

the leprosy in the case before us was not congenital, and even if the Hindu law could be extended to the case, it is not applicable on the facts found.

CHANDU
v.
SUBBA.

We do not consider that the appeal can be supported, and must, therefore, dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

SANKUMANI (PLAINTIFF), APPELLANT,

1889.
October 24.

v.

IKORAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

Jurisdiction by consent—Waiver of want of jurisdiction—Civil Procedure Code, s. 25, order made under, without notice to the party not applying.

A suit for land was filed in 1883 in the Subordinate Court of Cochin. In 1884 the Government, by a notification under Act III of 1874, transferred the district where the land was situated from the jurisdiction of that Court to that of the Subordinate Court of Calicut, whereupon the plaintiff applied to the District Court to transfer the case to the file of the first-mentioned Court under s. 25 of the Code of Civil Procedure. The District Judge granted the application without notice to the defendants. The defendants went to trial, and also preferred an appeal against the decree, which was passed in favour of the plaintiff, without objection to the jurisdiction of the Court.

In execution of the above decree, (which was affirmed on appeal) the plaintiff was obstructed. He, therefore, filed the present suit against the obstructors under the provisions of s. 331 of the Code of Civil Procedure, and they pleaded that the decree sought to be executed had been passed without jurisdiction:

Held, (1) that the want of notice to the defendants of the application made under s. 25 of the Code of Civil Procedure was immaterial;

(2) that the defect, if any, of the jurisdiction of the Court passing the decree had been waived by the defendants, and that the present defendants were precluded from availing themselves of it.

APPEAL against the decree of L. Moore, District Judge of South Malabar, in appeal suit No. 259 of 1888, reversing the decree of E. K. Krishnan, Subordinate Judge of Calicut, in original suit No. 24 of 1887.

The plaintiff obtained a decree for possession of certain land

* Second Appeal No. 468 of 1889.

SANKUMANI
v.
IKORAN.

in original suit No. 25 of 1883 on the file of the Subordinate Court of Cochin. The decree was dated 12th March 1884.

The execution of this decree was resisted as regards part of the land by the present defendants, against whom he accordingly filed this suit under the provisions of section 331 of the Code of Civil Procedure.

The defendants pleaded, *inter alia*, that the Subordinate Court of Cochin had no jurisdiction to pass the decree sought to be executed by reason of a notification of Government, Judicial Department, No. 40, published in *Fort St. George Gazette* of 2nd February 1884, whereby the Governor in Council notified under Act III of 1873, ss. 4 and 10, that the Court of the Subordinate Judge at Cochin had, from 11th January 1884, ceased to exercise jurisdiction, and that the Subordinate Judge at Calicut had, from the same date, been invested with jurisdiction over the seven Manaprom amshoms in which the land in question in original suit No. 25 of 1883 and in the present suit was situated.

On the other hand it was argued that exhibit T, which was an order made by the District Judge of South Malabar on miscellaneous petition No. 93 of 1884, gave jurisdiction to the Subordinate Court at Cochin. That petition was presented by the plaintiff, and prayed that the District Judge should issue an order to the Subordinate Judge at Cochin to hear and determine original suit No. 25 of 1883 himself and not transfer it to the Subordinate Court at Calicut. The order of the District Judge on this petition, which was made without notice to the defendants, was as follows:—"Under section 25 of the Code of Civil Procedure, original suit No. 25 of 1883 is transferred for disposal to Subordinate Court, Cochin." It appeared that the suit was defended in the Subordinate Court at Cochin and an appeal preferred against the decree of that Court without objection taken as to jurisdiction.

The present suit was dismissed by the District Munsif on the ground that the decree sought to be executed had been passed without jurisdiction, and his decree was affirmed on appeal by the District Judge.

The plaintiff preferred this second appeal.

Sundara Ayyar for appellant.

Sankaran Nayar for respondents.

