

APPELLATE CIVIL.

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

SUBBA RAO (PETITIONER), APPELLANT,

v.

PALANIANDI PILLAI (COUNTER-PETITIONER), RESPONDENT.*

1893.
October 12.

Succession Certificate Act—Act VII of 1889, ss. 19 and 26—Appeal from an order of a District Court under section 26.

Section 26 of the Succession Certificate Act confers on the District Court the same appellate jurisdiction over an order of an inferior Court as is conferred by section 19 on the High Court over the order of a District Court. There is no provision in the Act for a second appeal in any case.

APPEAL against the decree of R. S. Benson, District Judge of South Malabar, in civil miscellaneous appeal No. 63 of 1892, confirming the order of the Subordinate Judge of Palghat in civil miscellaneous petition No. 7 of 1892.

The petitioner applied for a certificate of heirship under section 6 of the Succession Certificate Act. The Subordinate Judge rejected the petition. The petitioner appealed to the District Court under section 26 of that Act and his appeal was dismissed. He then preferred this appeal.

Sundra Ayyar for appellant.

Krishna Menon for respondent.

JUDGMENT.—The preliminary objection is taken that no second appeal lies. The language of section 26 appears to us to support the contention. The intention was, we think, to confer on the District Court the same appellate jurisdiction over an order of an inferior Court as is conferred by section 19 on the High Court over the order of a District Court.

There is no provision in the Act for a second appeal in any case. Both section 19 and section 26 declare that the orders of District Courts shall be final.

The material words in section 19, clause 3, are “subject to the provisions of sub-section 1 and of chapters 46 and 47 of the Code of Civil Procedure as applied by section 647 of that Code, an order

* Appeal against Appellate Order No. 5 of 1893.

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“of the District Court, under this section, shall be final.” Section 26, clause 3, is to the same effect, but the words ‘subject to the other provisions of this Act,’ are omitted.

It is contended that the word final is intended to preclude any other suit. This may be. But we are of opinion that it also precludes a further appeal except when such is expressly allowed.

The use of the words subject to the other ‘provisions of this Act’ in section 19 and their omission in section 26 is significant.

We are of opinion that the preliminary objection must prevail.

This appeal is, therefore, dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Davies.

1893.
July 12, 13.
October 6.

NAMASIVAYA GURUKKAL AND OTHERS (DEFENDANTS Nos. 1 to 6),
APPELLANTS,

v.

KADIR AMMAL AND OTHERS (1ST PLAINTIFF'S REPRESENTATIVES
AND PLAINTIFFS Nos. 3 AND 4), RESPONDENTS.*

Contract—Executory contract involving personal considerations—Assignment—Contract consisting of distinct contracts with separate parties—Misjoinder of the parties as defendants in one suit—Grant of relief that was not prayed for—Damages—Liquidated rate of damages applicable to certain specified breaches of contract only.

Seven salt manufacturers, the defendants, contracted with A to manufacture and store in the factory in the name of and for the benefit of A such quantities of salt as he might require them to manufacture each season for seven years, in consideration of A's paying them at the rate of Rs. 11-8-0 per garce of salt, four months' credit after each delivery being allowed to A, and of his paying Government taxes and dues, and executing all but petty repairs in the defendants' factory. B was a party with A to the contract though he was not expressly mentioned therein. A assigned his share in the contract to C. B, as first plaintiff, and C, as second plaintiff, brought a suit against the defendants alleging that the defendants had failed to fulfil their part of the contract during the second year of its continuance (1886) and praying (1) that all the defendants be directed to deliver to the plaintiffs the salt collected during 1886; (2) that defendants 2, 4 and 7 should be held liable for any damages plaintiffs might suffer through a fall in the price of salt. The Court of first instance, having held that the contract contained seven separate and distinct contracts, each defendant having contracted with reference to his own

* Second Appeals Nos. 93 to 114 of 1892.