by the caste. The defendant denied the charge of incontinence, and pleaded that she was entitled to the maintenance. The Subordinate Judge found on the evidence that the defendant had been guilty of incontinence, but held that she did not lose her right to maintenance on that account. In appeal, the District Judge reversed that decree, and decided that she forfeited her right to maintenance by reason of her incontinent life.

The special appeal was heard by WESTROPP, C.J., and NA'NA'BHA'I HARIDA'S, J.

(1) *Supra* p. 554.

* Special Appeal No. 277 of 1876.