

an additional security for the benefit of the jenmi, but it does not follow that he cannot sell the kanom at an earlier date if he has obtained a decree for arrears of rent. Such sale will not ordinarily put an end to the kanom, but only transfer the kanomdar's interest, such as it is, to the purchaser at the execution sale. If the jenmi himself becomes the purchaser, he will be in no better position, except in that he will have a priority of claim as against fourth defendant's panayams for arrears of rent, one of the customary incidents of the kanom.

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The decree of the Lower Appellate Court must be modified by striking out the words "free of the encumbrance created by first defendant in favour of fourth defendant." In other respects the decree is affirmed.

The cases referred to at the hearing, viz., *Achuta v. Kali*(1) and *Kanna Pisharodi v. Kombi Achen*(2) and *Unnian v. Rama*(3) are not in point, inasmuch as the question here did not arise in those cases.

Under the circumstances of this case we direct each party to bear his own costs of this appeal.

APPELLATE CIVIL.

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

SUBBAMMAL (PLAINTIFF), APPELLANT,

v.

HUDDLESTON AND OTHERS (DEFENDANTS), RESPONDENTS.*

1894.
March 7, 12.

Civil Procedure Code—Act XIV of 1882, s. 13—Court of competent jurisdiction.

The term 'competent jurisdiction' in section 13 of the Civil Procedure Code has regard to the pecuniary limit as well as to the subject-matter. There is no authority for the general proposition that the competency of one Court as compared with another is affected by the circumstance that in the one case an appeal lies in the first instance to the District Court and in the other directly to the High Court. *Misir Raghobardial v. Sheo Bulsh Singh*(4) cited and followed. *Vithilinga Padayachi v. Vithilinga Mudali*(5) qualified.

(1) I.L.R., 7 Mad., 547.

(2) LL.R., 8 Mad., 381.

(3) I.L.R., 8 Mad., 415.

* Appeal No. 66 of 1892.

(4) I.L.R., 9 Calc., 439.

(5) I.L.R., 15 Mad., 111.

SUBRAMMAL APPEAL against the decree of E. K. Krishnan, Subordinate Judge
 HUDDLESTON. of Malabar, in original suit No. 26 of 1891.

The plaintiff in this suit sued to recover certain land and mesne profits, resting his title thereto on a karar dated 14th July 1864. In a former suit in the same Court between the plaintiff and the first defendant it had been decided that the karar in question was a forgery, and the Subordinate Judge held that the present suit was barred by section 13 of the Civil Procedure Code and dismissed the suit.

The plaintiff preferred this appeal.

Anandachari for appellant.

Mr. Gover for respondents.

JUDGMENT.—We fully agree with the Subordinate Judge that the plaintiff is not entitled to any relief except with reference to the allegations made in the plaint. In the plaint the plaintiff alleges as his title to the land, in respect of which he sues, a karar executed on the 14th of July 1864. If the plaintiff fails, or is unable to prove the execution of this karar by his lessor, it is clear that the suit must be dismissed. It is pleaded by the defendants that the question of the genuineness of this karar has already been decided in a suit between plaintiff and the first defendant, and that therefore it is not now open to the plaintiff to rely on that title. The former suit was brought in the same Court and the issue tried with regard to this karar was identically the same as that raised in the present suit. It is objected, however, on behalf of the appellant that the Court which heard the former suit was not competent to try the present suit, because in the former suit the value of the subject-matter was such that an appeal lay not to this Court, but to the District Court. In support of this objection, we are referred to certain decisions in which it has been held that the judgment in a suit cognizable as a Small Cause Court suit is not binding in a regular suit between the same parties subsequently brought with regard to the same matter. In the present case, where it was the very same Court that heard the two suits, we do not think that those decisions are applicable. In *Vithilinga Padayachi v. Vithilinga Mudali*(1) reference is made to the language of the Judicial Committee in the case in *Misir Rughobardial v. Sheo Buksh Singh*(2). It appears to have been

(1) I.L.R., 15 Mad., 111.

(2) I.L.R., 9 Calc., 439.

thought that, in considering the question of the competency of a Court within the meaning of section 13 of the code, the Judicial Committee had regard to the question as to the tribunal to which an appeal would lie from such Court. We do not think that the language of the Judicial Committee really bears this meaning. In their judgment reference is made to the anomaly which would arise if the decree of the District Munsif were held to be binding on a superior Court, and it is observed that this anomaly would not be removed by the fact that from both the Courts there would be an appeal, because from the judgment of the Munsif the appeal would lie to the District Court, and a second appeal only on questions of law would lie to the High Court. In the next sentence of the judgment their Lordships explain the meaning of the expression 'concurrent or competent jurisdiction.' The term has regard to the pecuniary limit as well as the subject-matter, and with respect to both those conditions it is plain that in the present case the Court which heard the former suit was equally competent to hear the present suit. There is no authority for the general proposition that the competency of one Court as compared with another is affected by the circumstance that in the one case an appeal lies in the first instance to the District Court and in the other directly to the High Court. In our opinion the suit was rightly dismissed. The appeal fails and is dismissed with costs.

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APPELLATE CIVIL.

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

SEETHARAMA RAJU (DEFENDANT), APPELLANT,

v.

BAYANNA PANTULU (PLAINTIFF), RESPONDENT.*

1894.
February 27.

Contract—Undue influence—Acquiescence by conduct—Lease for one year at a rental of more than Rs. 100—Registration—Registration Act—Act III of 1877, s. 17—Transfer of Property Act—Act IV of 1882, ss. 4 and 107.

Where the owner of certain land exchanges it for certain other land, but takes a lease for one year of the former land and pays the rent thereof, and receives and

* Appeal No. 71 of 1893.