413

M.R.O. 1—20,002—12-8-65.

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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

~~G.O. No.~~ / ~~B.P. No.~~	413	~~Press~~ / Mis.
Dated	1. 4. 1874	196

Not to be folded or roughly handled

Proceedings of the Madras Gove ent, Revenue Department,
1st April 1

No. 17. Read the following Proceedings e Board of Revenue, dated 19th March 1874, N :—

Read the following letter from H. S. THOM Esq., Collector of South Canara, to J. GROSE, Esq., Secretary to t oard of Revenue, dated Hiriadka, 27th January 18 No. 165:—

I HAVE the honour to submi the follo case of escheat for the orders of Government being obtain d under Sec ion 6, Regulation VII. of 1817.

2. One Subbamma, widow, and the last holder of the marginally noted Estate, died in 1868, when the question as to the person *prima facie* entitled to the land Registers of the Estate arose. Three persons claimed portions of the land under a will, alleged to have been made by the deceased in their favour; but a fourth individual by name Venkataramanaya set himself up as a blood relative of the deceased's husband.

Muli Murg, No. 6, situated in the Post Kasba village, Upparangady Taluq, registered in the name of Kombettu Narayana Shivayya, and assessed at Rupees 30-4-0.

3. A former Assistant Collector in this district recognised the claim of Venkataramanaya, into whose name he ordered the transfer of the Registers after the usual six months' warning.

4. In an ejection suit subsequently brought by Venkataramanaya against certain tenants on the land, the will-holders were also made co-defendants, and the Court decided in a decree, subsequently confirmed in appeal, that Venkataramanaya's relationship to the deceased's husband was not proved, and that the decision of the question of the will relied upon by the opposite party was out of place in that suit.

5. Under these circumstances, the Munsif asked the District Court to move the Collector to take the land as an escheat to Government, but the District Court rejected the proposal, observing that the will-holders appeared to have been in possession of the land, and that the appeal time had also then not expired.

6. One of the will-holders subsequently requested the Collector to register *his* portion of the land in his name, and it came to light, on enquiry, that the will once rejected by the Assistant Collector Mr. Weld, was an unstamped and unregistered writing, admitted by some of the holders thereof to have been made at a time when the Executrix was seriously ill, and had no consciousness of what was going on about her, and that it was, moreover, not established in a competent judicial Court.

7. The will-holders being in possession of the land have not brought any suit to establish the will, but remain quietly in possession of what is in truth a Government escheat.

8. I beg to enclose copies of the several judicial decisions in the case for the information of the Board.

ENCLOSURE No. 1.—Copy of Judgment, in Original Suit No. 129 of 1868.

ENCLOSURE No. 2.—Copy of Judgment, in Appeal Suit No. 665 of 1869.

ENCLOSURE No. 3.—Co... ...ont, in Appeal Suti No. 49 of 1872.

SUBMITTED for the order... ...nent.

2. Subbamma a childless ... ...ed in 1868 having a house and land assessed at Rupees 30-4-0 wh... ...l inherited from her husband. One Venkataramanaya applied for th... ...i the land in his name as a relative of the deceased husband. His cla... ...ns to have been recognized by the Assistant Collector.

3. He brought a suit to eject the ten...nts occupying the land and founded his claim to the property on the assertion that he was the cousin (son of paternal Aunt) of Subbamma's husband. The ten... ...allowed the suit to go *ex-parte* but the claim was contested by several parties who denied that plaintiff was in any way related to Subbamma's husband. 1st and 2nd Defendants as trustees of a Pagoda and 3rd Defendant, Subbamma's brother, claimed the property under a will and asserted that they held possession. The 6th, 7th and 8th Defendants claimed as heirs of Subbamma's husband and contended that they held possession through tenants. The Munsif dismissed plaintiffs claim as not proved and declined to adjudicate on the claims of the other parties. On appeal this decision was confirmed.

