

The second appeal having come on again for final hearing the Court delivered the following

ADAKKALAM  
v.  
THEERTHAN.

JUDGMENT:—It is contended that plaintiff had no knowledge of the tender, but we consider that having knowledge of the agreement he was put upon enquiry to ascertain whether the tender had been made, and whether there was any objection to his purchase on that ground. He did not go into the box to explain the matter. We cannot in this appeal consider plaintiff's claim for repayment of purchase-money. We reverse the decree of the Lower Appellate Court and restore that of the Subordinate Judge. The appellant is entitled to his costs in this Court and in the Lower Appellate Court.

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### APPELLATE CIVIL.

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

CHERU KURUP (DEFENDANT), APPELLANT,

v.

CHERU KANDA KURUP (PLAINTIFF), RESPONDENT.\*

1889.  
April 9.

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*Civil Procedure Code, s. 624—Who may review judgment—Grant of application for review.*

An application for review of judgment was presented on other grounds than those specified in s. 624 to a District Munsif who had delivered the judgment, and he thereupon ordered the decree to be produced. The District Munsif having resigned, his successor heard and determined the application:

*Held*, it was not competent to the District Munsif who had not delivered the original judgment to entertain the application for review.

SECOND APPEAL against the decree of Lewis Moore, Acting District Judge of South Malabar, in appeal suit No. 74 of 1888, affirming the decree of N. Sarvothama Row, District Munsif of Calicut, in original suit No. 192 of 1886.

An application by the decree-holder in original suit No. 341 of 1885, made under section 331 of Civil Procedure Code, having been registered as a suit between the decree-holder and the claimant came on for hearing before O. Chandu Menon, District Munsif of Calicut, and was dismissed with costs on 29th September 1886.

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\* Second Appeal No. 739 of 1886.

CHERU  
KURUP  
v.  
CHERU  
KANDA  
KURUP.

An application for review was then presented, and on 1st October the District Munsif made an order thereon as follows: "Produce copy of the decree."

The matter came on for determination before the successor in office of the District Munsif above referred to who granted a review and passed a decree for plaintiff as prayed for in the petition. The decree was affirmed on appeal by the Acting District Judge, against whose decree the defendant preferred this second appeal.

*Sankaran Nayar* for appellant.

*Govinda Menon* for respondent.

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

JUDGMENT.—Two points have been argued on behalf of the appellant, but it is sufficient to express an opinion on the first only, which is that under section 624 of the Civil Procedure Code, it was not competent to the District Munsif who had not delivered the original judgment to entertain the application for review made on the plaintiff's behalf. The District Judge observes that it was not shown that any new and important evidence had been discovered, and in this respect the respondent's Vakil has not succeeded in showing that the District Judge was wrong. But the District Judge held that as the application was in the first instance presented to Mr. Chandu Menon, and he had thereupon ordered the decree to be produced, the terms of the section had been satisfied. The District Judge refers to a decision in *Karoo Singh v. Deo Narain Singh*(1) as an authority for the position taken by him and prefers to follow that case to the case of *Fancham v. Jhinguri*(2). But even the decision in *Karoo Singh v. Deo Narain Singh*(1) does not go so far as to hold that the mere physical reception of an application is sufficient, for there notice had been issued and in order to issue notice the matter had to be judicially considered.

We are of opinion that the order of the District Munsif was wrongly granted, and therefore reverse the decree of the Lower Appellate Court and dismiss the suit with costs to the appellant throughout.

(1) I.L.R., 10 Cal., 80.

(2) I.L.R., 4 All., 278.