

into Court within one week from the date of re-opening of this Court after the recess all the costs incurred hitherto by plaintiffs both in the Court below and on appeal, the decree of the learned Judge should be set aside and the case remanded for disposal afresh, after giving appellant an opportunity to prove the will set up by him, and that if the appellant fails to make such payment within the time thus allowed, the appeal shall stand dismissed with costs throughout.

RAHAM-
TULLAH SAHIB
v.
RAMA RAU.

APPELLATE CIVIL.

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

VENKATRAYER (PETITIONER),

v.

JAMBOO AYYAN (RESPONDENT).*

1892.
Nov. 25.

Appeal from insolvency order—Code of Civil Procedure—Act XIX of 1882, ss. 586 (17), 589—Act VII of 1888, s. 56—Act X of 1888, s. 3, cl. (a).

Bearing in mind that section 589 of the Code of Civil Procedure was passed to regulate the appellate jurisdiction in appeals from orders, the words 'Court subordinate to that Court' in section 3 of Act X of 1888 must be construed with reference to its appellate jurisdiction. Consequently a District Court has no jurisdiction to hear an appeal from an order in insolvency matters, in a case where it has no jurisdiction to hear an appeal in the suit itself, as when the subject-matter of the suit is more than Rs. 5,000 in value.

PETITION under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of J. A. Davies, District Judge of Tanjore, passed on appeal against order No. 94 of 1891, presented against the order of P. Doraisami Iyer, Acting Subordinate Judge of Tanjore, in insolvency petition No. 2 of 1890 (in connection with original suit No. 36 of 1886).

The defendant in original suit No. 36 of 1886 applied under section 344 of the Code of Civil Procedure to the Subordinate Judge of Tanjore, praying that he might be declared an insolvent, being unable to satisfy his debts, which amounted to over Rs. 9,000. The Subordinate Judge granted the petition. The

* Civil Revision Petition No. 17 of 1892.

VENKATRAJEEB plaintiff in the above suit, a scheduled-creditor of the petitioner, appealed to the District Judge against the order of the Subordinate Judge, who allowed the appeal on the ground that the Subordinate Judge had no jurisdiction in the matter, and that the application for insolvency should have been made to the District Court. The original petitioner preferred this appeal to the High Court against the order of the District Judge on the ground that the appeal should have been made to the High Court.

"
JANBOO
AYYAN.

Srirangachariar and *Parthasaradhi Ayyangar* for petitioner.

Ramachandra Ayyar and *Sivaswami Ayyar* for respondent.

JUDGMENT.—The question before us is whether the appeal lies to the District Court or to the High Court. The suit in which the order was passed was one in which the subject-matter was over Rs. 5,000 in value and the appeal in the suit therefore lay to the High Court.

As section 589 of the Code of Civil Procedure was first enacted, appeals from orders specified under section 588, clause 17, lay in all cases to the High Court. This was modified by Act VII of 1888, in which the Court to hear the appeal in the suit was made the Court to hear the appeal against the orders in insolvency matters. The section thus modified failed, however, to provide for cases in which orders in insolvency matters were passed by Courts of Small Causes, and by section 3, Act X of 1888, it was provided that an appeal from an order specified in section 588, clause 17, should lie (a) to the District Court, when the order was passed by a Court subordinate to that Court; and (b) to the High Court in any other case.

The question, therefore, is whether clause (a) operates to transfer the jurisdiction from the High Court to the District Court, in cases in which the subject-matter of the suit is over Rs. 5,000 in value. Section 2 of the Code of Civil Procedure makes a subordinate Court subordinate both to the High Court and the District Court, but the Civil Court's Act gives the appellate jurisdiction exclusively to the High Court in suits in which the subject-matter is over Rs. 5,000 in value. Bearing in mind that section 589 of the Code of Civil Procedure was passed to regulate the appellate jurisdiction in appeals from orders, we are of opinion that the words 'Court subordinate to that Court' must be construed with reference to its appellate jurisdiction. It would be anomalous that a District Court should have jurisdiction to hear appeals from such

orders when it had no jurisdiction to hear an appeal in the suit itself and the first clause in the section points to an intention to give jurisdiction in insolvency matters to the ordinary appellate forum.

VENKATRAJAN
v.
JAMBOO
AYYAN.

We must set aside the order of the District Court and direct that the appeal be returned to the party for presentation in the High Court. Appellant is entitled to his costs in this appeal, but we make no order as to costs in the Court below, since the point was not taken there.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

GNANAMUTHU UPADESI (PETITIONER), APPELLANT IN
CIVIL MISCELLANEOUS APPEAL No. 130,

1893.
December 23.

v.

VANA KOILPILLAI NADAN (COUNTER-PETITIONER), RESPONDENT
IN THE ABOVE.*

ASĒERVADHAM (PETITIONER), APPELLANT IN CIVIL
MISCELLANEOUS APPEAL No. 139,

1894.
January 23.

v.

VANA KOILPILLAI NADAN (COUNTER-PETITIONER), RESPONDENT
IN THE ABOVE.*

Limitation—Limitation Act, sched. II, art. 178—Applications for probate.

The Limitation Act does not apply to applications for probate, and the applications referred to in art. 178 of sched. II of that Act are applications under the Code of Civil Procedure. *Janaki v. Kesavulu* (1), *Bai Manekbai v. Manekji Kavaji* (2), and *Isnan Chunder Roy in re* (3) followed.

APPEALS against the orders of T. M. Horsfall, District Judge of Tinnevely, passed on civil miscellaneous petition No. 165 of 1892 and succession certificate petition No. 40 of 1892 respectively.

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

The petitioner preferred these appeals.

Ranga Chariar for petitioner.

* Appeal against Orders Nos. 130 and 139 of 1892.

(1) I.L.R., 8 Mad., 207. (2) I.L.R., 7 Bom., 213. (3) I.L.R., 6 Calc., 707.