

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

• LAKSHMANA (APPELLANT),

v.

PARAMASIVA AND OTHERS (RESPONDENTS).*

1889.
Feb. 15.

Civil Procedure Code, ss. 32, 588 (2)—Appeal against order that a plaintiff be made defendant.

An appeal lies under Civil Procedure Code. s. 588 (2), against an order under s. 32 that a plaintiff be made defendant.

APPEAL against the order of C. W. W. Martin, District Judge of Salem, on civil miscellaneous petition No. 617 of 1887 in original suit No. 8 of 1887.

The District Judge having made an order on 31st August directing that Lakshmana Goundan, defendant No. 6, be made a plaintiff, on 21st December set aside that order and directed that Lakshmana Goundan be made a defendant. Lakshmana Goundan preferred this appeal against the last-mentioned order.

Bhashyam Ayyangar and Desika Charyar for appellant.

Subramanya Ayyar for respondents.

The facts of the case and the arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Muttusami Ayyar and Parker, JJ.).

JUDGMENT.—An appeal does certainly lie and we are unable to accede to the contention that the cases specified in section 588, clause 2, do not include an order, whereby a party, who is plaintiff is made defendant, or a defendant made plaintiff. On the merits it is conceded that the order cannot be supported. The respondents admit the assignment in their application of 21st December 1887, and the assignors admitted the assignment through their vakil when the order of 31st August 1887 was made.

We do not see why the Judge set aside his own order without an application and when the assignment was admitted.

We set aside the order appealed against and restore the order of 31st August 1887. Appellant is entitled to his costs in this appeal.

* Appeal against Order No. 20 of 1888.