

APPELLATE JURISDICTION. (a).

*Special Appeal No. 114 of 1862.*MALAVARAYA NAYANAR.....*Appellant.*OPPÁYI AMMÁL.....*Respondent.*

An alienation of a portion of zamindári by the zamindár in favour of his sister cannot operate independently of her claim to maintenance so as to bind his successor, though the alienation may be binding as against the grantor during his life.

Special Appeal No. 15 of 1862 followed.

THIS was a special appeal from the decision of T. I. P. Harris, the Civil Judge of Trichinopoly, in Appeal Suit No. 238 of 1861.

1863.
May 11.
S. A. No. 114
of 1862.

Branson (Ritchie and Sadagopacharu with him) for the appellant, the first defendant.

The facts appear from the following.

JUDGMENT:—This was a snit for the establishment of the plaintiff's right to a village named Husainabád, alleged to have been given to her for her subsistence by her brother, the deceased zamindár, under an agreement marked A, and executed on the 18th Máchi of Virodhi (1851-52) and for recovery of arrears of rent due. The village was part of the zamindári.

The defendant denied the validity of the agreement, but the two lower courts upheld it and decreed for the plaintiff.

The question raised in this special appeal for our consideration is whether the agreement (A), as an alienation of this village, part of his zamindári, by the late zamindár was invalid, and at all events inoperative beyond his own life.

The execution of A must be taken as unquestionable. But it appears that the plaintiff is a married woman, residing with her husband; and no right to subsistence, as against the first defendant, can, so far as the facts of this case disclose, be considered as existing on the part of the plaintiff, who is at present provided for and protected by her husband. We are therefore wholly relieved from any question arising out of the fact that the plaintiff is herself a female descend-

(a) Present: Scotland, C. J. and Holloway, J.

1863.
 May 11.
 S. A. No. 114
 of 1862.

ant of a former zamindár possessing a present right to maintenance. The only question which we are called upon to decide is whether the agreement, as an alienation of this village by the former zamindár, can operate independently of the claim to maintenance, so as to bind his successor. In *Special Appeal No. 15 of 1862(a)* on a review of all the cases, it was decided that a zamindár in possession cannot alienate his proprietary right so as to bind his legal successors. Following that decision, we think that the plaintiff is not entitled to succeed in the claim set up, and that so much of the decree of the court below as establishes the title of plaintiff to the village must be reversed. It appears, however, that a portion of the rent claimed fell due in the life-time of the late grantor, and the agreement A being binding as against him, the plaintiff is clearly entitled to the rent claimed to the period of his death. Our judgment therefore is, that so much of the decree as establishes the title of the plaintiff to hold the village as against the first defendant, and also so much as awards rent subsequently to the death of the late zamindár be reversed: but that the plaintiff is entitled to the rent due in the life-time of the late zamindár. The Civil Judge will ascertain the date of the death and modify the amount of rent decreed accordingly. The costs of the appeal will be paid by the plaintiff.

Appeal allowed.

(a) *Supra*, p. 141.