

Government within the meaning of that Act read with Act III of 1905. CHINNAPPAN
CHETTY
v.
THE
SECRETARY
OF STATE
FOR INDIA.

The question of the plaintiff's alleged excessive use of the river water for his own irrigation cannot be disposed of in this suit in which he is arrayed as a plaintiff.

We reverse the decree of the lower Appellate Court and grant the plaintiff the declaration abovementioned with costs throughout.

N.R.

APPELLATE CIVIL.

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

MAHBOOT BI (PLAINTIFF), APPELLANT,

1918,
November 8.

v.

SHERIFA BI AND FOUR OTHERS (DEFENDANTS), RESPONDENTS. *

*Practice—Order of Judge on Original Side of the High Court—Jurisdiction to
modify order before formally drawing up the order.*

A Judge on the Original Side of the High Court has jurisdiction to modify the minutes of an order before the formal order is drawn up.

APPEAL against the order of KUMARASWAMI SASTRI, J., made in the exercise of the Ordinary Original Civil Jurisdiction of the High Court of Madras in Civil Suit No. 193 of 1915.

This was a suit brought on the Original Side of the High Court by one of several heirs of a deceased Muhammadan for partition of the estate left by the deceased, for an account of the administration of the estate and for the appointment of a receiver pending the suit. Mr. Justice KUMARASWAMI SASTRI passed a preliminary decree on 25th July 1916 declaring *inter alia* the shares to which the plaintiff and the defendants were entitled and ordering the Official Referee (a) to take an account of the property, credits and effects of the estate and of the debts and liabilities of the estate then outstanding, and (b) to report to the Court a scheme for the distribution of the said estate among the parties. A receiver also was appointed in the case to take charge of the properties and to manage them. The

* Original Side Appeal No. 44 of 1917.

MAHBOOT BI
v.
SHERIFA BI.

Official Referee not only took an account of all the property belonging to the estate but he also sold by auction between the parties the various properties, setting off the value of each item sold against the share due to the purchaser, and he made a report to the above effect to the Court on 17th August 1916. No objection to the report having been filed, the Court on 4th September 1916, confirmed the sales and passed the following order:—"Receiver to sub-divide the Government Promissory Notes in such manner as to be capable of being allotted to the various shares. Final decree to stay over till receiver's accounts are passed." No formal order embodying the above was drawn up by the Court. Upon a motion made by the fourth defendant, a minor, to vacate the above order of 4th September 1916, the Judge vacated it on 30th April 1917 on the grounds (a) that the Official Referee was only asked to submit a scheme for distribution and was not empowered by the Court to sell the properties between the parties, (b) that the sales had prejudiced the interests of the minor fourth defendant and (c) that no final order embodying the report of the Official Referee was drawn up.

From the above order of the 30th April 1917, the plaintiff preferred this appeal.

V. V. Srinivasa Ayyangar for second and third appellants.

K. C. Desiku Achariyar for fourth respondent.

V. Ramaswami Ayyangar for second respondent.

A. Narasimha Achariyar for third respondent.

T. A. Vijayaraghava Achariyar for fifth respondent.

T. Ananda Rao for first respondent.

The judgment of the Court was delivered by

WALLIS, C.J. WALLIS, C.J.—At the time Mr. Justice KUMARASWAMI SASTRI passed his present order, no formal order had been drawn up on the minutes of his previous order, and we think that, as a Judge sitting on the Original Side of the Court, he had jurisdiction to modify the minutes before the formal order was drawn up. See *In Re Suffield and Watts: Ex parte Brown*(1), and *Preston Banking Company v. William Allsup and Sons*(2).

The appeal is dismissed.

N.R.

(1) (1888) 20 Q.B.D., 693.

(2) (1895) 1 Ch., 141.