

**BANASAMI**  
**v.**  
**BASAVAPPA.**

recognize the transfer. The plaintiff could not have appealed from an order under section 232, as no appeal lies, and he was clearly entitled to be replaced in the same position as before. He could not anticipate that the Court would refuse to recognize the transfer, or that the transfer of the minor's interest by defendant would be held to be void. The defendant could not enter into the agreement without the leave of the Court (section 462, Civil Procedure Code); the contract was, therefore, incomplete, and the defendant failed to make in plaintiff's favour a valid transfer. The case appears to be within the rule laid down by the Privy Council in *Seth Jaidayal v. Ram Sahae*(1).

The decree of the District Court may be reversed and that of the District Munsif restored. The plaintiff is entitled to his costs in this and in the lower Appellate Court.

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## APPELLATE CIVIL.

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

VASUDEVA (PLAINTIFF No. 2), APPELLANT,

*v.*

MADHAVA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Court Fees Act—Act VII of 1870, s. 7, cl. 9—Civil Courts Act—Act III of 1873 (Madras), s. 13—Suits Valuation Act—Act VII of 1887, s. 11—Valuation of mortgage suit—Appeal.*

In a suit in the Court of a Subordinate Judge to redeem certain land on payment of Rs. 1,525, being a quarter of a debt for which it had been mortgaged together with other land, a decree was passed for redemption of part of the land, but the Court held that the plaintiff had not established his right to the rest. The plaintiff appealed to the High Court paying *ad valorem* Court fees computed on the value of the land exonerated only:

*Held*, (1) that the *ad valorem* Court fees should be computed on one-fourth of the mortgage debt;

(2) that the appeal lay to the District Court, and since Act VII of 1887, s. 11, did not apply to the case, the petition of appeal should be returned for presentation in that Court.

APPEAL against the decree of S. Subba Ayyar, Subordinate Judge of South Canara, in original suit No. 40 of 1889.

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(1) I.L.R., 17 Cal., 432.

\* Appeal No. 161 of 1891.

The facts of this case appear sufficiently for the purposes of this report from the following judgment of the High Court.

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The plaintiff preferred this appeal.

*Narayana Rau* for appellant.

*Pattabhirama Ayyar* for respondents Nos. 3, 4, 6 and 7.

JUDGMENT.—Two preliminary objections are taken to the hearing of this appeal (i) that the appeal has not been properly stamped and (ii) that the appeal lies to the District Court and not to the High Court.

The appeal is from a decree for the redemption of one-fourth of the property in the schedule on payment of one-fourth of the mortgage debt. The Subordinate Judge held that 15½ padipads claimed by defendants Nos. 3 to 18 as their jenm were not liable to the mortgage debt and belonged to the defendants Nos. 3 to 18. He decreed redemption of one-fourth part of the remainder of the property mortgaged. Plaintiff appeals on the ground that the decision of the Subordinate Judge so far as it relates to the 15½ padipads was erroneous. Instead of valuing the appeal as required by section 7, clause 9 of the Court Fees Act at one-fourth of the mortgage debt, he has fixed an arbitrary value of Rs. 200 on the 15½ padipads and paid Rs. 15 only. No explanation is given why this arbitrary value was fixed. The proper stamp duty payable is Rs. 110 and the appellant must pay the difference.

With reference to the second objection, we have no doubt that the appeal does lie to the District Court and not to the High Court. Under section 13 of the Civil Courts Act, this Court has appellate jurisdiction in cases heard by a Subordinate Judge only when the amount or subject-matter of the suit exceeds Rs. 5,000. In the present suit the value of the subject-matter is Rs. 1,625, the one-fourth of the mortgage debt. Our attention is drawn by appellant's pleader to section 11 of Act VII of 1889, and it is argued that the entire mortgage debt, which was taken by the Subordinate Judge to be the value of the suit for the purpose of jurisdiction, must be taken as the value which regulates the appeal. That section only applies to cases in which the objection taken on appeal refers to the improper valuation of a suit by a Court of First Instance or of appeal for jurisdictional purposes. It does not apply to a case like the present, in which we have to determine what was the real value of the subject-matter in the Subordinate Court. That was one-fourth of the mortgage debt and not

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the whole debt. The erroneous view taken by the Subordinate Judge is not rendered binding upon us by section 11, because we are not now deciding whether or not he had jurisdiction, but whether an appeal lies to this Court. The case *Vydinatha v. Subramanya*(1) has no reference to a suit for redemption of a mortgage.

The appeal lies to the District Court. We order therefore that, on payment of the deficient stamp duty, the appeal be returned for presentation in the proper Court. If the deficient stamp duty be not paid within one month from this date, the appeal will stand dismissed.

The respondents are entitled to their costs in this Court.

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## APPELLATE CIVIL.

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

KONNA PANIKAR (PLAINTIFF), APPELLANT,

v.

KARUNAKARA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1892.  
August 15.  
October 5.

*Evidence Act—Act I of 1872, s. 114—Estoppel—Transfer of Property Act—Act IV of 1882, s. 60—Partial redemption—Indivisibility of mortgage—Civil Courts Act—Act III of 1873 (Madras), s. 14.*

The karnavan of a Malabar tarwad, having the jenm title to certain land and holding the uraima right in a certain public devasom to which other land belonged, demised lands of both descriptions on kanom to the defendants' tarwad, and subsequently executed to the plaintiff a melkanom of the first-mentioned land and purported to sell to him the jenm title to the last-mentioned land. In a suit brought by the plaintiff to redeem the kanom, and to recover arrears of rent:

*Held*, (1) that, for the purposes of determining the jurisdiction of the Court of appeal, the value of the subject-matter of the suit was the aggregate value of the two heads of relief;

(2) that the defendants were not estopped from denying the plaintiff's right to redeem on the ground that he did not represent the devasom;

(3) that the plaintiff who had denied the title of the devasom in the Court of first instance, was not entitled to redeem the kanom as a whole, by virtue of his admitted title to part of the premises comprised in it.

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(1) I.L.R., 8 Mad., 285.

\* Appeal No. 79 of 1891.