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or her assignee, appellant No. 1, was certainly estopped by her own act from questioning respondent's adoption. She had, at the most, no more than a Hindu widow's estate in the land as heir to Giriáppa, and she could not, after adopting the respondent in 1879 alienate the land without any proved necessity.

We accordingly confirm the decree of the lower appellate Court and dismiss the appeal with costs on appellants.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.

1894. *April* 19.

JAGMOHANDA'S KILA'BHA'I (ORIGINAL PLAINTIFF) APPLICANT, *v.* ALLU MARIA DUSKAL (ORIGINAL DEFENDANT), OPPONENT. *

Succession Certificate Act (*VII of* 1889), *Sec.* 4—*Joint family —Suit for family debt—No necessity for certificate—Hindu law—Evidence—Presumption as to nature of property where the family is joint.*

Under the Succession Certificate Act VII of 1889 a plaintiff does not require a certificate where his claim is for family property by right of survivorship.

Where a plaintiff's family is admitted or proved to be a joint Hindu family, but there is no direct evidence as to the nature of the debt claimed by the plaintiff, the presumption is that it is a family debt.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Sáheb G. V. Saraiya, Subordinate Judge of Bassein, in a Small Cause Court suit.

The plaintiff sued to recover Rs. 48-4-0 on a money-bond passed by defendant in favour of plaintiff's father on 22nd July, 1891. Plaintiff alleged that he and his deceased father were members of a joint Hindu family, and that the family business was transacted in the name of his deceased father.

Defendant did not appear.

The Subordinate Judge of Bassein with Small Cause Court powers found the bond proved, and that plaintiff and his deceased father were members of a joint family, but following the ruling of the Madras High Court in *Venkatramánna* v. *Venkayya*[1]

* Application No. 177 of 1893 under extraordinary jurisdiction.

(1) I. L. R., 14 Mad., 377.

held that as the bond did not show on the face of it that the debt claimed was due to the joint family, it was necessary for the plaintiff to produce a certificate under the Succession Certificate Act (VII of 1889), section 4, before a decree could be given in his favour. No such certificate being produced, the Subordinate Judge dismissed the plaintiff's suit with costs.

The plaintiff applied to the High Court in its extraordinary jurisdiction, contending that as he and his father were members of a joint family, no certificate under Act VII of 1889 was necessary to entitle him to recover the debt.

G. M. Tripăthi, for the applicant.

The opponent did not appear.

SARGENT, C. J. :—The Subordinate Judge has found that a certificate under Act VII of 1889 is necessary on the authority of *Venkatramánna* v. *Venkayya*[1], where it was laid down that a certificate is necessary, unless it appear on the face of the bond passed to the plaintiff's father that the debt claimed was due to the joint family consisting of the father and son. The Madras Court would appear to have held that the plaintiff could not in such a case raise the question that the debt was a family debt. However, we have already decided in *Rághavendra Mádhav* v. *Bhima*[2] that the necessity for the certificate upon the plain language of the Act depends on the question whether the debt was part of "the effects" of the deceased, or was in its nature a family debt and, therefore, "family" property. This does not of course prevent the defendant from insisting that all the members of the family be made co-plaintiffs. The Madras Court, however, would seem to have been influenced in its decision by a desire to give effect to the intention of the Act to protect debtors; but as the language of the Act is quite clear in showing that it is confined to the case in which the claim is to the "effects" of the deceased, and not to family property, where the claim is by right of survivorship, it would, in our opinion, be contrary to sound principles of construction to adopt the view of the Madras Court.

Another question is also touched upon in the above case, *viz.*, whether the debtor is entitled to insist on a certificate when the

(1) I. L. R., 14 Mad., 377. (2) I. L. R., 16 Bom., 349.

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family is admitted or proved to be joint; but there is no direct evidence before the Court as to the nature of the debt. We gather from the Madras judgment, that the Court considered that in that case there would be no presumption that the debt was a family debt. But we think that view is irreconcileable with the decision in *Taruck Chunder* v. *Jodeshur Chunder*[1], which has always been followed in this Court.

We must, therefore, in the exercise of our extraordinary jurisdiction make absolute the rule *nisi* and reverse the decree of the Court below, and send back the case for a fresh decision having regard to the above remarks. Costs to abide the result.

Rule made absolute and case sent back.

(1) 11 Beng. L. R., 193.

CRIMINAL REVISION.

Before Mr. Justice Jardine and Mr. Justice Farran.

1894. *November* 12.

IN RE NA'GARJI TRIKAMJI.*

Penal Code (Act XLV of 1860), Sec. 499, Exception 9—Defamation—Privilege of counsel—Good faith—Construction—Construction of statute.

A pleader, in addressing a Ma'mlatdár on behalf of his client, who was charged under section 125 of the Bombay Land Revenue Code (Bom. Act V of 1879) with wilfully removing boundary marks, commented on some of the witnesses for the prosecution, and called them loafers. Thereupon one of those witnesses prosecuted the pleader for defamation. The Magistrate held that there was no justification for the language, and convicted the pleader, and sentenced him to pay a fine of Rs. 15 under section 500 of the Indian Penal Code (XLV of 1860).

Held, reversing the conviction and sentence, that in the absence of express malice (which was not to be presumed) the pleader was protected by exception 9 to section 499 of the Indian Penal Code.

Held also that in considering whether there was good faith (*i.e.* due care and attention) the position of the person making the imputation must be taken into consideration. In the case of an advocate, where express malice is absent, a Court having due regard to public policy would be extremely cautious before depriving him of the protection of exception 9 to section 499 of the Indian Penal Code.

Semble.—Section of the Indian Penal Code should be construed without reference to the English law.

*Criminal Review, No. 214 of 1894.