

## APPELLATE CIVIL.

*Before Sir John Wallis, Kt., Chief Justice and Mr. Justice  
Burn.*

V. NAVANEETHA KRISHNA THEVAR (TWENTY-THIRD  
DEFENDANT), APPELLANT,

v.

RAMASWAMI PANDIA THALAVAR AND TWENTY-FOUR OTHERS  
(PLAINTIFF AND DEFENDANTS NOS. 1, 3 to 9, 11, 13 to 22  
AND 27 TO 31), RESPONDENTS.\*

1916,  
November,  
10, 13, 17, 20  
and 24.

*Hindu Law—Reversioners—Widow's estate—Estate taken under the management of the Court of Wards—Alienations by the Court of Wards—Power of Court of Wards as to alienations, if, absolute or limited like that of the limited owner—Court of Wards Act (Madras Act I of 1902), sec. 35—Suit by reversioners for declaration—Alienations, held good—Declaration as to title of plaintiff, as reversioner, if, can be given—Conversion of rent in kind into money rent—Power of widow to commute—Evidence Act (I of 1872), sec. 35—Copies of Takids, etc., made in official registers, if admissible.*

Where the plaintiff, claiming to be the nearest reversioner to the last male owner of a zamindari, sued for a declaration that certain alienations, made by the Court of Wards during their management of the estate on behalf of the adoptive mother of the late Zamindar on her succeeding to the estate as his heiress on his death, were not binding on the estate beyond her lifetime :

*Held* : that the power of the Court of Wards under section 35 of the Madras Court of Wards Act (I of 1902), is in terms absolute and not governed by the restrictions in the latter part of the section ;

that the Court of Wards had absolute powers of alienation in respect of the property taken under its charge, although the person on whose behalf the management was taken up was only a limited owner of the property like a widow ;

that consequently the alienations in the case were valid, without proof of necessity such as would support an alienation by a Hindu widow ; and

that the conversion of rents payable in kind into money rents is within the powers of a limited owner like a widow :

*Held further* :

(a) that reversioners are not entitled to sue for a declaration that they are the nearest reversioners to an estate unless the decision of that question is incidental to the grant of some other relief to which they may be entitled ;

*Janaki Ammal v. Narayanasami Ayyar* (1916) I.L.R., 39 Mad., 634 (P.C.), applied.

and (b) that copies of actual letters, such as Takids from the Collector to the *Majumdar* and his replies thereto, made in registers of official

NAVANEETHA KRISHNA THEVAR v. RAMASWAMI PANDIA THALAVAR.

correspondence kept for reference and record are admissible in evidence under section 35 of the Indian Evidence Act, and are entitled to great consideration. *Rajah Muttu Ramalinga Setupati v. Perianayagam Pillai* (1874) L.R., 1 I.A., 209 at page 238, referred to.

APPEAL against the decree of A. N. ANANTHARAMA AYYAR, the Subordinate Judge of Tinnevely, in Original Suit No. 30 of 1911.

The plaintiff claimed to be the nearest reversionary heir to the late Zamindar of Uttumalai, Navaneethakrishna Maruthappa Thevar who died in 1891. The plaintiff alleged that he was the son of one Gnanapurani Nachiar, who was said to be the legitimate daughter of one Gomathimuthu Nachiar, alleged to be the lawfully married second wife of the Zamindar Navaneethakrishna Maruthappa Thevar, who was the grandfather of the last male owner and had died in 1850. The last zamindar died without issue in 1891, and was succeeded by the first defendant who was his adoptive mother and her claim was established by the Privy Council decision *Annapurni Nachiar v. Forbes*(1). In 1901, the Court of Wards took over the management of the Uttumalai estate on behalf of the first defendant. The plaintiff instituted the present suit ostensibly for a declaration that certain alienations made by the Court of Wards of some of the properties of this zamindari during the course of their management were invalid beyond the lifetime of the first defendant as they were not supported by necessity and were beyond the powers of a Hindu widow on whose behalf the Court of Wards were in management and for a declaration that he was the nearest reversionary heir to the zamindari after the first defendant. The first defendant was the adoptive mother of the last male owner as already said; she was represented in the suit by the Manager of the Court of Wards who were in charge of the estate under Act I of 1902. The Court of Wards, on behalf of the first defendant, disputed the plaintiff's title as a reversioner and denied the factum and the legality of the marriage of Gomathimuthu Nachiar and the claim of Gnanapurani Nachiar as the legitimate daughter of the said zamindar. The twenty-third defendant claimed to be the nearest reversioner to the zamindari and denied the plaintiff's title as a reversioner. Defendants Nos. 24 to 31 were

