

## APPELLATE CIVIL.

1911.  
July, 31.

Before Mr. Justice Abdur Rahim and Mr. Justice Sundara Ayyar.

SRI MAHARAJAH OF VIZIANAGRAM (PLAINTIFF),  
APPELLANT,

v.

K. VEERANNA AND TWO OTHERS (DEPENDANTS),  
RESPONDENTS. \*

*Provincial Small Cause Courts Act (IX of 1887), sch. I, art. 13—Land Cess  
—Suit by zamindar against inamdar for recovery of, is a suit of a small cause  
nature.*

A suit by a zamindar for the recovery of land cess from the inamdar is not exempted from the cognizance of the Provincial Small Cause Courts Act, by virtue of article 13, schedule I.

SECOND APPEAL against the decree of D. RAGHAVENPRA RAO, the temporary Subordinate Judge of Vizagapatam, in Appeal No. 412 of 1908, presented against the decree of S. VENKATASUBBA RAO, the District Munsif of Chodavaram, in Original Suit No. 728 of 1907.

*S. Srinivasa Ayyangar* for appellant.

*P. Nagabhushanam* for respondents.

JUDGMENT.—The preliminary objection has been taken that no second appeal lies in this case as the suit is of a small cause nature. The question is whether a suit for recovery of land cess by the zamindar from the inamdar can be said to fall within article 13 (schedule I) of the Provincial Small Cause Courts Act. That article is in these words. "A suit to enforce payment of the allowance or fees respectively called *mālikāna* and *hakk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution."

Now can it be said that the land cess is payable to the zamindar by the inamdar by reason of the former's interest in immovable property? We think not. The land cess is a tax levied by the Government and the landlord who in the first instance has

\* Second Appeal No. 680 of 1910.

paid it to the Government is entitled to recover it from the intermediate tenure-holder because the latter as between himself and the landlord, is the person who ought to bear the burden of the tax. The cesses and dues contemplated in article 13 are payments which a person is entitled to as representing his interest in certain immoveable property and not because he possesses some interest in immoveable property. We are fortified in this conclusion by the rulings in *Zemindar of Tarla v. Latchiah*(1).

ABDUL  
BAHIM  
AND  
SUNDARA  
AYYAR, JJ.  
SRI MAHA-  
RAJAH OF  
VIJJA-  
NAGARAM  
v.  
VIREBANNA.

The preliminary objection prevailing, the second appeal is dismissed with costs.

## APPELLATE CIVIL.

*Before Sir Charles Arnold White, Chief Justice, and Mr. Justice Phillips.*

DANAKOTI AMMAL AND ANOTHER (DEFENDANTS NOS. 1 AND 2),  
APPELLANTS,

1911.  
August 1,  
2, 3.

v.

BALASUNDARA MUDALIAR AND ANOTHER (PLAINTIFFS),  
RESPONDENTS.\*

*Hindu Law—Adoption, validity of—Sapinda, consent of, obtained for consideration—Indian Evidence Act (I of 1872), section 32, sub-sections 3 and 5—admissibility of statement made by deceased person.*

Where under the Hindu Law, the consent of a sapinda is required to validate an adoption by a widow and that consent is obtained in exchange for a valuable consideration the transaction will vitiate the adoption.

*Rami Reddi v. Rangamma*, [(1901) 11 M.L.J., 20], followed.

*Srinivasa Ayyangar v. Rangasami Ayyangar*, [(1907) I.L.R., 30 Mad., 450], distinguished.

A statement made by a deceased sapinda admitting that he had received a sum of money in connection with an adoption was sought to be proved in order to invalidate the adoption :

*Held*, that the statement was admissible under section 32, sub-section 3 of the Indian Evidence Act, it being a statement made against his pecuniary or proprietary interest :

*Held also*, that the statement was admissible under section 32, sub-section 5, as it related to the existence of a relationship; and this notwithstanding that the relationship was not in dispute at the time when the statement was made.

(1) (1903) 13 M.L.J., 211 and Second Appeal No. 10 of 1907.

\* Appeal No. 212 of 1907.