

## APPELLATE CIVIL,—FULL BENCH.

Before Sir Arthur J. H. Collins, *Kt.*, Chief Justice,  
Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1891.  
October 13.

REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE INDIAN  
STAMP ACT, 1879.\*

*Stamp Act—Act I of 1879, s. 3, cl. 11, s. 29 (e)—Instrument of partition.*

Three out of seven brothers, constituting an undivided Hindu family, executed documents whereby each acknowledged the receipt of certain property made over to him, “a division of family property having been effected,” and acknowledged himself liable for one-seventh of the debts of the family. One of the documents contained a clause to the effect that the executant had no further claim on property of the family :

*Held*, that the documents should be stamped as instruments of partition, each member paying according to the share taken by him under the partition.

CASE stated for the opinion of the High Court by the Board of Revenue under Stamp Act, section 46.

The case was stated as follows :—

“The documents evidence that three out of seven brothers have received Rs. 200 each in pursuance of partition of family property and that they remain liable, each for one-seventh of the family debts ; in one case also the executant adds that his claims have been fully satisfied.

“The first question is what are these documents ; presumably, the whole of the family property was divided, but it is not actually said so, and all the seven documents are not produced. They are on the face of them receipts, and are stamped as such : their combined effect would be much the same as that of a formal deed of partition, and if all of them could be produced, and the release clause had been continued through all of them, the ruling in *Reference under Stamp Act, s. 46(1)*, would apply ; but only three of them are produced, and two of these do not contain the release clause.

“The second question is what is the amount of duty payable on them ? If they are a partition deed, do they pay on the amount, the receipt of which is evidenced in the three documents produced, viz., Rs. 600, or on the whole amount of the family pro-

\* Referred Case No. 19 of 1891.

(1) I.L.R., 12 Mad., 198.

“ perty divisible, presumably Rs. 1,400; and does each document  
 “ pay separately or all three together ?

REFERENCE  
 UNDER STAMP  
 ACT, s. 46.

“ If not a deed of partition, of what effect are the clauses  
 “ accepting liability for a one-seventh share of the family debts,  
 “ and the clause stating that the recipient’s claims have been  
 “ satisfied ?”

The papers placed before the High Court referred also to  
*Reference under Stamp Act, s. 49(1).*

The following is a translation of one of the documents in  
 question :—

*Dated Palmanair, 4th June 1890.*

I, Venkataramanayya by name, the son of Jallapeta Subbayya,  
 whose means of livelihood is some lands assigned to the Brahman  
 caste, grant this receipt written in my own handwriting to my  
 brothers (1) Appayya *alias* Apparaw, (2) Raghavayya, (3) Krish-  
 nayya, (4) Gopalakrishnayya, (5) Adayya and (6) Rangayya,  
 all residing in Palmanair village, Palmanair taluk, North Arcot  
 district.

A division of our family property having been effected by  
 lottery, the following is the description of the above which I got  
 and which all of you made over to me for my free enjoyment. . .  
 . . I agree to take for my share (1) dry, wet, circar and inam  
 lands above detailed; (2) 7, 8 sarams of a house on the eastern  
 side of the houses which now form our residence and which are  
 situated between the following boundaries, viz., west of Kuppayya’s  
 house, south of P. Surayya’s and M. Sayar Kuppuraw’s houses  
 and north and east of two small lanes; (3) plain ground extending  
 north and south in front of my sarams and having a breadth of  
 one and-a-half yards; and (4) one-seventh of the debts due by our  
 family up to this date. I received the property above detailed  
 which is worth about Rs. 200.

(Signed) JALLAPETA VENKATARAMANAYYA.

Presented by the undersigned, in the office of the Sub-Regis-  
 trar of Palmanair at 4-40 P.M., on 4th June 1890.

(Signed) JALLAPETA VENKATARAMANAYYA.

It is agreed that the receipt was written by the undersigned.

(Signed) JALLAPETA VENKATARAMANAYYA.

The Government Pleader (Mr. Powell) for the Board of Revenue.

REFERENCE  
UNDER STAMP  
ACT, s. 46.

JUDGMENT:—We are of opinion that these documents are partition deeds and must be stamped accordingly having regard to the provisions of section 29 (e) of Act I of 1879. Each member must pay according to the share which he has taken under the partition.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice,  
and Mr. Justice Shephard.*

1891.  
Sept. 23, 24.  
Oct. 19.

RAMUNNI AND OTHERS (DEFENDANTS NOS. 1, 2 AND 13), APPELLANTS,

*v.*

KERALA VARMA VALIA RAJA AND OTHERS (PLAINTIFFS NOS.  
1—17 AND DEFENDANT No. 16), RESPONDENTS.\*

*Landlord and tenant—Surrender—Limitation—Adverse possession—Malabar law—  
Karnavan, powers of—Perpetual lease.*

The karnavan of a Malabar kovilagam executed a kuikanom lease of certain land, the jemm of the kovilagam, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land :

*Held*, (1) that the perpetual lease, as being of an improvident character, was *ultra vires* and void ;

(2) that the original lease was not surrendered ;

(3) that the suit was not barred by limitation, the possession of the defendants never having been adverse to the plaintiff's kovilagam.

APPEAL against the decree of C. Gopalan Nayar, Subordinate Judge of North Malabar, in original suit No. 26 of 1889.

Plaintiff No. 1 was the Valia Raja of the Cherikal kovilagam, of which plaintiffs Nos. 2—17 and defendant No. 16 were the junior members. They sued to recover possession of a paramba, being the jemm of their kovilagam, alleged to have been comprised in a kuikanom lease executed by a predecessor of plaintiff No. 1 to the karnavan of the remaining defendants in August 1846. The contending defendants denied the demise set up in the plaint and alleged that they were in possession under a perpetual lease executed in May 1861 by another predecessor of plaintiff No 1, and also pleaded limitation.

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\* Appeal No. 45 of 1890.