(1) (1900) I.L.R., 23 Mad., 1 (P.C.).

remoter reversioners who supported the twenty-third defendant and denied the plaintiff's title. Defendants Nos. 2 to 22 were alienees and persons claiming from them. The Court of Wards also contended that the alienations were valid as they maintained that the Court of Wards had absolute powers of alienation granted to them under the Statute (Act I of 1902), and were not restricted by the limitations imposed on the limited owner on whose behalf the estate was taken over by them for management. There were similar suits instituted by the plaintiff as well as the twenty-third defendant in the District Munsif's Court of Ambasamudram, and these suits were transferred to the Subordinate Judge's Court of Tinnevelly for trial and disposal along with the suit (Original Suit No. 30 of 1911) already filed in the Subordinate Judge's Court. The Subordinate Judge held that the plaintiff was the nearest reversioner to the estate, that the alienations were invalid and not binding on the plaintiff or the estate beyond the lifetime of the first defendant. The twenty-third defendant as well as some other defendants preferred separate appeals to the High Court.

NAVANEETHA  
KRISHNA  
THEVAR  
v.  
RAMASWAMI  
PANDIA  
THALAVAR.

*T. R. Ramachandra Ayyar, T. R. Vankatarama Sastriyar and S. Viswanatha Ayyar* for the appellant.

Hon. Mr. *S. Srinivasa Ayyangar* and *K. Rajah Ayyar* for the first respondent.

*Nugent Grant* and *S. Ramaswami Ayyar* for the second respondent.

*M. D. Devadoss* for the respondents Nos. 12 and 13.

The others were not represented.

WALLIS, C.J.—Appeal No. 380 of 1914 is an appeal from WALLIS, C.J. the judgment of the Subordinate Judge of Tinnevelly, in Original Suit No. 30 of 1911, a suit brought by Ramasami Pandia Thalavar claiming to be the nearest reversioner of the last *zamindar* of Uttumalai to declare that certain alienations made by the Court of Wards during their management of the Estate on behalf of the widow of the late *zamindar*, Ranee Meenakshi Sundara Nachiar, now an incapacitated proprietor under Madras Act I of 1902, are not binding on the Estate. Under that Act, as amended, suits by and against a ward are to be in the name of the ward but the conduct of the suit is with the manager appointed by the Court of Wards acting as guardian *ad litem*.

NAVANEETHA  
KRISHNA  
THEVAR

v.

RAMASWAMI  
PANDIA  
THALAVAR.

WALLIS, C.J.

Defendants Nos. 2 to 22 are alienees and persons claiming under them. Defendant No. 23 denies the plaintiff's pedigree and claims to be the next reversioner, and has brought a similar suit (Original Suit No. 26 of 1912) to declare the alienations of the properties mentioned in schedules 5 and 6 of the plaint in Original Suit No. 30 of 1911 invalid. He was added as a party to the suit together with defendants Nos. 24 to 31 who claim to be remote reversioners and support him. The plaintiff has also brought other suits in the Court of the District Munsif of Ambasamudram (Original Suits Nos. 380 to 382 of 1909) to question an alleged alienation made by the first defendant whilst in management in 1901, and these suits have been transferred to the Subordinate Judge's Court of Tinnevely and tried along with the principal suit (Original Suit No. 30 of 1911) and are now the subject of appeals before us (Appeal Nos. 346 to 351 of 1915). Though this and the connected suits have been brought for a declaration that certain alienations are not binding beyond the life of the first defendant, there can be little doubt that the main object of the plaintiffs in the suits was to assert their respective titles as next reversioners to the estate on the death of the first defendant. The relationship of the twenty-third defendant is admitted, and though the Subordinate Judge found against his reversionary right, it is now admitted that his judgment on that point cannot be supported. The relationship set up by the plaintiff in the present suit is strongly contested both by the Court of Wards on behalf of the first defendant and by the twenty-third defendant, and was the main question fought in the Court below. The Subordinate Judge has found that the plaintiff's case is true and that he is the son of Gnanapurani Nachiar, the legitimate daughter of the zamindar, who died in 1850 and of his second wife Gomathimuthu Nachiar, who, according to the plaintiff's case, was the daughter of one Maruthappa Thevar and was married by the zamindar Navaneetha Krishna Maruthappa Thevar as his second wife between the years 1841 and 1845, and that Gnanapurani's mother was not, as contended by the defendants, a dancing girl named Kuppi who was living with the zamindar as his concubine when she gave birth to Gnanapurani. He has also held the alienations questioned to be invalid and has given the plaintiff a declaration to that effect. His judgment on the latter point is supported by the twenty-third and subse-

