

# Tamil Nadu Impartible Estates Act, 1904

TAMILNADU

India

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### Act 2 of 1904

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Tamil Nadu Impartible Estates Act, 1904(Tamil Nadu Act 2 of 1904)Statement of Objects and Reasons - Tamil Nadu Impartible estates Act, 1904 (Tamil Nadu Act II of 1904). This Act was intended to provide a permanent enactment to take the place of the Madras impartible Estates Act, 1902, the operation of which, extended by Madras Act II of 1903, was to expire on the 31st March, 1904. As explained in the statement attached to the Bill which became Madras Act II of 1903, the Legislature wanted to secure, as far as it was practicable to do so, the preservation of the ancient Zamindaries of this Presidency. The general objects and reasons for the legislation were set out in that statement. The Act declares the estates named in the schedule to be impartible and goes on to lay down the law for impartible estates generally. Clause 4 defines the powers of alienation of the holder of an impartible estate. Under the Mitakshara law which governs the devolution of Hindu estates in this Presidency, the powers of alienation of the managing member or, at all events, the power to make the estate liable for the debts contracted by firm, whether or not incurred for necessary family purposes are practically unrestricted if he happens to be the father or grandfather of the other coparceners, it being the pious duty of the sons to pay the debts of the father in all circumstances, except where such debts have been contracted for immoral or illegal purposes; while coparceners other than the father or grand-father who are in the management of joint Hindu family property can incur binding debts or alienate family property only for necessary family purposes or for purposes beneficial to the estate. It is these restricted powers that it is proposed to confer on the holder of an impartible estate. The holders of all the estates included in the schedule are Hindus. The explanation to this clause instances some of the cases in which the proprietor shall be competent to alienate portions of his estate. The clause was believed to represent the law as it then stood, and was inserted to forestall vexatious litigation. Clause 5 is intended to enable the holder of the estate to alienate portions thereof under certain special conditions to pay the Government revenue. Clause 6 of the Bill is intended to save past alienation and debts. Clause 7 reproduces the provisions of section 2 of Madras Act II of 1903 regarding the period of limitation applicable to suits and legal proceedings other than suits stayed and to appeals barred by Madras Act II of 1903, and those regarding estates which may be finally decided in such suits or proceedings to be partible. Please see Fort St. George Gazette, 1903, Part IV, page 343; far Report of the Select Committee, see ibid, Part IV, page 383 and for Proceedings in Council, see ibid, Part IV page 364;

and *ibid*, 1904, Part IV, page 49. This Act shall cease to be in force in estates notified under the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 (Tamil Nadu Act XXVI of 1948), by virtue of section 66 of that Act. Received the assent of the Governor on the 8th February 1904, and that of the Governor-General on the 1st March 1904 and first published in the Fort St. George Gazette, dated the 8th March 1904. An Act to declare that certain estates are impartible and that the proprietors of such estates cannot exercise unrestricted powers of alienation in respect thereof. Preamble. - Whereas it is expedient to amend the law in regard to the impartibility and inalienability of certain estates. It is hereby enacted as follows:

## 1. Short title.

(1) This Act may be called the [Tamil Nadu] [Substituted for 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969, which came into force on the 14th January 1969.] Impartible Estates Act, 1904. (2) Extent. - It extends to the whole of the Presidency of [State of Tamil Nadu] [Substituted for 'Presidency of Madras' by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January 1969.] [xxx] [The words 'except the districts of Malabar and South Kanara were omitted by the Madras Adaptation of Laws Order, 1957.](3) Repeal. - On this Act coming into force, the Madras Impartible Estates Act, 1902 (Madras Act II of 1902), and the Madras Impartible Estates Act Continuance Act, 1903 (Madras Act II of 1903), shall be repealed. This Act shall be deemed to have been repealed in its application to the inam estate with effect on and from the notified date, if that estate had been governed by this Act immediately before that date by virtue of section 74 of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963 (Tamil Nadu Act 26 of 1963).