4. Plaintiff's claim is thus disposed of—

5. The will under which defendants 1st, 2nd and 3rd claim is no doubt invalid but it appears they are in possession. If so the Board do not see how they can be ousted except in due course of law. Government may declare the property an escheat and direct its sale but the purchaser will have to bring a suit to obtain possession. Defendants 6th, 7th and 8th claimed as "*Dayadis*" and produced evidence in support of their claim but there was no occasion for the Court to pronounce any opinion on that evidence. There is nothing to show that their case is a bad one and it is quite possible that their claim may be valid. It is not *clear* therefore that the property is liable to escheat in default of heir. Considering that there are several claimants and that the issue is doubtful the Board do not advise any interference on the part of Government but they are of opinion that if Government are disposed to declare the property an escheat the Collector should first be required to report on the claim of the 6th, 7th, and 8th Defendants which has not been noticed in his letter.

No. 18. ORDER THEREON, 1st April 1874, No. 413.

Miscellaneous.

THE Government as at present advised will not interfere.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Board of Revenue.

Exd. G. A. Turton.

Extract of 1874 Proceedings of the BOARD OF REVENUE.

To

THE BOARD OF REVENUE.

Dated April 1st.

Read.

G. O., 1st April 1874, No. 413.

APRIL.

No. 17-18.

Claims advanced to certain property left by deceased Subbamma, in Uppurangadi Taluq, South Canara.—Declines to interfere with the —.

No. 630.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th March 1874.

Read the following letter from H. S. THOMAS, Esq., Collector of South Canara, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Hiriadka, 27th January 1874, No. 165:—

I HAVE the honour to submit the following case of escheat for the orders of Government being obtained under Section 6, Regulation VII. of 1817.

2. One Subbamma, a widow, and the last holder of the marginally noted Estate, died in 1868, when the question as to the person *prima facie* entitled to the land Registers of the Estate arose. Three persons claimed portions of the land under a will, alleged to have been made by the deceased in their favour; but a fourth individual by name Venkataramanaya set himself up as a blood relative of the deceased's husband.

Moli Marg, No. 6, situated in the Puttur Kasba village, Upparangady Taluq, registered in the name of Kombettu Narayana Shivayya, and assessed at Rupees 30-4-0.

3. A former Assistant Collector in this district recognised the claim of Venkataramanaya, into whose name he ordered the transfer of the Registers after the usual six months' warning.

4. In an ejection suit subsequently brought by Venkataramanaya against certain tenants on the land, the will-holders were also made co-defendants, and the Court decided in a decree, subsequently confirmed in appeal, that Venkataramanaya's relationship to the deceased's husband was not proved, and that the decision of the question of the will relied upon by the opposite party was out of place in that suit.

5. Under these circumstances, the Munsif asked the District Court to move the Collector to take the land as an escheat to Government, but the District Court rejected the proposal, observing that the will-holders appeared to have been in possession of the land, and that the appeal time had also then not expired.

6. One of the will-holders subsequently requested the Collector to register *his* portion of the land in his name, and it came to light, on enquiry, that the will once rejected by the Assistant Collector Mr. Weld, was an unstamped and unregistered writing, admitted by some of the holders thereof to have been made at a time when the Executrix was seriously ill, and had no consciousness of what was going on about her, and that it was, moreover, not established in a competent judicial Court.

7. The will-holders being in possession of the land have not brought any suit to establish the will, but remain quietly in possession of what is in truth a Government escheat.

8. I beg to enclose copies of the several judicial decisions in the case for the information of the Board.

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ENCLOSURE No. 3.—Copy of Judgment, in Appeal Suti No. 49 of 1872.

SUBMITTED for the orders of Government.

2. Subbamma a childless widow died in 1868 leaving a house and land assessed at Rupees 30-4-0 which she had inherited from her husband. One

Venkataramanaya applied for the transfer of the land in his name as a relative of the deceased husband. His claim seems to have been recognized by the Assistant Collector.