quent defendants, but Mr. Nugent Grant instructed by the Manager for the Court of Wards who is the guardian *ad litem* of the first defendant has appealed against this part of the decision also, and contended that the alienations cannot be questioned, and, that being so, that the suit should be dismissed without going into the claims of the rival reversioners.

NAVANEETHA  
KRISHNA  
THEVAR  
v.  
RAMASWAMI  
PANDIA  
THALAVAR.  
WALLIS, C.J.

The alienations\* questioned in the main suit were made by the Court of Wards whilst in superintendence of the Estate purporting to act under the statutory powers given them by section 35 of the Act. In 1899 the old Court of Wards Regulation V of 1802 was amended by the insertion of a general chapter intended to enable the Court to take incumbered estates under their management and clear them from encumbrances, and in 1902 the Regulation was repealed by Madras Act I of 1902 which re-enacted the provisions of the Act of 1899 and introduced other changes. Section 35 of the Act is in the following terms :—

“The Court may mortgage or sell the whole or any part of any property under its superintendence and may give leases or farms of the whole or any part of such property for such terms as it thinks fit, and may make remissions of rent or other dues, and may generally pass such orders and do such acts not inconsistent with the provisions of this or any other Act for the time being in force as it may judge to be for the advantage of the ward or for the benefit of the property.”

The Subordinate Judge has held that this only enables the Court to sell or mortgage the particular interest of the ward in the property under superintendence unless there are circumstances which would justify the ward himself if *sui juris* in selling outright. Under the Act, the ward is not necessarily a full owner and may be, as here, a widow, or the owner of an impartible estate with limited powers of alienation under the Madras Impartible Estates Act, 1904, which continued in substance the provisions of the temporary Act passed at the same time as the Court of Wards Act in 1902, or the property may be owned as joint family property by several minors in which case the senior if of age would only have a limited right of sale. In comparatively few cases under superintendence in this Presidency would the ward if *sui juris* be full owner with power to sell outright. The power to sell, mortgage or lease is in terms

NAYANETHA  
KRISHNA  
THEVAR

v.

RAMASWAMI  
PANDIA  
THALAVAR.

WALLIS, C.J.

absolute, and is not governed by the restriction in the latter part of the section, as pointed out in *Mohsan Shah v. Mahbub Ilahi*(1); and to say that the Court cannot sell outright where the ward has only a life interest unless there are circumstances which would justify the ward himself in selling under the Hindu Law is to import into the section the words which are not there, and to hamper the Court in the exercise of powers which are conferred upon it as incidental to its right of management for the benefit of the estate, that is, of the ward and those who come after him. The word "property" under its superintendence means, in my opinion, the moveable and immoveable property itself and not the particular interest of the ward as widow. Further, if the word "property" be construed as confined to the limited interest of the ward, it will be necessary to look elsewhere for the Court's power to sell and mortgage outright in cases where the Hindu Law allows it. Powers of selling, mortgaging and leasing are often conferred on trustees and others as incidental to powers of management, the proceeds being held by them as part of the estate, and I see no reason why the section should not be construed as conferring such powers upon the Court. To enable it to extricate encumbered estates from difficulties, the legislature in other sections has gone the length of enabling it to oust mortgagees in possession from management of the property under mortgage to them and take over the management. Sales or mortgages of life interests are always highly speculative and unsatisfactory transactions, and were not, in my opinion, the transactions which the section was enacted to validate. It seems to me that the intention was to enable the Court of Wards to give a statutory title free from the risk of law suits by subsequent heirs, etc., and so to enable it to realise the best price for the estate. The decision by their Lordships of the Judicial Committee in *Muhammad Mumtaz Alikhan v. Farhat Alikhan*(2) did not relate to a sale or mortgage but to a transaction which their Lordships held to be a voluntary alienation not warranted by the latter part of the section which was nearly in the same terms as the present section.