## 2. Definitions.

- In this Act, unless there is something repugnant in the subject or context,-(1) "Alienation" includes a temporary transfer such as a mortgage or a lease;(2) "Impartible estate" means an estate descendible to a single heir and subject to the other incidents of impartible estates in southern India;(3) "Proprietor of an impartible estate" means the person entitled to possession thereof as single heir under the special custom of the family or locality in which the estate is situated or if there be no such family or local custom under the general custom regulating the succession to impartible estates in southern India;[For the purposes of clause (c) of sub-section (2) of section 4 and of subsection (3) of that section, "estate" means(1) any permanently settled estate, whether a Zamindari, Jaghir, Mitta or Palaiyam;(2) any portion of such permanently settled estate which has been separately registered in the office of the Collector;(3) any unsettled Palaiyam or Jaghir;(4) any inam village of which the grant was made or confirmed by the [xxx] Government; or(5) any portion consisting of one or more villages, of any of the estates specified above in clauses (1), (2) and (3), which is held on a permanent under-tenure.

### 3. Estates deemed impartible.

- The estates included in the Schedule shall be deemed to be impartible estates.

### 4. Restriction on alienations of impartible estates.

(1)The proprietor of an impartible estate shall be incapable of alienating or binding by his debts, such estate or any part thereof beyond his-own lifetime unless the alienation shall be made or the debt incurred, under circumstances which would entitle the managing member of a joint Hindu family, not being the father or grandfather of the other co-parceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other co-parceners independently of their consent.(2)Permissible alienations. - In particular and without prejudice to the generality of the foregoing provisions, the proprietor of an impartible estate is hereby expressly authorized -(a)to grant sites for public charitable and public religious institutions;(b)to grant mining or quarrying leases for terms not exceeding sixty years and leases of the pannai or home farm lands for terms not exceeding fifteen years, provided that every such lease -(i)shall be by registered deed and shall be made to take effect in possession not later than twelve months after its date;(ii)shall reserve the best rent that can reasonably be obtained, regard being had to any money laid out or to be laid out by the lessee for the benefit of the estate, but not to any fine or premium paid or to be paid in consideration of granting such lease;(iii)shall contain a covenant by the lessee for payment of rent and a condition of re-entry on the rent not being paid within a time therein specified not exceeding three months;(iv)if a mining or quarrying lease, may make the rent ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of in or from such estate, or any other land, or by or according to any facilities given in that behalf, and may reserve a fixed or minimum rent with or without power for the lessee, in case the rent according to acreage or quantity in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent;(c)[ (i) to exchange the impartible estate or any part or parts thereof for an estate or estates or part or parts of an estate or estates; and [Added by section 3 of the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act I of 1934)](ii)to sell the impartible estate or any part or parts thereof and acquire with the proceeds of such sale an estate or estates or part or parts of an estate or estates:Provided that the Collector of the district in which the impartible estate which is to be exchanged or sold or the part or parts thereof which is or are to be exchanged or sold is or are situated, has granted a certificate or where the impartible estate or part or parts thereof affected is or are situated in more than one district, the / Collectors of all the districts concerned have granted a certificate, to the effect that the transaction of exchange or of sale and acquisition, as the-case may be, is advantageous to and for the benefit of the impartible estate or, where the Collector or any of the Collectors concerned have refused to grant such a certificate, the Board of Revenue, on appeal made to it within a time to be prescribed by rules under sub-section (4), has granted a certificate to the effect that the transaction is advantageous to and for the benefit of the impartible estate.] [Added by section 2 of the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act I of 1934).](3)[ The estate or estates or part or parts of an estate or estates obtained in exchange for or acquired with the proceeds of the sale of an impartible estate or any part or parts thereof under clause (c) of

sub-section (2) shall, for all the purposes of this Act, be deemed to be an impartible estate or to form part or parts of the impartible estate, as the case may be.] [Inserted by section 3(2) of the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act I of 1934).](4)[ The [State Government] [Inserted by section 3(2) of the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act III of 1934).] may make rules for regulating the grant of certificates under the proviso to clause (c) of sub-section (2) and generally for carrying out the purposes of the said clause.](5)[ Exception. - Nothing in this section shall be construed to restrict the power of the owner of an impartible estate to provide for the succession thereto in default of heirs.] [The original sub-section (3) was renumbered as sub-section (5) by section 3( 2) of the Madras Impartible Estates (Amendment) Act, 1934 (Madras Act III of 1934).]