3. He brought a suit to eject the tenants occupying the land and founded his claim to the property on the assertion that he was the cousin (son of paternal Aunt) of Subbamma's husband. The tenants allowed the suit to go *ex-parte* but the claim was contested by several parties who denied that plaintiff was in any way related to Subbamma's husband. 1st and 2nd Defendants as trustees of a Pagoda and 3rd Defendant, Subbamma's brother, claimed the property under a will and asserted that they held possession. The 6th, 7th and 8th Defendants claimed as heirs of Subbamma's husband and contended that they held possession through tenants. The Munsif dismissed plaintiffs claim as not proved and declined to adjudicate on the claims of the other parties. On appeal this decision was confirmed.

4. Plaintiff's claim is thus disposed of—

5. The will under which defendants 1st, 2nd and 3rd claim is no doubt invalid but it appears they are in possession. If so the Board do not see how they can be ousted except in due course of law. Government may declare the property an escheat and direct its sale but the purchaser will have to bring a suit to obtain possession. Defendants 6th, 7th and 8th claimed as "*Dayadis*" and produced evidence in support of their claim but there was no occasion for the Court to pronounce any opinion on that evidence. There is nothing to show that their case is a bad one and it is quite possible that their claim may be valid. It is not *clear* therefore that the property is liable to escheat in default of heir. Considering that there are several claimants and that the issue is doubtful the Board do not advise any interference on the part of Government but they are of opinion that if Government are disposed to declare the property an escheat the Collector should first be required to report on the claim of the 6th, 7th, and 8th Defendants which has not been noticed in his letter.

(A true Copy and Extract.)

J Grote
Secretary.

To the Acting Secretary to Government, Revenue Department,
with three original enclosures to be returned.

Copy to the Collector of South Canara.

Exd. G. A. Turton.

Received 1874. Board of Revenue, MADRAS. No 988

PROCEEDINGS, 19TH MARCH 1874, No. 630.

Read 25 March 1874

Received 26.

MARCH.

No. 630.

Property—consisting of a house and land, left by deceased Subbamma, in Uppinangady Taluq, South Canara District.—Letter from Collector reporting on claims advanced to — and requesting instructions as to whether the property should be declared an escheat, submitted for orders of Government.

S.O. No 413-14th March

REVENUE DEPARTMENT.

4/413

P. No. 988.

From Board of Revenue
Dated 19th March 1874.

FOR ORDERS.

There seems to be some confusion of names here. The person who brought the suit referred to in paragraph 3 is named Narayana not Venkataramanaya - vide judgment in Suit No 129 of 1868 on the Puttur Moonsiffs file. He claimed as son of Subbamma's husband's paternal Aunt and was cast in original and appeal suits.

The 6th defendant in those suits is named Venkataramanaya and he may be the same as the Plaintiff Appellant in Appeal Suit No 49 of 1872 in the file of the Additional Principal Sadr Amin - but the judgment in original suit No 212 of 1870 against which this last named appeal was filed has not been sent.

The 6th 7th & 8th defendants can

have no rights or they
would ere this have sued
to recover their rights as
alleged "Dryades".

The parties in possession
have clearly no right as
the will under which they
profess to hold their claims
has never been established

Eq

I do not understand
why he should write
me. He did not
from the parties in
possession or mind
as he did from the
deceased or any from
any one else. The land
seems to be fully advised

Sd

Respts. Mar 6 1873
Submitted for decision
Admitted and filed
Mar 7th 1873

FOR ORDERS.

Claim rejected in entirety
Petn. dismissed
Petitioner to pay Govt.
Costs.

