

ADIPURANAM
PILLAI
v.
GOPALASAMI
MUDALI.

JUDGMENT.—The parties have not arrived at an agreement and we have heard arguments again as to the amount to be awarded as interest. We think on consideration that the usual Court rate of 6 per cent. should be allowed as interest on the principal from the date fixed for payment in the decree, viz., the 16th June 1906, to the date of payment into Court, viz., the 17th November 1906, and 6 per cent. on that sum from the 17th November to the date of payment. Parties will pay and receive proportionate costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Wallis and Mr. Justice Munro.

1908.
February 19.

BABUBALENDRUNI GURUVARAJU (PETITIONER), APPELLANT,
v.
CHANDRASEKARARAJU, MINOR BY HIS GUARDIAN,
GOPINATHA TRIPATI (COUNTER-PETITIONER), RESPONDENT.*

Succession Certificate Act—Act VII of 1889, s. 19—Section 3 of Act XXIV of 1839 and rule X of rules framed thereunder—General Clauses Act of 1868, s. 2 (12)—Agent to the Governor, Vizagapatam, is a District Judge within s. 19 of Succession Certificate Act and an appeal lies to the High Court against his order—Scope of inquiry in proceedings under Succession Certificate Act.

Section 2 (12) of the General Clauses Act of 1868 defines a District Judge as the Judge of a Principal Civil Court of Original Jurisdiction.

Under section 3 of Act XXIV of 1839 and rule X of the rules framed thereunder, the Agent is the Judge of the Principal Court of Civil Jurisdiction within the Agency. The Agent is therefore a District Judge within the definition in section 2 (12) of the General Clauses Act of 1868.

The General Clauses Act of 1868 was in force in 1889, when the Succession Certificate Act was passed, and the Agent to the Governor, Vizagapatam, is a District Judge and the Court presided over by him is a District Court as defined in section 3 of the Succession Certificate Act.

An appeal therefore lies to the High Court under section 19 of the Succession Certificate Act from the order of the Agent as from an order of the District Court.

Chakrapani v. Varahamma, (I. L. R., 18 Mad., 227), not followed.

* Civil Miscellaneous Appeal No. 192 of 1907, presented against the order of R. H. Campbell, Esq., Agent to the Governor at Vizagapatam, in Civil Miscellaneous Petition No. 2 of 1908.

In inquiries under the Succession Certificate Act, the Court may decline to decide points which will involve a lengthy and complicated inquiry.

THE petitioner in this case applied to the Court of the Agent to the Governor, Vizagapatam, for a certificate under section 6 of Act VII of 1889 to enable him to collect debts due to one A, deceased. He claimed as the nearest sapinda of the deceased. The counter-petitioner denied that the petitioner was a sapinda, and claimed the grant to himself on the ground that he was adopted by A.

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The Agent passed the following order :—

“ I am not disposed to grant a certificate in this case. The petitioner should establish his claim by a regular suit in a Civil Court.”

The petitioner appealed to the High Court on the following grounds:—

1. The order of the lower Court is against law.
2. The Agent to the Governor erred in not granting the certificate to the appellant.
3. The Agent to the Governor erred in not holding any enquiry as to the appellant's right to the certificate.
4. No reasons are given by the lower Court to refuse the grant of the certificate to the appellants.
5. The lower Court ought to have held that the appellant has the best *prima facie* title to the certificate.

V. N. Kuppu Rau for appellant.

C. R. Tiruvenkatachariar for respondent.

JUDGMENT.—It is urged that there is no appeal in this case under section 19 of the Succession Certificate Act from the order of the Agent to the Governor, Vizagapatam, as it is contended that the Agent is not a District Court and the decision in *Chakrapani v. Varahalamma* (1) is referred to. Mr. Tiruvenkatachariar has, however, very properly called our attention to the definition of District Judge in the General Clauses Act, 1868, which was in force in 1889 when the Succession Certificate Act was passed.

In section 2 (12) District Judge is defined as the Judge of a Principal Civil Court of Original Jurisdiction.

(1) I. L. R., 18 Mad., 227.

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We think, under section 3 of the Act XXIV of 1839 and rule X, clause 4 of the rules framed pursuant to that Act, the Agent is the Judge of the Principal Civil Court of Original Jurisdiction in the Agency. In section 3 of the Succession Certificate Act, District Court is defined as a Court presided over by a District Judge.

Consequently under section 19, Succession Certificate Act, an appeal lies from the Agent's order as from an order of a District Court.

In *Chakrapani v. Varahalamma* (1) this provision of the General Clauses Act appears to have been overlooked, and we are unable to follow it. The objection must be overruled.

As to the merits, in order to ascertain the title of the petitioner, it would have been necessary for the Agent to go into the pedigree filed by the petitioner as supplemental to his petition in accordance with the Agent's directions. This would have involved a lengthy and complicated inquiry, and we think, under these circumstances, the Agent was justified in not going into the pedigree and dismissing the petition.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Munro.

THE EAST INDIAN AND ANGLO-INDIAN DEPOSIT AND
 LOAN SOCIETY (LIMITED) BY ITS SECRETARY AND
 TREASURER MR. E. C. D'SENA (PLAINTIFFS),

v.

DR. T. M. NAIR AND ANOTHER (DEPENDANTS).*

Presidency Small Cause Courts Act—Act XV of 1882, s. 69—Negotiable Instruments Act, s. 84 (2)—Question whether cheque was presented within reasonable time is a question of fact and cannot be referred to the High Court by Presidency Court of Small Causes.

The Presidency Court of Small Causes referred to the High Court, under section 69 of the Presidency Small Cause Courts Act, the question whether a cheque was presented within a reasonable time :

(1) I. L. R., 18 Mad., 227.

* Case referred No. 18 of 1907, stated under section 69 of Act XV of 1882 and rule 428 of the Rules of Procedure of the Madras Small Cause Courts by James H. Bakewell, Esq., Chief Judge of the Madras Small Cause Court in Suit No. 8599 of 1907.

1908.
 March 18.