

JAMNA BAI  
v.  
VASANTA  
RAO.  
LORD SHAW,  
SIR JOHN  
EDGE AND  
SIR  
LAWRENCE  
JENKINS.

plaintiff's claim against her. Stripped of all that is not relevant, the plea advanced on her behalf is that one of two promisors can plead the minority and consequent immunity of the other as a bar to the promisee's claim against him. This is a position that cannot be maintained, and the plea has been properly rejected by the High Court. On possible developments in the future it would be wrong for their Lordships to make any pronouncement; they will therefore humbly advise His Majesty that each of these appeals should be dismissed. There will be no order as to costs.

*Appeals dismissed.*

Solicitor for appellant in first appeal and  
the respondent in second appeal (defendants). } *Douglas Grant.*

Solicitors for respondent in first appeal } *Chapman, Walker*  
and appellant in second appeal (plaintiff). } *Shepherd.*

J.V.W.

## APPELLATE CIVIL.

*Before Mr. Justice Spencer and Mr. Justice Seshagiri Ayyar.*

Re. A. V. HANUMANTHA RAO AND ANOTHER  
(PETITIONER—ACCUSED AND SECOND RESPONDENT), PETITIONERS.\*

*Madras Estates Land Act (I of 1908), ss. 164—167—Officer, preparing record of rights under—Criminal Procedure Code (Act V of 1898), sec. 476, not a Court within the meaning of.*

A Revenue Officer preparing a record of rights under sections 164 to 167 of the Madras Estates Land Act is only discharging an executive function of Government and is not a Court within the meaning of section 476 of the Code of Criminal Procedure.

PETITION under section 15 of the Charter Act praying the High Court to revise the order of G. VENKATANARAYANA NAYUDU, Revenue Officer, Record of rights, Pithapuram estate, in prosecution proceedings in Original Petition No. 1149 of 1912.

The facts appear from the judgment of SESHAGIRI AYYAR, J. P. Narayanamurti for the appellants.

*Nugent Grant, the Acting Government Pleader for the Crown.*

\* Civil Revision Petition No. 605 of 1913.

1915.  
January  
6 and 7.

28 M. L. J.

123

SPENCER, J.—I am of opinion that a Revenue officer preparing a record of rights under sections 164 to 167 of the Madras Estates Land Act is only discharging an executive function of Government and is not a Court within the meaning of section 476 of the Code of Criminal Procedure.

RE HANU-  
MANTHA  
RAO.  
—  
SPENCER, J

In *Muhammad Subhanullah v. The Secretary of State for India in Council*(1), it was held that a settlement officer preparing a record of rights was not a Court but was simply an executive officer acting in his executive capacity. In *Nasarulla Mia v. Amiruddi*(2) and *Kurban Ali v. Jafar Ali*(3), the powers of a Revenue officer disposing of an objection under section 103-A of the Bengal Tenancy Act which corresponds closely in wording to section 166 of the Madras Estates Land Act were considered, and it was held that the legal effect of proceedings taken under this section was that the Revenue officer's order was not a judicial order, was not open to appeal and would not operate as *res judicata*. Section 106 of the Bengal Tenancy Act provides for the institution of suits before Revenue officers preparing records of rights and for suits instituted before them being transferred by them to a competent Civil Court for trial. Section 107 further provides that they shall adopt the procedure of the Code of Civil Procedure in trying such suits and that their decisions shall have the force and effect of a decree of a Civil Court.

In contradistinction to this, it may be observed that the Madras Act provides in section 173 for institution of suits in the Civil Courts having local jurisdiction, whenever the correctness of the record of rights is impugned in certain particulars.

In fact a Revenue officer proceeding under chapter XI of the Madras Estates Land Act is not anywhere referred to in that Act as a Court in the manner that Collectors and other Revenue officers who hear suits and applications specified in the schedule, are described in section 189 and elsewhere as Courts. Mr. Grant relies on the provision in section 164 (3) that the survey made by the Revenue officers proceeding under this chapter shall be made under the Madras Survey and Boundaries Act, 1897, and on the provision in section 29 of that Act applying the procedure of the Code of Civil Procedure for enforcing the

(1) (1904) I.L.R., 26 All., 382. (2) (1906) 3 C.L.J., 133.

(3) (1901) I.L.R., 28 Calc., 471.

Re HANU-  
MANTHA  
RAO.

SPENCER, J.

attendance of witnesses and for the recording of evidence, and also on the definition of "Court" in section 3 of the Evidence Act

He has referred us to several decisions such as *Raghoobuns Sahoy v. Kokil Singh alias Gopal Singh*(1), *Atchayya v. Gangayya*(2), and *Queen Empress v. Munda Shetti*(3), in which officers authorized to receive evidence and decide matters on evidence have been treated as Courts.

But the notification dated 3rd May 1910 in the *Fort St. George Gazette* Supplement for June under which the Revenue officer who passed the order under section 476 now under consideration was appointed does not invest him with powers to record evidence nor with the powers of a survey officer under Act IV of 1897. It merely appoints him to be a Revenue officer for the purpose of making a survey of the Pithapuram estate and for preparing a record of rights in respect of the said estate and it goes on to declare what particulars the record of rights shall show.

