

## [73] APPELLATE CIVIL.

*The 7th October, 1880.*

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND  
MR. JUSTICE MUTTUSAMI AYYAR.

Sangaralingam Pillai .....(Plaintiff) Petitioner.\*

*Reference to arbitration by Court of Appeal—Civil Procedure Code, Section 582.*

Under Section 582† of the Civil Procedure Code, a Court of Appeal has the power, with the consent of the parties, of referring to arbitration matters in dispute in an appeal.

*Jaggessar Dey v. K. M. Dossee* (12 B. L. R., 266) dissented from.

In this case plaintiff sued to recover his share in a coffee estate from the defendants.

The Munsif decided in his favour. Defendants appealed.

The Subordinate Judge, at the instance of both parties, referred the matter to arbitration in January, and the award was submitted in July 1879.

Plaintiff put in a petition of objection charging the umpire with corruption, but failed to prove it. The suit was therefore dismissed in accordance with the award.

Plaintiff thereupon appealed to the High Court against the decision of the Subordinate Judge.

The appeal was dismissed.

Lastly, plaintiff put in this petition under Section 622 of the *Civil Procedure Code*, objecting to the validity of the award for various reasons which were not substantiated.

*M. O. Parthasaradi Ayyangar* for Petitioner, at the hearing, took a further objection, *viz.*, that the Appellate Court had no power to refer the matters in dispute in the appeal to arbitration, and referred to *Jaggessar Dey v. K. M. Dossee* (12 B. L. R., 266).

The Court (TURNER, C. J., and MUTTUSAMI AYYAR, J.) delivered the following

**Judgment** :—Entertaining all respect for the opinions of the learned Judges of the High Court of *Calcutta*, by whom the case [79] in 12 B. L. R., 266, was decided, we are not convinced by the reasons given by them for holding that an Appellate Court might not, with consent of the parties, refer the matters in dispute in the appeal to arbitration. But in the case before us the Court proceeded under the amended Code X of 1877, and having under that Code,

\* C. M. P. 455 of 1880 against the decree of the Subordinate Judge of Tinnevely, reversing the decree of the Additional District Munsif of Tinnevely, dated 21st October 1879.

Appellate Court to have same powers as Courts of original jurisdiction.

†[Sec. 582 :—The Appellate Court shall have the same powers in appeals under this chapter as are vested by this Code in Courts of original jurisdiction in respect of suits instituted under Chapter V.

The provisions hereinbefore contained shall apply to appeals under this chapter so far as such provisions are applicable].

Section 582, to perform as nearly as may the same duties as are imposed on Courts of First Instance, the Lower Appellate Court was, in our opinion, fully justified in making the orders relating to the reference under the provisions of the Code.

The petitioners consented that a decision should be given by the majority of two arbitrators and an umpire.

This application is dismissed with costs.

**NOTES.**

[See (1885) 12 Cal. 173 ; (1891) 18 Cal. 507; (1888) 13 Bom. 119 for the recognition of the powers of an Appellate Court to refer the matter in dispute to arbitration at the instance of parties under Sec. 582 of C. P. C. of (1882) corresponding to Sec. 107 (2) and Or. 22, R. 11 of V of 1908.]

[3 Mad. 79.]

**APPELLATE CIVIL.**

*The 11th October, 1880.*

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE  
MUTTUSAMI AYYAR.

Ponnampilath Parapravan Kuthath Haji.....(Petitioner) Appellant

*versus*

Ponnampilath Parapravan Bavotti Haji.....(Counter-Petitioner)

Respondent.\*

*Civil Procedure Code, Section 231* †—*Application to keep decree in force—Limitation Act, Section 179—Joint decree-holders.*

Although the Civil Procedure Code does not allow one of several decree-holders to apply for the partial execution of a joint decree, yet an application by one of such decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually, may keep in force the decree as being an application according to law.

THIS was an application by a judgment-debtor for the refund of Rupees 697-10-0, recovered by the decree-holder *Bavotti Haji* in execution of a joint decree obtained by him and three other persons.

The amount was recovered by process of execution issued in April and July 1878. On 4th February 1879 three years had [80] elapsed since the last application to execute the *whole* decree. The Subordinate Judge held that the judgment-debtor was entitled to have the amount refunded on the ground that

† C. M. S. A. 24 of 1880 from the order of J. W. Reid, District Judge of North Malabar, reversing the order of the Subordinate Judge, dated 22nd November 1879.

† [Sec. 231 :—If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed [on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.]