As regards the particular alienations in the plaintiff's schedule, that referred to in the schedule 6 was of one of

(1) (1907) I.L.R., 29 All., 589.

(2) (1901) I.L.R., 23 All., 394 (P.O.).

two bungalows possessed by the estate at a watering place called Courtallam. No tenants were to be obtained, it was falling into decay, and the fact that a ruined zamindar had been allowed to live there by the late zamindar and had been buried in the compound was against its letting well. I think that the widow herself would have been justified in selling under these circumstances. The property comprised in the schedule 6 is only 1.7 acres. Both these sales were, in my opinion, within the powers of the Court.

NAVANEETHA  
KRISHNA  
THEVAR  
v.  
RAMASWAMI  
PANDIA  
THALAVAR  
WALLIS, C.J.

The alienations complained of in schedules 1 to 4 were in respect of certain *pannai* lands in which there was admittedly no occupancy right. The tenants who held on leases for fixed terms set up that, in consideration of their having reclaimed the lands, the late zamindar had promised to grant them permanent leases on favourable terms and that the promise had been confirmed by his widow in September 1891, whilst in charge of the estate on behalf of her minor son. The Court of Wards contested that claim but later on entered into compromises by which on payment of Rs. 160 per kotta of land the tenants were allowed permanent rights of occupancy at a fixed rent. The result was to settle the litigation and to raise money for the satisfaction of the debts incurred during the life of the late zamindar. The Subordinate Judge is wrong in saying that such debts were binding only if incurred for necessary purposes. The Madras Impartible Estates Act, 1902, did not affect debts already incurred. The estate which has been included in the Impartible Estates Act was presumably impartible, and under the decisions of the Privy Council was alienable by the holder for the time being prior to the passing of the Act of 1902. Assuming that this transaction amounted to sale of the kudiwaram or occupancy right, I think the alienation was covered by the first part of the section 35, and that in any case it was covered by and was also within the powers conferred by the second part. As regards the rates reserved, it is not shown that they were inadequate, regard being had to the premium paid.

The other alienations complained of were made by the widow herself and are the subject of the three suits instituted in the District Munsif's Court of Ambasamudram and transferred to the Subordinate Judge's Court of Tinnevely and tried along with the other suits, and of separate appeals. The complaint is

NAVANEETHA  
KRISHNA  
THEVAR  
v.  
RAMASWAMI  
PANDIA  
THALAVAR.  
WALLIS, C.J.

that the first defendant granted the tenants permanent leases and converted the waram rents into fixed money rents. The objection that the first defendant granted permanent leases is unsustainable, as it is well settled that even before the passing of the Madras Estates Land Act of 1908 there was a presumption in this Presidency that ordinary ryots, such as these, had permanent occupancy rights in the holdings, and it would have been hopeless to contest it. The conversion of rents payable in kind into money rents is, I think, within the powers of a limited owner, such as a widow. In a good year, rents payable in kind may produce more, but in a bad year they may bring in nothing; and, as is well known by every one at all acquainted with the subject, there are great difficulties in the way of the due realization of the land-holder's share under the waram system. These and other reasons have induced the legislature now to give either party a right to sue for a commutation of waram into money rents. In the present case, the Subordinate Judge has not found, and it is not shown, that the rate of commutation was unfair, and in these circumstances, I do not think, the plaintiff was justified in coming to Court and asking for a declaration as to these items. It is therefore unnecessary to consider the other points raised by Mr. Nugent Grant in this connection.

