

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

SYED HUSSAIN (PLAINTIFF), APPELLANT,

v.

MADAN KHAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

1894.
Jan. 22, 23.

Civil Procedure Code—Act XIV of 1882, s. 544—'Any ground common to all the plaintiffs or to all the defendants.'

Section 544 of the Civil Procedure Code presupposes a common ground of decision affecting property in which both those who have appealed and those who have not appealed have an interest direct or indirect. Thus a District Judge has no power under this section to reverse the decree of a Lower Court, given for a plaintiff in favour of a defendant who did not appeal, and in respect to property in which the other defendants who did appeal disclaim all interest. *Sriram Ghatak v. Braga Mohan Ghosal*(1) and *Appa Rau v. Ratnum*(2) cited and followed. *Seshadri v. Krishnan*(3) and *Nayanma v. Subba*(4) distinguished.

SECOND APPEAL against the decree of Manavedan Raja, Acting District Judge of Kurnool, in appeal suit No. 64 of 1892, reversing the decree of V. Ranga Row in original suit No. 79 of 1891.

The plaintiff sued to establish his right to certain property and to recover from the defendants possession of the same. The property consisted of two plots of ground marked respectively A and C in the survey of the village. All the defendants except the sixth defendant laid claim to plot A only, whilst the sixth defendant laid claim to plots A and C. The plaintiff claimed the property on the ground that his late father had purchased it from the former owner, and the District Munsif decreed in his favour. All the defendants except the sixth thereupon appealed, and the District Judge reversed the decree of the Lower Court in respect to the whole property on the ground that the alleged sale to the plaintiff's father had not been established.

The plaintiff preferred this appeal.

Venkatasubbayyar for appellant.

Ramachandra Rau Saheb, Sriramulu Sastriar and *Venkatarama Sarma* for respondents.

* Second Appeal No. 1470 of 1893.

(1) 3 B.L.R., App. 41.

(2) I.L.R., 13 Mad., 249.

(3) I.L.R., 8 Mad., 192.

(4) I.L.R., 11 Mad., 197.

SYED
HUSSAIN
v.
MADAN KHAN.

JUDGMENT.—The Judge's finding is that there was no completed sale. He gives his reasons for so finding, and it is not open to us in second appeal to consider that question of fact. This appeal, so far as the plot A is concerned, must therefore fail.

It is contended further with regard to the plot C, in which the other respondents disclaim all interest, that sixth defendant not having appealed from the District Munsif's decree, the District Judge could not disturb that decree so far as it affected this plot C. On the other hand the fifth respondent's vakil refers to the cases in *Seshadri v. Krishnan*(1) and *Nagamma v. Subba*(2) and urges that when the ground of decision is common, the Court is entitled under section 544 of the Code of Civil Procedure to alter a decree in favour of a party who has not appealed, even in respect of property in which those who have appealed disclaim all interest. We are not prepared to accept this contention. Section 544 appears to us to presuppose a common ground of decision affecting property in which both those who have appealed and those who have not appealed have an interest either direct or indirect. This was the ground on which the decisions proceed in the two cases cited. The present case is on all fours with that in *Appa Rau v. Ratnam*(3). The principle is that laid down by Jackson, J., in *Sriram Ghatal v. Braga Mohan Ghosal*(4) that the section applies only to decrees incapable of division and relates to property in which all the plaintiffs or all the defendants are interested.

We therefore set aside the Lower Appellate Court's decree so far as the land C is concerned and affirm it with regard to the land A.

Appellant must pay the costs in this Court of the respondents other than the sixth defendant, who and appellant will bear their own costs.

(1) I.L.R., 8 Mad., 192.

(3) I.L.R., 13 Mad., 249.

(2) I.L.R., 11 Mad., 197.

(4) 3 B.L.R., App., 41.