The said officer's order directing the prosecution of the petitioners for giving false evidence was therefore in my opinion *ultra vires* and must be set aside.

SESHAGIRI  
AYYAR, J.

SESHAGIRI AYYAR, J.—I entirely agree. By a notification dated the 3rd May 1910, Mr. Venkatanarayana Nayudu was appointed to survey and to prepare a record of rights in the Zamindari of Pithapuram. It is conceded that this notification does not empower the officer to administer oath and to record evidence. In pursuance of this notification, the officer entered the name of one Venkataswami Gadu as the occupancy tenant of a holding. This was objected to by the first petitioner, the proprietor. The survey officer came to the conclusion that the petitioners had made false statements regarding the right of Venkataswami Gadu. He took action under section 476 of the Code of Criminal Procedure and directed the prosecution of the petitioners. The point for consideration is whether an officer recording rights under the Estates Land Act is exercising the function of a Civil or Revenue Court so as to enable him to take action under the Code of Criminal Procedure. I must answer this question in the

(1) (1890) I.L.R., 17 Calc., 872.

(2) (1892) I.L.R., 15 Mad., 138.

(3) (1901) I.L.R., 24 Mad., 121.

negative. Under chapter XI of the Extates Land Act, the Local Government may empower a person to conduct three classes of operations : (a) to survey the fields ; (b) to enter the names of the tenants in respect of [the fields surveyed as occupancy ryots ; and (c) to settle the rate of rent. In this case, the officer had no authority to settle the rate of rent. The false statement is alleged to have been made in the enquiry regarding the record of rights. Under section 166 of the Act, if the record of rights is not objected to, "it shall be conclusive evidence that the record has been duly made." No right to contest the record is given either by bringing a suit in that behalf or by perfering an appeal. The right of suit given by section 173 does not affect the present question. Section 167 lays down in clause (3) that the entry shall be evidence of the tenant's rights. Neither section 166 nor section 167 gives power to the officer to take evidence. *Prima facie*, therefore, the entry as tenant is a purely administrative act, and the officer cannot be said to be exercising the functions of a Civil or Revenue Court. The decisions in *Muhammad Subhanullah v. The Secretary of State for India in Council*(1) and *Nasarulla Mia v. Amiruddi*(2) which relate to the construction of similar provisions in the Tenancy Acts of the United Provinces and Bengal lay down that the officer entrusted with such duties is not acting judicially, but only in his executive capacity. The learned Public Prosecutor draws attention to the fact that the officer was also performing the duties of a survey officer and as under clause (3) of section 164, he is authorized as such to exercise all the powers contained in the Madras Survey and Boundaries Act, he must be deemed to have acted as a Court. In the first place section 29 of the Boundaries Act which is relied upon lays down that the power to take evidence must be either specially or generally conferred. There is no such authorization in this case. In the second place whatever may be the officer's duties in regard to survey, in recording rights he is not given power to administer oath to witnesses.

The fact that in section 195 of the Code of Criminal Procedure the legislature exempts the offices of the Registrar and of the Sub-Registrar from the designation of Courts

Re HANU-  
MANTHA  
RAO.

SES HAGIRI  
AYYAR, J.

(1) (1904) I.L.R., 28 All., 382.

(2) (1906) 3 C.L.J., 133.

Re HANU-  
MANTHA  
Rao.  
—  
SESHAGIRI  
AYYAR, J.

strengthens the view that persons exercising quasi-judicial functions are not ordinarily to be regarded as Courts. The decision in *Queen Empress v. Munda Shetti*(1) proceeds on the language of Act III of 1869 which specially empowers the Tahsildar to take evidence during the course of the enquiry and to give his decision upon such evidence. The decision in *Atchayya v. Gangayya*(2) is no longer law, and I do not think that the *obiter dicta* of some Judges in that case can be relied upon. On the other hand, it has been laid down that the mere fact that an enquiry has to be made will not constitute the enquiring officer a Court. In *Durga Das Rukhit v. Queen Empress*(3) it was decided that an officer enquiring into the value of property under the Land Acquisition Act was not a Court. The proper test for ascertaining whether an officer is a Court or not has been stated in *Queen Empress v. Munda Shetti*(1). There must be power to record evidence, and to come to a judicial determination on the evidence so recorded. Mr. Justice AYLING and myself had to consider a similar question in *Re Vijayaraghava Pillai*(4). Applying the tests suggested in that case and *In re Nataraja Iyer*(5), I am of opinion that an officer charged with the duty of recording tenant rights in a zamindari under chapter XI of the Estates Land Act is not a Court within the meaning of section 476 of the Code of Criminal Procedure.

S.V.

---

(1) (1901) I.L.R., 24 Mad., 121.      (2) (1892) I.L.R., 15 Mad., 133.

(3) (1900) I.L.R., 27 Calc., 820.      (4) (1914) 27 M.L.J., 227.

(5) (1913) I.L.R., 36 Mad., 72.