

REFERENCE
UNDER STAMP
ACT, s. 46.

legal obligation and that its breach renders the documents 'not duly stamped.'

"On the other hand it may be argued that these rules issued by the Local Government, subject to the control of the Governor-General in Council under s. 55, concern the executive duties of the stamp vendors, and are to be broadly distinguished from the rules framed by the Government of India Notification, No. 1288, dated 3rd March 1882, which concern the proper stamps to be issued in certain cases. It may be also contended that if an instrument was not 'duly stamped,' because the stamp vendor violated rule (9) above referred to, as regards the endorsement, it would be equally 'not duly stamped' if he failed to make the entries in his register required by the same rule. The Board are not agreed on the point and therefore deem it desirable to obtain an authoritative decision of the High Court."

The Government Pleader (Mr. *Powell*) appeared on behalf of the Board of Revenue.

The Full Bench (Collins, C.J., Kernan, Muttusami Ayyar and Parker, J.J.) delivered the following

JUDGMENT:—We are of opinion that the document in question is duly stamped.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

CHANDU (DEFENDANT No. 2), APPELLANT,

and

RAMAN (PLAINTIFF), RESPONDENT.*

Malabar law—Decree for maintenance against karnavan—Execution against tarwad property.

A member of a Malabar tarwad having obtained a decree for maintenance against her karnavan, assigned the decree to the plaintiff, who proceeded to execute it against the tarwad property. The then karnavan objected and his claim was allowed. In a suit by plaintiff to have it declared that he was entitled to execute the decree against tarwad property:

Held that the plaintiff was entitled to execute the decree against the tarwad property.

* Second Appeal No. 689 of 1887.

APPEAL from the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, confirming the decree of J. F. Pereira, District Munsif of Kawai, in suit No. 100 of 1886.

The facts of the case, so far as they are necessary for the purpose of this report, appear from the judgment of the Court (Muttusami Ayyar and Shephard, JJ.).

Ramaçhandra Rau Sahib for appellant.

Sankara Menon for respondent.

JUDGMENT.—Defendant No. 8 obtained a decree for maintenance against defendant No. 1, the karnavan of the defendant's tarwad. The decree was assigned by defendant No. 8 to the plaintiff, and he proceeded to execute the decree against tarwad property. Defendant No. 2, who was then managing the tarwad affairs, objected to the execution and the objection was allowed. Thereupon, the present suit was brought to obtain a declaration that tarwad property was liable for the decree debt. Both the Courts below decreed the claim, and it is urged in appeal that there was no decree against defendant No. 1 in his capacity of karnavan, that the decree for maintenance in favor of a member of a Malabar tarwad created only an obligation personal to the karnavan, and that the decree is incapable of being executed against tarwad property. As to the objection that there was no decree against defendant No. 1 in his capacity of karnavan, we observe that it was not taken in the petition of appeal to the lower appellate Court. It must also be remembered that the suit was one brought for maintenance, which from its nature would ordinarily be brought against the karnavan. As to the contention that the decree created an obligation personal to the karnavan, we are of opinion that if the contention were to prevail, there would be no adequate means of enforcing decrees for maintenance which might be passed in favor of members of a Malabar tarwad. Our attention was called to *K. Manoki Koran Nayar v. P. Manoki Chanda Nayar*(1), but that case appears to show that a decree for maintenance is one for the satisfaction of which a karnavan may encumber tarwad property. We may also refer to the judgment of this court in S.A. 340 of 1885, in which it was held that the maintenance of members of a Malabar tarwad is a charge on the tarwad property. It is urged that the mainte-

(1) 3 M.H.C.R., 295.

CHANDU
v.
RAMAN.

nance would be a charge only when there was no tarwad income out of which it might be paid, but neither of the cases cited was decided on that ground.

The second appeal fails and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

1888.
Jan. 25, 26,
27,
March 13.

JAGANATHA AND ANOTHER (DEFENDANTS), APPELLANTS,
and
RAMABHADRA AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Zamindari—Partition—Limitation Act, 1877, sch. II, art. 127—Limitation Act, 1859, 1(13).

In 1803 G being in possession of the zamindari of M, the permanent settlement was made with him and a sanad was granted to him as prescribed by Regulation XXV of 1802. In 1827 C, the only son of G, being in possession of the zamindari, got into debt and the zamindari was sold in execution of a decree and bought by Government. In 1835 the zamindari was granted to J, the son of C, by Government and a sanad issued in the usual terms as prescribed by Regulation XXV of 1802. J died in 1864 leaving four sons, the three plaintiffs and C, his eldest son. C died in 1869 leaving an only son, J, the defendant. In 1869 the Court of Wards took charge of the estate on behalf of the infant defendant and allowed his uncle, plaintiff No. 1, to receive the rents of the zamindari as renter. J and his three uncles lived in the same house and participated in the joint family property until 1872, when the plaintiffs claimed to have the zamindari divided.

By an agreement between the plaintiffs and the Court of Wards all the movable and immovable property, except the zamindari taluk, was divided into four shares and distributed in 1874 between the plaintiffs and defendants. In 1884 the plaintiffs sued for partition of the zamindari, alleging that their cause of action arose in 1872, when the Court of Wards denied their right to a partition of the zamindari taluk.

The defendant pleaded

- (1) that the estate was not partible;
- (2) that the suit was barred by limitation:

Held (1) distinguishing the *Hunsapore case* (12 M.I.A., 1) and the *Sivaganga case* (I.L.R., 3 Mad., 290), and following the principle laid down in the *Nuzvid case* (I.L.R., 2 Mad., 128) that the zamindari was partible;

- (2) that the suit was not barred by limitation.

APPEAL from the decree of J. R. Daniel, District Judge of Ganjam, in original suit No. 27 of 1884.