

ETHRUNGANA-  
KATH  
AVUTHALA  
v.  
THAZHATHA-  
BAYIL  
KUNHALI.

The result is that there should be deducted from the amount payable for improvements by the plaintiff the value of 30 *paras* of paddy, namely, Rs. 15, the amount by which the rent was reduced and that the amount of the Commissioner's fee payable by the plaintiff to the defendants is reduced from Rs. 15 to Rs. 7½. With these modifications, I would dismiss the second appeal with proportionate costs.

Under section 575 of the Code of Civil Procedure, the judgment of Mr. Justice Subramania Ayyar prevails and the second appeal is dismissed with costs.

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## APPELLATE CIVIL.

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

ARIYA PILLAI (APPELLANT), APPELLANT,

1896,  
November 30.

THANGAMMAL (RESPONDENT), RESPONDENT.\*

*Succession Certificate Act—Act VII of 1889, ss. 9, 10—Order for issue of certificate  
subject to security being given—Appeal.*

On a contested application for a succession certificate under Act VII of 1889, an order was made for the issue of the certificate on security being furnished by the applicant. The opposite party preferred an appeal against the order:

*Held*, that the appeal was maintainable.

APPEAL under Letters Patent, section 15, against the judgment of Subramania Ayyar, J., in Civil Miscellaneous Appeal No. 9 of 1896, rejecting an appeal which was preferred against the order of T. M. Horsfall, District Judge of Tanjore, on Civil Miscellaneous Petition No. 526 of 1895.

The above petition was preferred in the District Court of Tanjore under Act VII of 1889 by the widow and opposed by the undivided brother, of one Naga Pillai deceased. By the order appealed against the District Judge directed that the succes-

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\* Letters Patent Appeal No. 100 of 1896.

sion certificate should issue to the widow on her giving security which she subsequently did. The brother appealed to the High Court and his appeal came on for disposal before Mr. Justice Subramania Ayyar, who delivered judgment as follows:—

ARIYA  
PILLAI  
v.  
THANGAMMAL.

SUBRAMANIA AYYAR, J.—On behalf of the respondent it is argued that the order appealed against was an interlocutory order against which no appeal lies (*Bhagwani v. Manni Lal*(1)). This seems to be so as it appears that, after the security was furnished, the Judge passed on the 25th October 1895 an order granting the certificate. I therefore reject the appeal with costs.

The appellant now appealed as above under Letters Patent, section 15.

*Seshagiri Ayyar* for appellant.

ORDER.—We are unable to agree with the learned Judge that an appeal does not lie. The Allahabad case on which he relies was considered and dissented from by a Bench of this Court in *Venkatasami Naik v. Chinna Narayana Naik*(2) which, however, does not appear to have been brought to the notice of the learned Judge.

We agree with the previous ruling of this Court.

On the merits, however, we find no ground for the appeal. There is no affidavit or other evidence to show that the District Judge refused to examine any witness whom the appellant desired to examine.

The Vakils on both sides were heard.

We dismiss the appeal.

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(1) I.L.R., 13 All., 214.

(2) Appeal against order No. 32 of 1894 (unreported).