Mr. No. 413.
Order

The Government as
at present advised
will not interfere

[signature]
1 April 1874

List for
order [signature]
1 April 1874

17 - 18

C. 27 March/74. R 30 -

Judgment

Suit No. 129 of 1868 in the Puttoor Munsiff's
Court of Mangalore Taluk
Present Subbanna Shanbhogue

Plaintiff.	Defendants.
Narayana, by Vakil Laxmiannappa.	1. Kattoje Krishnaya 2. Lanteppa Shetty By Vakil L. Lakshmi Narappa 3. Subbaya by V. Bavatikk 4. Bàbu Campti. 5. Eshwaraya 6. Talapady Venkatramanaya 7. Shivannaya 8. Subbaya by Vakil Narainaya

1. One Mantranarainan, who was in possession of a land and a house at Kombettu, in Puttoor Casba, died 25 years ago. His widow, Subbamma, his only heir, also died in May 1868. It appears that some dispute went on between the 3rd & 6th defendants in the Revenue department, with regard to the collection of the assessment of the land and the transfer of Rudabale, and that a reference was made to the Huzur on the subject, but that no final orders have yet been passed thereon. In the meantime, the present Plaintiff filed this suit on the 20th July. He states that the widow of the deceased Shanbhogue Narayana, his only heir, died without

issue; that the said Shankaranarayana has no other heirs, either Sakuindas or Samanodakas, and that therefore he has, under the Hindu Law, a right to the property as he is the son of his (Shankaranarayana's) paternal aunt, & his Athmabundu. He therefore prays that the illegal proceedings of the Defts carried on in different ways in the Rev. department may be cancelled, and the 4th & 5th Defendants ordered to make over to him the land, house, &c. The 6th, 7th & 8th Defendants allege that they are such near relations to the late Shankaranarayana, as to be reckoned as his Sapindas and Samanodakas the particulars of which are explained by the following genealogical tree.

Family as given by the 6th Defendant.

Shivaya — Narayana — Statement of the Plaintiff

Narayana — Lingaya — Shivaya

Shivaya | Ramayya | Krishna | Narayana | Narayana | Shivaya | Seshamma

8th Defdt | 6th Defdt | 7th Defdt | Shankaranarayana owner of the property deceased 2½ years ago. | Narayana the Plaintiff

Widow Subbamma lately deceased — Brother 3d Defdt

The 1st, 2nd & 3d Defendants' plea are to one and the same effect viz: that the deceased Subbamma has no heirs of any kind whatever. The relationship alleged by the Plaintiff & the 6th, 7th & 8th Defendants is false. As the 3d Defendant who is the brother of the said widow has long been acting agreeably to the wishes of her and her husband, she made the will II for the property at the time of her death, under the terms of the said will, a portion of the estate has been bequeathed to the Puttoor Mahalingueshwar Devastan and is enjoyed by the 1st & 2nd Defendants, as being the trustees thereof, while the remaining portion with the house &c is likewise enjoyed by the 3d Defendant. The Plaintiff has therefore no reason to claim it. The 4th & 5th Defendants, the tenants of the land, allowed the suit to go ex parte.

3. For himself & the 7th & 8th Defts the 6th puts in a Statement contending that under the Hindu Law and according to the aforesaid genealogical tree, they have a title to the property and have been enjoying it, & that the claim set up by the Plaintiff & also the will and the bequest to the temple alleged by the 3d Defendant

have all been forthwith.

4. The following ten documents have been filed for the 1st, 2nd, 3d and 6th Defts, and 22 witnesses have been examined, viz: 3 for the Plaintiff, 3 for the 1st & 2nd Defendants, 9 for 3d Defts & 7 for the 6th Defendant, and the Vakeels for both parties were heard.

(Hereunto the documents and names of witnesses).

5. Under the provisions of the Mitakcari Shastra in force in Southern India, it is an indisputable fact that, in the absence of Samanodakas and Sapindas, the nearest heirs to the property of persons having no issue, the bandhus succeed to the property - that the bandhus are of three kinds - and that as is stated by the plaintiff, the son of the paternal aunt of a deceased person comes under one of such three classes. This matter has been fully discussed & established by the Privy Council in the case of Gridhareelaya V. Government of Bengal, decided on the 17th July 1868, and published at Page 386 Vol III of the Madras Jurist. It therefore seems unnecessary to consider the matter more fully.