## **5. Procedure in regard to grant of certain leases.**

- When the proprietor of an impartible estate proposes to grant any such lease as specified in section 4, subsection (2), clause (b), it shall be lawful for such proprietor or the intending lessee to submit a draft of the proposed lease to the Board of Revenue for approval, and the Board, if satisfied after making such inquiry and giving such notices as it thinks fit, that the terms of such draft lease are in accordance with the provisions of this Act, may approve thereof and affix its seal thereto in token of approval; and if the proprietor shall thereafter execute the lease in the terms of the draft lease so approved and sealed, such lease shall be deemed to have been duly granted in accordance with the provisions of this Act.

## **6. Conditions of alienations of impartible estates for payment of land revenue due to Government.**

- Notwithstanding anything hereinbefore contained, the proprietor of an impartible estate shall be incapable of alienating, or binding by his debts such estate or any part thereof beyond his own lifetime for the payment of land-revenue due to Government, unless he shall have first obtained the consent in writing of the Collector of the district in which the estate is situated. Such consent shall not be refused unless in the opinion of the Collector the case is one in which the land-revenue due to Government may be realized by management of the estate under the provisions of the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969, which came into force on the 14th January 1969.] Revenue Recovery Act, 1864 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969, which came into force on the 14th January 1969.] Act II of 1864).

## **7. Saving clause.**

- This Act shall not affect alienations made or debts incurred before the coming into force of this Act, and shall cease to apply to estates or parts of estates which may hereafter be lawfully alienated otherwise than by temporary transfer.

## **8. Computation of period of limitation.**

(1) In computing the period of limitation applicable to suits and legal proceedings other than suits stayed and to appeals barred by the Madras Impartible Estates Act, 1902 (Madras Act II of 1902), the period during which such suits, proceedings or appeals were stayed or barred by the said Act shall be excluded, and all such suits, proceedings and appeals shall be, deemed to have been actively prosecuted during such period within the meaning of Section 52 of the Transfer of Property Act, 1882. (2) Exclusion of estates declared partible. - If in any suit, proceedings or appeal permitted to proceed by the Madras Impartible Estates Act Continuance Act, 1903 (Madras Act II of 1903), it be finally decided that any estate named in the Schedule attached to this Act is partible, such estate shall be deemed not to have been mentioned in the Schedule.

## **9. [ Persons entitled to maintenance out of the impartible estate. [Added by section 4 of the Tamil Nadu Act XII of 1934.]**

- Where for the purpose of ascertaining the succession to an impartible estate, the estate has to be regarded as the property of a joint Hindu family, the following persons shall have a right of maintenance out of the impartible estate and its income, namely:-(a) the son, [grandson, or] great-grandson, in the male line, born in lawful wedlock or adopted, of the proprietor of the impartible estate or of any previous proprietor thereof: Provided that where maintenance is payable to a son or grandson, by or under any decree or order of court, award, contract, family arrangement or other instrument in writing, and such instrument, expressly or by necessary implication, makes it clear that the maintenance is payable to such son or grandson as representing his branch of the family, it shall not be open to a son or grandson of such son, or to a son of such grandson, as the case may be, during the period for which such maintenance is payable, to claim maintenance either in his individual right or as representing his branch of the family; (b) the widow of any previous proprietor of the impartible estate so long as she does not remarry; (c) the widow of the son, grandson or great-grandson of the proprietor of the impartible estate or of any previous proprietor thereof, so long as she does not remarry, provided she has no son or grandson living; (d) the unmarried daughter born in lawful wedlock of the proprietor of the impartible estate or any previous proprietor thereof; and (e) the unmarried daughter, born in lawful wedlock, of a son or grandson of the proprietor of the impartible estate or of any previous proprietor thereof, provided she has neither father nor mother nor a brother living. Explanation. - Maintenance shall, where necessary, include a provision for residence and in the case of an unmarried daughter of the proprietor or any previous proprietor, a provision for the expenses of her marriage in accordance with the scale customary in the family.]

