

property found by the District Judge to be in her possession with proportionate costs, that his suit be dismissed as to the 109 acres 14 cents of inam land in the possession of second defendant and as to the other movable property with proportionate costs. In appeal No. 148 of 1891 first defendant must pay plaintiff's costs. In appeal No. 183 of 1891 plaintiff must pay second defendant's costs. Appeal No. 20 of 1892 is dismissed with costs.

JAGANNADHA
PAPAMMA.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

AMMUNNI (PLAINTIFF), APPELLANT,

v.

KRISHNA (DEFENDANT NO. 1), RESPONDENT.*

1892.
October 3, 4.

Succession Certificate Act—Act XXVII of 1860—Suit to set aside certificate granted by the Resident at Cochin.

Defendant No. 1, who was domiciled in the Native State of Cochin, obtained from the Resident a certificate to collect the debts of the deceased karnavan of the plaintiff's tarwad. The plaintiff, whose domicile was the same as that of defendant No. 1, now sued in British Cochin for a declaration of his right to receive the interest accrued due on certain Government promissory notes, being the property of his deceased karnavan:

Held, that the suit did not lie, and that the appellant should either have established his representative right by suit in the Court of Native Cochin and then applied to the Resident for a certificate, or have brought his action against the Government of India, joining defendant No. 1 as a party to such action.

SECOND APPEAL against the decree of L. Moore, District Judge of South Malabar, in appeal suit No. 951 of 1890, reversing the decree of B. M. D'Cruz, Subordinate Judge of Cochin, in original suit No. 51 of 1889.

Suit to establish the plaintiff's right to recover a certain sum, being the interest due on certain Government promissory notes, the property of Raman Menon deceased, the late karnavan of his tarwad.

The plaintiff alleged that defendant No. 1 had obtained from the British Resident at Cochin a certificate under Act XXVII of

* Second Appeal No. 1817 of 1891.

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1860 to enable him to recover the debts due to Raman Menon. The plaintiff and defendant No. 1 were both domiciled in Native Cochin. Defendant No. 2 was the agent of the Bank of Madras, who had been called upon by the plaintiff to pay to him the interest of the Government promissory notes in question. He pleaded that he had been unnecessarily joined in the suit, inasmuch as he had no power to pay the interest sued for without the authority from the District Treasury Officer.

The Subordinate Judge passed a decree whereby it was ordered as follows, viz., "that the plaintiff is entitled to recover "the interest sued for." On an appeal preferred by defendant No. 1, to which the plaintiff was the only other party, the District Judge reversed the decree on the ground that the Subordinate Judge of British Cochin had no jurisdiction to try the suit.

The plaintiff preferred this second appeal.

Bhashyam Ayyangar for appellant.

Sankaran Nayar and *Sundara Ayyar* for respondent.

JUDGMENT.—The second defendant has not been made a party to this appeal, nor was he a party to the appeal to the District Court, and the question which we have to decide is one arising between the plaintiff and the first defendant. The suit is virtually one to obtain a declaration as against the respondent that plaintiff is the legal representative of the deceased Raman Menon, and, as such, entitled, in preference to the respondent, to the certificate issued by the British Resident under Act XXVII of 1860 and to receive the interest due on the Government securities. It is conceded that both parties are domiciled in Native Cochin. There can be no doubt that, if the respondent had collected any money due as interest on the Government securities, a suit for money had and received would lie only in the Courts of Native Cochin, though the money had been received in British territory. The question as to who is the legal representative of the deceased Raman Menon is a question which, as between appellant and respondent, can only be tried in the Courts of Native Cochin. The suit was, to all intents and purposes, a suit to set aside a certificate of heirship granted by the Political Resident of Cochin, and the Secretary of State was a necessary party to such a suit, and the appeal in its present form cannot be supported. Two courses were open to the appellant, either to establish his representative right in the Courts of Native Cochin and then to apply to the Resident for the

issue of a certificate in his name, or to sue the Government of India, making the respondent a party to the suit. We observe that under order XI, rule 1, clause *g* of the Judicature Act this is the course which would be obligatory in England. He has pursued neither of these courses. The second appeal cannot be supported and is dismissed with costs.

AMMUNTI
*
KRISHNA.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

RAMANADHAN (DEFENDANT NO. 6), APPELLANT,

1893.
Feb. 21, 22.

v.

ZAMINDAR OF RAMNAD AND OTHERS (PLAINTIFFS NOS. 1 AND 2 AND DEFENDANTS NOS. 1, 3 AND 4), RESPONDENTS.*

Specific Relief Act—Act I of 1877, s. 54, cls. (b) and (c)—Perpetual injunction—Injury to interest in immovable property—Inapplicability of remedy by compensation—Landlord and tenant—Erection of dwelling house on agricultural land—Ameliorating waste.

A zamindar sued for an injunction to compel the defendant who held agricultural lands comprised in the zamindari with occupancy rights, to demolish a dwelling house which he had erected thereon for purposes not connected with agriculture, and to restrain him from altering the character of the land :

Held, that the plaintiff was entitled to the injunction sued for.

SECOND APPEAL against the decree of T. Weir, District Judge of Madura, in appeal suit No. 404 of 1891, confirming the decree of T. T. Rangachariar, District Munsif of Paramagudi, in original suit No. 566 of 1890.

Suit for an injunction compelling the plaintiff to remove a certain building erected by him on land which he held from the plaintiff as an agricultural holding and to restrain him from altering the character of the land. It appeared that the defendant had occupancy rights in the land in question, which formed part of the plaintiff's zamindari, and that the land had been used for agricultural purposes merely up to recent date, when the defendants erected a building which was in no way connected with agricultural purposes, but was intended to be used either as a dwelling house

* Second Appeal, No. 737 of 1892.