6. The chief points to be considered in this suit are three Viz:-

1. Whether the plaintiff is the son of the paternal aunt of the ex deceased Chankranarayana.
2. Whether it is true that the 6th 7th & 8th defendants are Sapindas or Samanodakas of the said Chankranarayana, as alleged by them.
3. Whether it is true that Subbamma, widow of the said Chankranarayana, had under the will VI bequeathed the estate to the 3d Defendant, her brother, and to the deceased, of which the 1st & 2nd defendants are trustees & if so, whether the transaction of such widow is valid, and whether it has such force as to affect those who may succeed to the property under the law, after her death, as also the Govt. who may at last have a right to the property. For Chankrarayana who lately died, and who was the owner of the property in the present suit and his widow were of Shanie caste. The Hindu Law that

the King cannot possession of a Brahmin's property can therefore never apply to property belong to one of the Stanic caste. Granting that it does, the very principle of prohibiting the King from taking possession of a Brahmins property has been overruled by the present British Govt. in case Collector of Masulipatam V. Kavali Venkata Narrappa. The parties to this suit have therefore no reason whatever to base their claim upon this principle of the Hindu Law.

7. The whole evidence advanced by the Plaintiff as regards the aforesaid 1st point is only the groundless oral testimony of 3 witnesses, some of them reside at Puttoor Kasba, and others within 3 miles of it. They make a joined about statement to the effect that one Sippamma, the paternal aunt of the late Shankranarayana, and the mother of the present Plaintiff, was the wife of one Krishnaya, and lived with him at Manbade, 12 Miles distant from this place; that soon after the death of her husband, i.e. 18 or 20 years ago, she came up with the Plaintiff to Balanadu Village and lived there; that she used to do service in the temple & pass her days with the

Plaintiff and that 15 years ago she suffered from an abscess in the stomach and died. But there are reasons for objecting to their statements and they are as follows: The 1st and 2nd witnesses are related to each other. The 1st witness is related to the 1st Defdt. and makes mention of the will which favors the latters plea. The said 1st witness appears to be one of the trustees of the Puttur Devastan in favor of which the will is. Of the 2nd and 3rd witnesses, who are said to have seen Sippamma when she was 60 years of age, one deposes to her having had a head of hairs, while the other, to her having had a shaved head. One states that he did not see her come to Shankranarayana, while the other that he heard him Shankranarayana say that she was his paternal aunt. It is therefore very unsafe to give credit to mere oral evidence of this nature, in the absence of any other circumstances.

8. The chief reason for this is the following. It appears that 3 months before the death of Subbamma, widow of the late Shankranarana, i.e. in February 1868, she stated in Yadast Exhibit II, which appears to have been

given by her and the village servants and others before the 1st witness, Potail Janardanaya, and the Police when they came there with reference to the destruction by fire of her house situated on the plaint land, that she had no protectors, or heirs or any issue. Had the present Plaintiff been the son of her husband's paternal aunt, what reason had she for stating so, and why did even the Potail the 1st witness remain silent in the matter at the time? This is not clear. Besides there is another reason to doubt still more the allegation of the Plaintiff. For, immediately after the death of Subbamma the Defendants from 1 to 3 and the 6th carried on proceedings before the Revenue Authorities, as regards the payment of the assessment on her estate and the entry of the Kudatale, when, the present Plaintiff appears not to have set up his claim as her heir. The 6th 7th & 8th Defts in order to repudiate the pleas of Defts 1 to 3 and to shew their own superior rights, began to carry on counter proceedings before the Revenue Authorities, who without passing any definite orders, at last took measures as a temporary arrangement to collect the assessment from the tenants; and it is only

after this that the Plaintiff has for the first time brought his claim before the Court. The evidence shews that the temple in which Plaintiff is employed at Bolnad, as well as the place of his residence belongs to the family of the 1st Defendant in this case. The Vakeel of the 6th and following Defendants alleges that the plea, namely of will and gift (testamentary bequest) set-up by defendants 1 to 3 in one quarter having met with opposition from the 6th and following Defendants, the 1st defendant has instigated the Plaintiff who is a dependent of his to institute this suit on a different plea, and this allegation cannot be considered altogether groundless. It is therefore held that the Plaintiffs plea, that he is heir to the property of the deceased, by relationship is not proved.