## **10. [ Amount of maintenance. [Added by section 4 of the Tamil Nadu Act of 1934.]**

(1) In determining the amount of maintenance payable to any of the persons mentioned in section 9, the court shall inter alia have regard to the following considerations, namely:-(i) the net income of the estate; (ii) the number of persons to be maintained out of the estate; (iii) the nearness of

relationship of the person claiming to be maintained;(iv)the other sources of income of the claimant; and(v)the circumstances of the family of the claimant.(2)The court shall so fix the amount of such maintenance that the total amount payable out of the estate by way of maintenance to the relations mentioned in section 9 shall not exceed one-fifth of the net income.]

**11. [ Family arrangements in satisfaction of claim to maintenance. [Added by section 4 of the Tamil Nadu Act XII of 1934.]**

- Notwithstanding anything contained in this Act, the proprietor of an impartible estate shall have power to enter into a bona fide family arrangement whereby in full satisfaction of the claim for maintenance of a particular branch, any property other than the impartible estate is allotted to that branch, and where such an arrangement has been entered into, no member of such a branch shall have any right after such arrangement to claim any maintenance from the estate.

**12. [ Right to maintenance under law or custom not to be affected. [Added by section 4 of the Tamil Nadu Act XII of 1934.]**

- Nothing contained in this Act shall affect the right to maintenance out of an impartible estate and the income thereof, of any other relations of the proprietor or any previous proprietor under any law or custom for the time being in force.]

**13. [ Power to declare maintenance to be a charge. [Added by section 4 of the Tamil Nadu Act XII of 1934.]**

- The award of maintenance under section 9 may be declared a charge upon any portion of an impartible estate or the income thereof.]

**14. [ Power of Court to vary maintenance. [Added by section 4 of the Tamil Nadu Act XII of 1934.]**

(1)Any decree for maintenance passed under this Act may be varied by the court if any of the facts and circumstances referred to in section 10 have undergone a material change.(2)Where the rate of maintenance periodically payable to any person mentioned in Section 9 out of an impartible estate has been fixed by a decree or order of court, family arrangement, award, contract or other instrument in writing, whether before or after the commencement of the Madras Impartible Estates (Second Amendment) Act, 1934 (Madras Act XII of 1934), it shall be lawful for the court to reduce such rate of maintenance in order to provide maintenance for neW claimants and to adjust it within the limits specified in sub-section (2) of section 10.]

**15. [ Sections 9 to 14 not affect prior contracts, etc. [Added by section 4 of the Tamil Nadu Act XII of 1934.]**

- Save as provided in section 14 nothing contained in sections 9 to 14, shall affect any contract, arrangement, award or decree of court entered into or made before the date of the commencement of the Madras Impartible Estates (Second Amendment) Act, 1934 (Madras Act XII of 1934) Provided that no decree made prior to the passing of the Madras Impartible Estates (Second Amendment) Act, 1934 (Madras Act XII of 1934), negating the right of any person to maintenance claimed in his own right or as representing his branch shall debar his descendants declared entitled to maintenance under section 9 from claiming such maintenance.]

## Schedule

North Arcot

South Arcot 1.2.3.4.

Chingleput 1.2.

Coimbatore 1.2.3.4.5.6.7.8.9.

Madurai 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.17.18.19.20.

Salem 1.2.3.4.5.

Tanjore 1.2.3.4.5.6.7.8.9.10.11.

Tinnelvely 1.2.3.4.5.6.7.8.9.10.11.12.13.14.15.16.17.

Trichinopoly 1.2.3.4.

Arni Jagir

Vettavalam.Kurumba Gounden Jagir.Ja

Kalahasti.Karvetnagar

Uttukuli.Samattur.Kottampatti.Poraviap

Ramnad.Sivaganga.Rettayambadi.Peraiu

Shulgagiri Palaiyappattu.Ankusagiri Pala

Gandaryakottai.Kallkottai.Konur.Sillattu

Ettiyapuram.SivagiriSettur.UrakkaduSir

Marungapuri.Kadavur.Turaiyur.Udaiyar