

APPELLATE CIVIL.

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

1896.
March 30.
April 1.

KAMALAMMAL (DEFENDANT No. 1), APPELLANT,

v.

RAJU NAICKER AND OTHERS (PLAINTIFFS AND DEFENDANT No. 2),
RESPONDENTS.*

*Suit for declaration—Regulation XXV of 1802, s. 8, and Madras Act I
of 1876, ss. 2, 6.*

An alienee of a portion of a zamindari is entitled to separate registration and assessment under Madras Act I of 1876. A Court has power to order separate registration and assessment under s. 6, although all the parties concerned do not concur in applying within the meaning of s. 2.

APPEAL against the decree of P. Narayanasami Ayyar, Subordinate Judge of Madura (West) in original suit No. 89 of 1894.

The facts of the case are as follows:—

One Kamaraja Pandiya Naicker was the zamindar of Bodinayakanur. He died in December 1888 and was succeeded by his widow the first defendant. After his death one Kanthasami Naicker, whose father and the zamindar's father were brothers, brought a suit for recovery of the zamindari in original suit No. 16 of 1889 on the file of this Court against the present defendants. Plaintiffs' father, Sundra Pandiya Naicker, who was then the eldest paternal uncle of the said Kanthasami and the late Kamaraja Pandiya Naicker, asserted some claim in the zamin. The claims of all the parties were settled in that suit by a compromise, which is exhibit D in this suit. A deed of gift, dated 6th May 1890, (exhibit I) was executed by first defendant to the said Sundra Pandiya Naicker, father of these plaintiffs. Under that document the plaintiff village was absolutely given to plaintiffs' father by first defendant. In original suit No. 33 of 1890 the plaintiffs' father brought a suit against first defendant for recovery of this village and other properties comprised in exhibit I, got a decree and was put in possession of the village. But he could not exercise his right as landlord without separate registry being entered in his name in the Collector's register as shown by

* Appeal No. 100 of 1895.-

exhibits B and C. Plaintiffs' father then applied to the Collector for separate registry under Madras Act I of 1876, and the Collector passed an order in his favour as per exhibit E. But the Revenue Board cancelled that order as is seen from F. Hence this suit for separate registry under section 6 of the said Act. As ruled by the Madras High Court in *Mangamma v. Timmapaiya* (1) and *Virasami v. Rama Doss* (2), the Collector representing the Secretary of State as second defendant is a necessary party to a suit of this nature. The cause of action arose under section 6 of Act I of 1876 only after refusal to separately register and assess.

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Sankaran Nayar for appellant.

The Government Pleader (*Mr. Powell*) for respondent No. 5.

Krishnasami Ayyar for respondents Nos. 1 to 4.

JUDGMENT.—Plaintiffs, as the alienees of two villages of the first defendant's zamindari under exhibit I, applied to the Collector under Act I of 1876 to have the two villages registered in their names. Owing to the first defendant's objection the Revenue authorities refused to make the transfer of registry. Plaintiffs, as persons aggrieved by this order, sued first defendant and the Secretary of State for India (second defendant) under section 6, Act I of 1876, for a declaration that such separate registry ought to be made. The Lower Court decreed that it ought, and, first defendant now appeals against that decree. The Government Pleader, on behalf of the second defendant, states that Government is indifferent to the result of the suit. It is urged by appellant that under the terms of exhibit I the first defendant (appellant) alone and not the plaintiffs (respondents 1 to 4) are liable, notwithstanding the alienation, to pay the land revenue to Government, and that there is, therefore, no occasion for separate registry, and that Act I of 1876 is inapplicable to the case, as its purpose is to make better provision for the separate *assessment* of revenue on alienated portions of estates. We cannot admit that this is so. Section 8 of Regulation XXV of 1802 allows the proprietors of zamindaries to transfer their proprietary rights in the whole or in part of their zamindaries and Regulation XXVI of 1802 and Act I of 1876 provide for the separate registry and assessment of the alienated portions. Without such separate registry the alienee cannot collect rents as a landlord under Act VIII of 1865,

(1) 3 M.H.C.R., 134.

(2) I.L.R., 15 Mad., 350.

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Valamaramayyan v. Virappa(1) and *Ayyappa v. Venkatakrishnamaravu*(2), and without separate assessment he is liable to have his property sold at any time for arrears accruing on the other parts of the zamindari. It is, therefore, essential that he should get separate registry at least in order that he may enjoy the fruits of the alienation. Government, in order to maintain the security for the public revenue due from the estate, apportions the revenue separately as a natural result of the alienation and this Government will do notwithstanding any arrangement between the parties as to which of them is to be responsible for the revenue. It is argued that under section 2 of Act I of 1876 the Collector cannot transfer the registry unless all the parties concur. That section relates to transfer of registry by agreement of parties on application to the Collector. It does not control or affect the power of the Civil Court under section 6 of the Act to direct separate registration. The right to registry follows the title, and under exhibit I the title is in the respondents 1 to 4. The decree of the Lower Court was, therefore, right. This appeal fails and is dismissed with costs.

Two sets of costs will be allowed—one to the respondents 1 to 4, and one to respondent 5.

APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

KALIAN AND OTHERS.*

*Penal Code—Act XLV of 1860, s. 224—Escape from lawful custody—Salt Act
(Madras)—Act IV of 1889, ss. 46, 47.*

The Madras Salt Act 1889, only authorises searches for contraband salt and arrests of the parties concerned in the keeping of such salt to be made by officers of the Salt department without search warrant in cases where the delay in obtaining such search warrant will prevent the discovery of such contraband salt :

Held, that where the circumstances did not justify the officer in believing that the delay in obtaining a search warrant would prevent the discovery of contra-

(1) I.L.R., 5 Mad., 145.

(2) I.L.R., 15 Mad., 484.

* Criminal Appeal No. 702 of 1895.