reference has been made to an Allahabad case (*Manni Rasaundhan* v. *Crooke*(1)), in which it was held that where the Secretary of a Municipality had been sued in place of the President, the error was one of form only. But we observe that in this case the fifth defendant called the attention of the plaintiffs to section 27 at the outset, and that the plaintiffs' pleader was aware of the necessity of amending the plaint at the very first hearing. Not only was no application made to amend, but the error was persisted in even in the Appellate Court, and the grounds of appeal to that Court contained the mis-statement that it was by the order of the Munsif that the fifth defendant had been brought in. We do not, therefore, consider that this was a case of a *bonâ fide* mistake.

The second appeal fails and is dismissed with costs of fifth defendant.

PRIVY COUNCIL.

* P. C. 1893. March 24.

VENKATA VARATHA THATHA CHARIAR AND OTHERS (APPELLANTS)

and

ANANTHA CHARIAR AND OTHERS (RESPONDENTS).

[Petition for special leave to appeal from a decree of the High Court at Madras.]

Civil Procedure—Powers of an Appellate Court to remand for decision upon evidence—Adherence to the Code.

The sections in Chapters XLI and XLII, Civil Procedure Code, relating to the hearing of appeals, provide the only powers that can be exercised by an Appellate Court in remanding a suit for the consideration of evidence by the Court from which the appeal is preferred.

PETITION for special leave to appeal from a decree (28th July 1891) of the High Court, affirming a decree (24th April 1889) of the District Judge of Chingleput.

This application was made by members of a sect of Brahmans in Conjeeveram in the Chingleput district, known as the Vadakatars Tatha Chariars, between whom and the respondents, members

(1) I.L.R., 2 All., 296.

* *Present*:—LORDS WATSON, HOBHOUSE, and MORRIS, SIR R. COUCH, and the Honourable G. DENMAN.

VENKATA VARATHA THATHA CHARIAR v. ANANTHA CHARIAR.

of another sect of Brahmans known as the Tengalai Sri Vaishnava, a contest had arisen as to rights to recite muntras in temples at Conjeeveram and to receive the emoluments. The respondents, in their plaint filed on the 25th August 1886 in the Court of the District Munsif of Chingleput against sixty-five defendants, asked for a decree declaring that they had the exclusive right to what was termed the Thodakka Adya Pakam Miras, the recitation which they claimed make, and that the defendants should not obstruct them. Some of the defendants denied the plaintiffs' right and alleged their own exclusive right.

On the 4th April 1888, the District Munsif decreed substantially in favour of the plaintiffs. An appeal to the District Judge was dismissed by him on the 24th April 1889.

The petitioners then appealed to the High Court, drawing attention to some material documents. The High Court thereupon made an order in the following terms: "Without expressing any opinion as to the weight to be attached to the evidence, we must ask the District Judge to take these documents into his consideration and to submit a revised finding within four weeks from the date of the receipt of this order."

The District Judge, not the same officer, but another, who had succeeded to the office in the interval, submitted a conclusion upon the whole evidence "that the Adya Paka Miras belonged exclusively to the appellant Tatha Chariars"; he was of opinion that the right belonged to the present petitioners, an opinion the reverse of that of his predecessor. The first and fourth of the present respondents filed objections to this finding on the merits of the matter. The High Court, in its judgment of the 28th July 1891, after referring to the evidence, oral and documentary, including prior judgments that were relevant, declared that the Court was "unable to accept" the revised finding and dismissed the appeal with costs.

The defendants applied, under section 600, for a certificate that the case was a fit one for appeal to the Queen in Council, urging that, although the value of the suit was below Rs. 10,000, the decree affected a large section of the community and involved questions of law. This, on the 10th March 1892, the Court refused, and the defendants now petitioned for special leave.

Mr. *J.D. Mayne*, for the petitioners, submitted that the case might be viewed thus: The second, or revised, finding had taken

the place of the former judgment of the Lower Appellate Court, this being equivalent to a withdrawal of the first judgment. It was true that the High Court could not have overruled the former judgment on the facts, nor could they have substituted a judgment of their own. But, as the second finding stood exactly on the same footing as a finding in the District Judge's first judgment, no other objection could be taken to it than such as could be taken under Chapter XLII of the Code, on a second appeal, under sections 584 and 585.

Their Lordships intimated that the power of the High Court to remand for further consideration of the evidence was limited to, and defined by, the Code; that the second or revised judgment of the District Judge had been irregularly obtained, and had not been obtained upon an order authorized by any one of the sections 562 to 567 of the Code; and that the High Court had done right at last in rejecting it.

The petition must be rejected on that ground. On a further objection that the matter could hardly be considered the subject of a civil suit, it was observed that there was a question of emoluments, which could be preceded by a question of ritual without being barred by it.

Petition rejected.

Solicitors for the petitioners :—Messrs. *Lawford, Waterhouse & Lawford.*

APPELLATE CIVIL.

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

RAJARAM (PLAINTIFF), APPELLANT,

v.

KRISHNASAMI AND ANOTHER (DEFENDANTS NOS. 1 AND 3), RESPONDENTS.*

1892. October 3.

Transfer of Property Act—Act IV of 1882, *s.* 3—*Constructive notice—Notice of a deed, notice of its contents—Right of pre-emption reserved in family partition deed—Covenant by guardian of infant coparcener—Tender of price.*

The plaintiff and his step-mother, as guardian of her son, defendant No. 1, then an infant, made a division of the family property under a deed of partition by which

* Second Appeal No. 1820 of 1891.