APPELLATE CIVIL.

Before Mr. Justice Parker.

1886. Nov. 17, 25.

VENKATÉSWARA, *in re.**

Act XX of 1863, s. 18—Civil Procedure Code, s. 622—Order refusing permission to sue not appealable, nor subject to revision under s. 622 of the Code of Civil Procedure.

An order passed under s. 18 of Act XX of 1863, refusing leave to sue, is not appealable, nor if the Judge has exercised his discretion, liable to revision under s. 622 of the Code of Civil Procedure.

APPLICATION under s. 622 of the Code of Civil Procedure to set aside an order of T. Weir, District Judge of Madura, refusing permission to one Venkatéswara Ayyan to bring a suit under s. 18 of Act XX of 1863 against the members of the Madura Temple Committee.

Mr. *Brown* for petitioner.

It was contended that even if the application under s. 622 would not lie, the order was appealable.

The Court (Parker, J.) delivered the following

JUDGMENT :—This is an application under s. 622 of the Code of Civil Procedure, asking the Court to revise the order of the District Judge of Madura refusing leave to file a suit under s. 18, Act XX of 1863. The learned counsel referred to the decisions in appeals 48 of 1885 and 49 of 1886, urging that these appeals had not been argued, and pointing out that an appeal had been allowed against an order under s. 5 of the same Act ; *Sultan Ackeni* v. *Shaik Bâva Malimiyar*.(1)

The decisions quoted followed the Full Bench decision of this Court in Civil Revision Petition 101 of 1882 (*a*) given on March

* Civil Revision Petition 243 of 1886.

(1) I.L.R., 4 Mad., 295.

(*a*) Turner, C.J. (Innes, Kernan, Kindersley and Muttusâmi Ayyar, JJ., concurring). The petitioner applied to the District Court, under Act XX of 1863, s. 18, for leave to file a suit under the Act.

The Judge refused leave. The petitioner then applied to this Court, under s. 622 of the Civil Procedure Code complaining that the Judge had referred his application on grounds other than were contemplated by the Act.

It was objected that no application lay to this Court, under s. 622, inasmuch as the order is open to appeal.

The question referred to the Full Bench is whether or not an appeal lies from the grant or refusal of leave to sue.

21st, 1883, but which by an oversight would appear not to have been reported.

In that decision the case reported at IV Madras, 295, was discussed and was distinguished from the present on the ground that it was a proceeding analogous to a decree in a suit. The grant or refusal of leave under s. 18 of the Act, to institute proceedings, is not analogous to a decree, but the sanction is a statutory condition precedent to the exercise of the right of suit.

In *Kavirája Sundára Múrtiya Pillai* v. *Nalla Náikan Pillai*, 3 M.H.C.R., 93, this Court held that no appeal lay against a grant of leave, and that decision the High Court of the North-West Provinces has approved and followed ; *Hajee Kaheb Hossin* v. *Sheikh Deen Ali*, 4 N.W.P., 3.

The Legislature, in conferring on parties interested facilities for the institution of suits against persons charged with the management of temple property, has imposed the condition that leave should be obtained from the principal Court of original civil jurisdiction in the district. The Act directs that Court, on the perusal of the application to determine whether there are sufficient *primâ facie* grounds for the institution of a suit, and if in the judgment of the Court there are such grounds, to give leave for its institution. It is to be inferred from the language of the Act that the Legislature did not intend that the grant or refusal of leave should be interfered with by an Appellate Court. A suit cannot be instituted under the Act without leave of the Court mentioned in the Act, and if leave has been given by that Court, the condition imposed by the Legislature has been complied with.

The grant of leave by the Appellate Court would not satisfy the requirements of the Act ; the refusal of leave by the Appellate Court would not override the sanction accorded by the Court mentioned in the Act. It is left to the discretion of the Court empowered by the Act to determine, whether or not there exist *primâ facie* grounds for the institution of a suit, and the Appellate Court has no power to constrain the judgment of the prescribed Court to pronounce affirmatively or negatively, in accordance with the views of the Appellate Court.

Where the Legislature intends that the Appellate Court shall have concurrent power with the Court of original jurisdiction to grant sanction to the institution of proceedings, it has expressly conferred the power.

It is, however, argued that an appeal is given by the provisions of the Code of Civil Procedure, enacting that the procedure prescribed by the Code shall be followed in all proceedings in any Court, other than suits and appeals, s. 647, that except when otherwise expressly provided by that Code or by any other law for the time being in force, an appeal shall lie from the decree of a Court exercising original jurisdiction, and that the refusal or grant of leave to institute a suit under the Act is a decree.

It was held by this Court in *Sultan Aekeni Sahib* v. *Shaik Bâva Malimiyar*, I.L.R., 4 Mad., 295, that in virtue of the sections of the Civil Procedure Code above referred to, an appeal lay from an order passed by the District Court, under s. 5 of the Act appointing trustees, on the ground that the order was analogous to a decree as defined in the Code of Civil Procedure. We are, however, unable to hold that the grant or refusal of leave under s. 18 of the Act to institute proceedings of a special character is analogous to a decree.

The sanction is a statutory condition precedent to the exercise of the right of suit and not an adjudication of any matter *inter partes* on a right claimed, and, on this ground, we hold that no appeal is given by the Procedure Code.

The case will be returned to the Division Bench for the disposal of the application, under s. 622.

VENKATÉSWARA, *in re.*

There is, therefore, no appeal, and as the Judge has not declined jurisdiction, but has merely exercised a discretion vested in him by law, there is no ground for the interference of this Court on revision.

The petition is therefore dismissed.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Parker.

1886. Oct. 25, 28.

SESHAYYA AND OTHERS (PLAINTIFFS), APPELLANTS,

and

ANNAMMA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Limitation Act, sch. II, art. 132—Registered hypothecation bond—Personal remedy barred after six years.

Article 132 of sch. II of the Indian Limitation Act, 1877, by which a period of 12 years is allowed to enforce payment of money charged on immovable property, refers only to suits to enforce payment by sale of the property charged and not to a claim to enforce the personal remedy on a registered bond by which immovable property is pledged as security for the debt.

APPEAL against the decree of W. F. Grahame, District Judge at Cuddapah, modifying the decree of M. Jayaram Ráu, District Múnsif of Nandalúr, in suit 176 of 1885.

In 1885, the plaintiffs, Bandaru Seshayya and three others, sued the defendants, Kuravi Annamma and Ravanayya, to recover Rs. 858-4-0, principal and interest, due under a registered bond of 1873 executed by Kesava Bhotlu, deceased, the undivided brother of Krishnayya, deceased husband of defendant No. 1.

By the bond certain land was made security for the payment of the debt.

Defendant No. 1 was alleged to have succeeded to, and taken possession of, the estate of Kesava Bhotlu. Defendant No. 2 was made defendant as being a distant dayadi of Kesava Bhotlu.

The Múnsif decreed that the defendants should pay the amount sued for before January 1st, 1886, and in default that the property pledged should be sold, and that if any balance remained

* Second Appeal 571 of 1886.