JUDGMENT.—We are unable to concur with the opinion of the Courts below that the decree of the Cochin Subordinate Court in

original suit No. 25 of 1883 is bad in law. The notice prescribed by section 25 of the Civil Procedure Code is intended for the benefit of the party in the suit other than the party applying for transfer, and defendants in the above suit would have been entitled to object to the transfer on the ground that notice had not been given. But admittedly they by their conduct in going to trial submitted to the jurisdiction, and not only suffered the Cochin Court to pass a decree against them, but also appealed from that decree without taking any objection to the jurisdiction of the Court. The only question, therefore, is whether they were at liberty to waive their objection to the validity of the order by which the Cochin Subordinate Court acquired jurisdiction. In *Ledgard v. Bull*(1) and *Minakshi v. Subramanya*(2), the Privy Council have pointed out that in cases in which a Court has no inherent jurisdiction, waiver will not confer jurisdiction; but in cases in which a Court has jurisdiction, but there has been some irregularity in the initial proceedings upon which it exercised jurisdiction, the defect is one which can be cured by waiver, though it may be made a valid ground of objection to the exercise of jurisdiction. It must not be overlooked that under section 25 the District Court can of its own motion transfer, and the provision, therefore, as to notice is one in the nature of procedure and practice as observed in *Park Gate Iron Company v. Coates*(3) with reference to 13 and 14 Vict. Cap. 61, sect. 14, and in *Graham v. Ingleby*(4) with reference to 4 Ann. Cap. 16, sect. 11. It is, therefore, clear that as the objection was not taken by the parties in the suit, but on the contrary waived, any defect in the order conferring jurisdiction on the Cochin Court must be held to have been cured. We have also to observe that both the Lower Courts have omitted to consider that the notification of Government transferring jurisdiction over the Manaprom amshoms was dated 2nd February 1884, whereas the suit was filed in 1883. At the time, therefore, of the notification the Cochin Court had jurisdiction to decide original suit No. 25 of 1883, and such jurisdiction was apparently not taken away as regards pending suits by the notification of Government. The order of Government transferring jurisdiction is not before us, and in its absence we do not desire to

(1) L.R., 13 I.A., 134.
(3) L.R., 5 C.P., 634.

(2) I.L.R., 11 Mad., 26.
(4) 1 Ex., 651.

SANKUMANI
v.
IKORAN.

express any opinion as to whether the jurisdiction in pending suits was validly taken away. Nor do we think that the present defendants, who were no parties to the decree in original suit No. 25 of 1883, and as between whom and the plaintiff the execution creditor in the Cochin Subordinate Court, the Calicut Subordinate Court has jurisdiction, are entitled to rely on the provisions of section 25 of which the defendants in original suit No. 25 of 1883 did not avail themselves and thereby call in question the jurisdiction of the Cochin Subordinate Court.

We set aside the decree of the Lower Appellate Court and remand the appeal to be heard and determined on its merits. Costs to follow result.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusami Ayyar.*

1889.
November 27.
December 12.

RANGANAYAKAMMA AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

ALWAR SETTI (PLAINTIFF), RESPONDENT.*

Hindu Law—Vaisyas—Requisites of adoption—Adoption during pollution of adoptive parent—Contract Act—Act IX of 1872, ss. 15, 16—Coercion—Undue influence.

The minor widow of a deceased Hindu of the Komati or Vaisya caste (who had authorized her to adopt a son) corporeally accepted a boy as in adoption from his natural father who (*semble*) belonged to a different gotram from her deceased husband. There were no formal declarations of giving and taking the child, and *datta homam* was not performed. At the time when the child was handed over to the widow her husband's corpse was still in the house, and the relatives of the child and other members of the caste obstructed the removal of the corpse until the child had been accepted as above and the widow had executed a deed of adoption :

Held, that there was no valid adoption by the widow.

Per cur: We cannot say that obstructing the removal of a corpse by the deceased's widow or her guardian, unless she made an adoption and signed a document is not an unlawful act or not an act such as is defined by section 15 or 16 of the Indian Contract Act.

Dicta in Mahashaya Shosinath Ghose v. Srimati Krishna Soondari Dasi(1) as to incidents of a formal adoption discussed.

* Appeal No. 143 of 1888.

(1) L.R., 7 I.A., 250.