9. The 1st and chief point in this case not being proved, it seems to me irregular and unnecessary to consider here the remaining two points, because the claim of Defendants 1 to 3 is based on a will Exhibit III while the 6th and the following defendants plead that they are Dayadees of Mankramanayana Family. These pleas are equally opposed to that

of the Plaintiff and to each other. The allegation of each of these parties that the house and land in dispute is in their respective possession, and the evidence adduced by them to prove it are not sufficient to establish their right. The land is in the possession of tenants, the assessment is collected from them by Government and the house appears to be occupied by the same persons that lodged in it before viz: the 3d Defendant the co brother of Subbamma, the 5th Defts a tenant Dhareshwar Laxumi-narnappa, Vakeel in behalf of 1st and 2nd Defendants Lingappayan Ameen of this Court & the 4th Defts 1 to 3 or the 6th and following defendants desire to obtain this property, they must legally establish their right and recover it. It would be improper in this case to enter upon a consideration of such rights, because in the event of admitting their title, some of the defendants must needs appeal, just as the Plaintiff has to do against the present decree, and it would be setting aside the Plaintiff's claim in this suit brought by him on a different ground and then newly creating a title for others, the Defendants. Moreover, as the admission of their co title would affect the interests of Govt who might be the ulterior heirs to the property, it is necessary in this case also to call upon them (Govt) for their answer & evidence. The Govt are not a party to this suit, and even if the Court were to make them a party and receive their evidence in this case, under the authority conferred by Sec. 73 of the Civil Pro. Code as they will have to be ranked among the Defendants in the suit, there would be no means for them to adduce or for the Court to receive evidence of such a nature as would set aside the pleas of the other Defendants.

10. Even in the present state of the case if only one of the 2 contradictory pleas contained in the defence of the Defendants were admitted and the other rejected & the Defendants cast appealed, the other contending Defts would not be able to oppose them as Respondents. On a consideration of all these circumstances, it appears to me that the best course is to dispose of this suit only on a single plea on which the Plaintiff has

based his claim, and to direct the Defendants who claim the land on other pleas to bring separate suits to establish their respective claims.

It appears that the Civil Procedure Code was formed with a view to facilitate the adjudication of Civil suits, and a question therefore arises whether the above opinion would not be opposed to the spirit of the said Act, and whether it would not be improper to subject the parties to the vexation of bringing a fresh suit. The facts of the present being of such a peculiar nature as to entitle the contending Defendants to obtain the property only in case of their establishing their assertions by regular suits and in the event of their failure to do so, the property being escheatable to Government another party who may claim it under the law, I think that the opinion expressed above would not be opposed to the provisions of the Civil Code.

II. It is therefore decreed that Plaintiff's suit be dismissed with costs, and that the Plaintiff pay the costs of the Defendants. The Court further directs that a copy of this decree be forwarded to the Collector

through the Civil Court, for his information with a view to his taking the necessary precautions in respect of the property in dispute, which may be considered as unclaimed until the Defendants prove their claims as required above.

/Signed/

C. Subbamachary

Munsiff.

(True Copy)

M. Moorad.

Comp 93/38

Judgment.

In the Court of the Principal Asst. Sessions of Mangalore, Monday the 2nd August 1870.

Present: V. Jagannatha Rao

Appeal Suit No 665 of 1869.

From the decree of the Dt. Munsiff of Puttur in O.S. No 129/1868

Kariana	Plff.	Appellant
1. Hattoji Krishnaya 2. Linnappa Shetti 3. Subbaya & Bable Ganapti & Shivaraya 6. Talapadi Venkat- ramanaya. 7. Shi- vannaya. 8. Lub- baya.	Defts.	Respondents.

