

(1892) 10 MAD CK 0016
In the Madras High Court

Ammunni

APPELLANT

Vs

Krishna

RESPONDENT

Date of Decision : 04-10-1892

Acts Referred:

Citation : (1893) ILR (Mad) 405

Hon'ble Judges : Wilkinson, J; Muttusami Ayyar, J

Bench : Division Bench

Judgement

1. The second defendant has not been made a party to this appeal, nor was he a party to the appeal to the District Court, and the question which we have to decide is one arising between the plaintiff and the first defendant. The suit is virtually one to obtain a declaration as against the respondent that plaintiff is the legal representative of the deceased Raman Menon, and, as such, entitled, in preference to the respondent, to the certificate issued by the British Resident under Act XXVII of 1860 and to receive the interest due on the Government securities. It is conceded that both parties are domiciled in Native Cochin. There can be no doubt that, if the respondent had collected any money due as interest on the Government securities, a suit for money had and received would lie only in the Courts of Native Cochin, though the money had been received in British territory. The question as to who is the legal representative of the deceased Raman Menon is a question which, as between appellant and respondent, can only be tried in the Courts of Native Cochin. The suit was, to all intents and purposes, a suit to set aside a certificate of heirship granted by the Political Resident of Cochin, and the Secretary of State was a necessary party to such a suit, and the appeal in its present form cannot be supported. Two courses were open to the appellant, either to establish his representative right in the Courts of Native Cochin and then to apply to the Resident for the issue of a certificate in his name, or to sue the Government of India, making the respondent a party to the suit. We observe that under Order XI, Rule 1, Clause (g) of the Judicature Act this is the course which would be obligatory in England. He has pursued neither of these courses. The second appeal cannot be supported and is dismissed with

costs.