

SUBBAMMAL  
v.  
VENKATA-  
RÁMÁ.

Defendants Nos. 1, 2 and 3 preferred this second appeal; the plaintiff and defendant No. 4 being joined as respondents.

*Venkatrámayyar* and *Seshagiri Ayyar* for appellants argued that the assignment was invalid for want of notice to the mortgagors under s. 131 of the Transfer of Property Act, and that in any case the plaintiff was only entitled to a decree for the purchase money and interest under s. 135 of that Act.

*Subramanya Ayyar* for respondents pointed out, as to the contention that the plaintiff could not recover the whole claim, that no payment or tender of the purchase-money and interest had been proved.

The further arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J.)

JUDGMENT.—The principal point argued before us is that no notice of transfer was given under s. 131 of the Transfer of Property Act. This point was not raised at settlement of issues.

We follow the rulings in *Lala Jugdeo Sahai v. Brij Behari Lal*(1) that the transfer came into operation when the debtors became aware of it (and he became aware of it when the action was brought), and in *Grish Chandra v. Kashisauri Debi*(2) that plaintiff is not debarred from recovering the full amount.

The second appeal is dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Kernan and Mr. Justice Parker.*

ÁLWAR AND ANOTHER (PLAINTIFFS), APPELLANTS,  
and

SÉSHAMMÁL AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Civil Procedure Code, ss. 98, 99—Decree passed in a restored suit pending appeal against order of restoration.*

A suit was filed in a Múnsif's Court, but neither party appeared for the hearing, and the suit was dismissed. The Múnsif subsequently on review made an order restoring the suit and eventually decreed for the plaintiff. The defendant in the meanwhile appealed to the District Court against the order of restoration, and after

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(1) I.L.R., 12 Cal., 505.

(2) I.L.R., 13 Cal., 145.

\* Second Appeal No. 1112 of 1886.

the date of the decree, the District Court made an order allowing the defendant's appeal. The plaintiff appealed to the High Court and the order of the District Court was reversed and the order of restoration upheld :

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\* *Held*, that the Múnsif's decree was not passed without jurisdiction.

SECOND appeal from the decree of S. T. McCarthy, Acting District Judge of Chingleput, reversing the decree of N. R. Narasimhayyar, District Múnsif of Trivellóre, in Original Suit No. 830 of 1883.

This was a suit to recover principal and interest due on a mortgage bond executed by defendant No. 1 in favor of the minor plaintiff's father. \* On 12th January 1885, the Múnsif dismissed the suit under s. 98 of the Code of Civil Procedure; but on 21st January he made an order restoring the case of the file of the Court, and eventually passed a decree in favor of the plaintiffs on 20th March. Meanwhile an appeal had been preferred against the order of 21st January, and the late District Judge heard the appeal and reversed the order appealed against on 18th April. The defendants appealed against the Múnsif's decree of 20th March, alleging as their first ground of appeal that the decree of the Lower Court was void in that the Múnsif's order of restoration had been set aside on appeal. S. T. McCarthy, the Acting District Judge, heard the appeal and reversed the decree appealed against as having been passed without jurisdiction, but expressed an opinion favorable to the plaintiffs on the evidence.

The plaintiffs preferred this second appeal; the order of the District Court, dated 18th April, having been meanwhile reversed by the High Court. See *ante*, p. 270.

*Subramanya Ayyar* for appellants argued that the order of the District Judge setting aside on appeal the Múnsif's order of 21st January having been made subsequently to the Múnsif's decree, the decree was not passed without jurisdiction.

*Srirangácharyár* for respondents argued that the Múnsif's decree was *ultra vires*.

The Court (Kernan and Parker, JJ.) delivered the following

JUDGMENT:—The District Judge on 18th April 1885 reversed the order of the Múnsif to restore of the 21st January 1885, and in appeal reversed the decree of the Múnsif of the 20th March 1885. The appeal against the decree of the Múnsif was filed on the 8th of May 1885 and the hearing was on 1st September 1886. By the decree the District Judge reversed the decree of the Múnsif on the ground that the decree of his predecessor

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of April 1885 reversed the order to restore the suit, the effect of which was that the suit was no longer in Court and the decree of the Múnsif was wrong.

The present District Judge expressed an opinion in favor of the plaintiff on the merits, in order that the Court might, if it felt justified, act on that opinion. But we cannot do so, as the District Judge had no jurisdiction to pronounce such an opinion as long as the decree of his predecessor stood.

We have reversed the decree of 18th April 1885. Therefore the order of restoration stands and the decree of the Múnsif made before the decree of 18th April 1885 stands.

We reverse the decree of 1st September 1886 and direct the District Judge to rehear the appeal on the merits, but not on the first ground of appeal which we have already decided. Costs of this Appeal to be paid by the respondents to the appellants and the costs of the appeal to the Lower Appellate Court and of the original suit are to abide the result of the suit.

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## APPELLATE CIVIL.

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

GANAPATI (DEFENDANT), APPELLANT,

and

SÍTHÁRÁMÁ (PLAINTIFF), RESPONDENT.\*

1887.  
March 28, 29.

*Civil Procedure Code, s. 561—Appeal from appellate decree disallowing memorandum of objections—Limitation Act—Act XV of 1877, s. 12—Karnam—Rights of de facto karnam.*

A filed a plaint on 28th June 1882 for a declaration of his title as karnam of a village and for arrears of dues payable to him as such, including those for fasli 1288, which accrued due on 1st July 1879. His family had held the office and discharged its duties for three generations, but there was no evidence of any formal appointment of A or his ancestors :

*Held*, that the plaintiff was entitled to the dues as *de facto* karnam, and his claim was not barred in respect of any of the arrears claimed.

*Per cur.*—The preliminary objection taken by the respondent that no second appeal lies from so much of the decree of the Subordinate Judge as disallowed the objections filed by the appellant under s. 561 of the Code of Civil Procedure is without weight.

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\* Second Appeal No. 361 of 1886.