The result is that the plaintiffs in these suits have not made out their right to declarations that any of the alienations complained of are not binding on the estate. It is well settled by a long catena of cases ending with the recent decision of the Privy Council in *Janaki Ammal v. Narayanasami Ayyar*(1), that the reversioners are not entitled to sue for a declaration that they are the next reversioners unless the decision of that question is incidental to the grant of some other relief to which they may be entitled. It follows that the only course open to us is to allow all the appeals, reverse the decrees of the Lower Court, and dismiss the suits.

As however the case may not stop here, we think it right to allow the petitioners in Civil Miscellaneous Petitions Nos. 845 and 1655 of 1915 and 2996 of 1916 for the admission of certain documents rejected by the Subordinate Judge, namely, (1) the decree of the Zillah Court of Tinnevely, dated 31st May 1859

(1) (1916) I.L.R., 39 Mad., 634 (P.C.).



in Original Suit No. 4 of 1859, (2) the Takid of the Collector to the Muzumdar on the death of the raja in 1850, (3) the reply of the Muzumdar, and (4) the Collector's Takid in 1853 on the complaint of the zamindar's widow as to the conduct of Maruthappa Thevar who according to the plaintiff's case was the father of Gnanapurani's mother. They will accordingly be marked as Exhibits XXXIV, XXXV, XXXVI and XXXVII respectively and incorporated in the record. The learned Advocate-General did not support the exclusion of the last three on the ground that the copies of correspondence kept in the Collector's and taluk offices were not signed but contended that they were not admissible under section 35 of the Indian Evidence Act. We think however that copies of actual letters made in registers of official correspondence kept for reference and record are admissible under section 35 as reports and records of acts done by public officers in the course of their official duty and of statements made to them, and that in the words of their Lordships in *Rajah Muttu Ramalinga Setupati v. Periyannayagam Pillai*(1), they are entitled to great consideration in so far as they supply information of material facts and also in so far as they are relevant to the conduct and acts of the parties in relation to the proceedings of Government founded upon them.

NAVANEETHA  
KRISHNA  
THEVAR  
v.  
RAMASWAMI  
PANDIA  
THALAVAR.  
WALLIS, C.J.

[His Lordship then referred to the arguments which had been put forward on either side as to whether the plaintiff's mother was a wife or a concubine, but gave no finding; that portion of the judgment has been omitted from this report.]

BURN, J.—I agree with the learned Chief Justice in holding that the decree from which Appeal No. 380 of 1914 is preferred should be reversed. There can be no doubt that the real object of the litigation is not the securing of a declaration with regard to the transactions of comparatively little importance which are being impugned but the determination of the question of who the nearest reversioner is with a view to claims to succession on the death of the zamindar.

As the suit is being dismissed on other grounds, it is unnecessary to record any finding on the merits of the claim put forward by the appellant and first respondent in Appeal No. 380 of 1914. As however the questions have been fully argued, it

(1) (1874) L.R., 1 I.A., 209 at p. 238.

NAVANEETHA  
 KRISHNA  
 THEVAR  
 v.  
 RAMASWAMI  
 PANDIA  
 THALAVAR.  
 —  
 BURN, J.

may be as well to indicate briefly the view I am inclined to take on some of the principal contentions which have been relied on in the course of the argument.

[His Lordship then discussed the evidence on the question of the title of the plaintiff as the nearest reversioner but did not give any finding on the question and proceeded as follows] :—

I purposely refrain from expressing any opinion on the effect of the evidence as a whole.

I agree with the judgment of the learned Chief Justice as regards the connected appeals.

K.R.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Ayling and Mr. Justice Napier.*

1917,  
 January, 11.

*Re* PIRANU NADATHI AND TWO OTHERS (ACCUSED).\*

*Registration Act (XVI of 1908), ss. 82 and 83—Offence under section 82—  
 Prosecution by a private person—Permission under section 83, whether,  
 necessary.*

Permission under section 83 of the Registration Act (XVI of 1908) is not a preliminary requisite for the institution by a private person of proceedings for an offence under section 82 of the Act.

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\* Criminal Miscellaneous Petition No. 422 of 1916.

Section 82.—Whoever—

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act; or

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan; or

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or enquiry under this Act; or

(d) abets anything made punishable by this Act ;  
 shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

Section 83.—(1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector-General, the Branch Inspector-General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the Second Class.