Plaintiff a Hindu sued to recover possession of certain land and a house standing thereon, on the ground that he is entitled to succeed to the said property as the son of the paternal aunt and only reversionary heir of the last

Grahame R.T.

In a letter from the Collector of South Canara to the Secretary to the Board of Revenue, Madras, dated 20th January 1868 No 183-

Read: Rs 988/74

Judgment 7/5/75

Copy of Government Order, Revenue Department, dated 12th May 1868 on the file of the Puttur Court.

P.C. Dt. 21st Oct. 1868 No 13

deceased proprietor of it named Shankranarama- Plaintiff so stated that Subbammah the widow of the said Shankranarama, who had succeeded to the possession of the disputed property after his death, died in May 1868. leaving the inheritance open to him. The 1st and 2nd Defendants who are the trustees of a certain pagoda, and the 3d defendant, brother of the said Subbammah, were sued on the ground that the two former have been asserting claims on behalf of the said pagoda, and the latter on his own behalf to portions of the property in question, under a will said to have been executed by the said Subbammah. That the 2nd Defendant has been in possession of the disputed house was a further ground for his inclusion. The 4th and 5th Defts were included as tenants of Shankranarama in the occupancy

of the land in question, and the defendants 6 to 8 as asserting a preferential but false claim to the property in issue, on the ground of their being the dayadis of Shankranarama

1st 2nd & 3d defendants denied all relationship between plaintiff and deceased Shankranarama; defended upon the disposition of the property in question alleged to have been made by Shankranarama's widow Subbammah in favor of the 3d defendant and the aforesaid pagoda- and contended that neither plaintiff nor the defendants 6 to 8 who are no way related to Shankranarayana, have had any right to call in question such disposition of property, which is good in law.

4th & 5th defendants were ex parte.

6th defendant contended, that plaintiff was no relation of Shankranarama that as the dayadi

of the deceased; he was entitled to succeed to the property in question and has accordingly been holding possession of it through tenants.

The Munsiff considered the relationship set up by plaintiff not proved, and accordingly dismissed the suit.

Plaintiff has appealed.

I am disposed to uphold the judgment of the Munsiff. For I do not at all consider the evidence given by the three witnesses examined by the plaintiff to his relationship with the deceased to be satisfactory. All these witnesses make a positive statement that plaintiff is related to Shankaranarana in the manner stated by him. But what opportunities these witnesses had enjoyed to know the said fact is not known. None of them is so connected with the family of the deceased as might have enabled them to know the said fact. The two last witnesses examined by plaintiff are not even men residing in the neighbourhood of the deceased's house. The 3rd witness says that he might have seen Sippamma plaintiff's mother in the deceased's house, but he cannot positively say so. From this witness' own allegation it appears quite doubtful whether he had any occasion to know her at all. I cannot believe his statement that he used to visit her residence on his way to a Village many miles further off. The 2nd witness states that the deceased's father Siva told him how he was related to Sippamma. But it does not appear why Siva should have made the said statement to this witness. Plaintiff's 1st witness indeed says that Sippamma was laid up with sickness in Shankaranana's house where she died. Even believing this statement to be true, the said fact in itself would not warrant the presumption of any relationship or at least

of such relationship between the said Tippamma and the deceased as is claimed by plaintiff. The circumstance of plaintiff having adduced such witnesses as the said 2nd & 3d witnesses are, who neither belong to the place wherein the deceased or plaintiffs mother had lived, nor are any way connected with them, is calculated to create a doubt that parties likely to have a knowledge of the fact in dispute are not prepared to support his case.

On a careful examination of the record I do not find that the plaintiffs 1st and 2nd witnesses are either connected with him or the deceased, as it appears to have been supposed by the Munsiff.

I therefore confirm the original decree so far as it has reference to the claim of plff to the property in dispute and dismiss the appeal with costs.

