

APPELLATE CIVIL.

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

RAMASAMI (PLAINTIFF), APPELLANT,

v.

BASAVAPPA (DEFENDANT), RESPONDENT.*

1898.
March 14, 16.

*Civil Procedure Code, ss. 232, 462—Sale of decree-holder's interest under a decree—
Right of vendee when execution is refused.*

The assignee for value of a decree obtained by two persons, of whom one was a minor, applied for execution of the decree, but his application was refused under Civil Procedure Code, s. 232. He now sued to recover from his assignor the sum paid by him for the assignment :

Held, that the plaintiff was entitled to recover.

SECOND APPEAL against the decree of W. J. Tate, Acting District Judge of Salem, in appeal suit No. 222 of 1891, reversing the decree of J. S. Krishna Ayyar, District Munsif of Krishnagiri, in original suit No. 22 of 1891.

The plaintiff was the assignee of a decree obtained by the defendant and an infant for whom he had been appointed guardian *ad litem*. The plaintiff paid Rs. 1,000 for the assignment of the decree to him. He was not, however, permitted to execute the decree, the Court considering, with reference to Civil Procedure Code, s. 232, that the interest of the infant decree-holder might be injured if effect were given to the assignment. The plaintiff now sued for the recovery of the Rs. 1,000 paid by him, and the District Munsif passed a decree in his favour. This decree was reversed by the District Judge.

The plaintiff preferred this second appeal.

Subramanya Ayyar and Rajagopala Ayyar for appellant.

Subramanya Ayyar for respondent.

JUDGMENT.—In order to facilitate the realization by defendant of a judgment-debt and to procure the release of the judgment-debtor from jail, the plaintiff paid Rs. 1,000 and took a transfer of the decree from defendant. The decree was, however, in favour of a minor as well as of defendant, and the Court refused to

* Second Appeal No. 1064 of 1892.

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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.

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.

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

* Appeal No. 161 of 1891.