(Signed) V. Jayaram Rao
Dy. Principal Sadr Amin

(True Copy)
H. Thomas.
Collector

Compared

Judgment

In the Court of the Additional Principal
Sadr Amin of Mangalore.

Present: P. Vasudeva Rau

Original Suit No 49 of 1870.

Appeal Suit No 49 of 1870.

From the decree of the District Munsiff of Mallur

in Original Suit No 2/12 of 1870

Venkatramanaya — Plff — Appellant —

Venkatramanaya — Plff —
Panduranga — Deft — Respondents

1. Shyamu Rau
2. Shivalinga
3. Sankati Chetty
4. Subbaya

1. Plaintiff sued for the recovery of a piece of land with a house at Kadba Pattu within arrears of rent all included at Rupees 138-10-8

2. 1st Defendant urged that the execution of the deed was made over the

3. land to him as opposed in the suit
4. 2, 3, 4 Defendants were included in the suit not upon the Plaintiff's title on their own request as claiming the land under a will left by

Subbamma who owned the property

4. The land in dispute is but a portion of the claimed by the 2, 3, and 4th Defendants that claimed by the Plaintiff was not the subject and the object of the Plaintiff's application to must of the Plaintiff's right of succession. It was enough to property of deceased Subbamma. It was required a term to the summons issued upon the 1st Defendant a term to the 2, 3, and 4th Defendants from to the claim of the 2, 3, and 4th Defendants denied was the Munsiff's jurisdiction to hear the Plaintiff's case the question as to whether the Plaintiff was entitled to succeed to the whole property of Subbamma or only a portion of it from which Plaintiff had claimed only a portion of it from

1874 Dept

Enclosure No II

In a letter from the Collector of South Canara to the Secretary to the Board of Revenue Madras, dated 27th January 1874. No 165.

Judl Dept 5/4/74

Copy of Judgment in Appeal Suit No 65 of 1869 on the file of the Mangalore Principal Sudr Amin's Court —

Rev: 2
988/74
Pg. 7/4th April/74.
In B No 17.

from the 1st Defendant on a contract of lease - Hence I consider the inclusion of the other defendants as unnecessary and the remarks in regard to them uncalled for.

5- District Munsiff dismissed the Plaintiff's claim.

6- Plaintiff appeals -

7. The only point for decision in this case is whether the Plaintiff duly made over the contested land to the 1st Defendant.

8. I think he did not make over the land to the 1st Defendant as agreed upon because the evidence of Plaintiff's witnesses to the 1st defendant's enjoyment of it in 1870 is quite unsatisfactory and inconclusive and I reject it as untrustworthy as the Plaintiff has utterly failed to prove that he duly assumed possession of the whole estate of Subbamma after her death of which that in dispute is but a small part; and as Exhibit K shows that the disputed land was in the possession of two others, the 4th and 5th Defendants of the other suit at least until the end of 1869 when Exhibit K was passed - Nor does it appear that the Plaintiff alleged in the said suit that he enjoyed the disputed portion of the land through 1st Defendant which he must have stated with reference to the fact of the original suit No 129 of 1868 having been instituted one month after the date of Exhibit K - Hence my belief is that Plaintiff himself has never had possession of the disputed land and that he never transferred it to the 1st defendant.

I dismiss this appeal with costs

9. Judgment pronounced on the 9th July 1872.

Signed / R. Vasudeva Rau
Addl. P. J. Ammur

(True Copy)

Sd. Thomas.
Collector

Compared

1874 - Oct

Enclosure No III.

1. In a letter from the Collector of South Canara to the Secretary to the Board of Revenue Madras, dated 27th January 1874 No 165

Judl Mlle 574/74

Copy of Judgment in Appeal Suit No 49 of 1872 on the file of the Additional Principal Sudr Ameen's Court at Mangalore.

Rev. 3
988/74
P.G. 31st April/74
Sir B No 14.