

## APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

1895.  
January 16.

SUBBAYYA (PLAINTIFF'S REPRESENTATIVE), APPELLANT,

v.

SAMINADAYYAR (DEFENDANT), RESPONDENT.\*

*Civil Procedure Code—Act XII of 1882, ss. 366, 367—Dispute as to right to represent a deceased plaintiff—Right of his adopted son to continue the suit—Appeal against orders rejecting claim of alleged representative of deceased plaintiff and declaring suit abated.*

The plaintiff in a partition suit in which his brother was defendant died, and an application was made on behalf of a boy alleged to have been adopted by the widow of the deceased under his authority that his name be brought on to the record as plaintiff. This application was made within six months of the death of the original plaintiff. The Court of first instance rejected the application which the defendant opposed on the ground that the boy had not been adopted, and dismissed the suit on the ground that it had abated :

*Held*, that appeals lay against the rejection of the above application, and also against the dismissal of the suit.

*Per curiam* : A dispute within the meaning of Civil Procedure Code, section 367, need not be between persons claiming to represent the deceased plaintiff.

SECOND APPEAL against the decree of H. H. O'Farrell, District Judge of Tanjore, in appeal suit No. 349 of 1893, and against his order in appeal against order No. 46 of 1893, dismissing appeals against the decree of A. Ramasami Ayyar, District Munsif of Tiruvalur, in original suit No. 413 of 1892, and against his order made in that suit on petition No. 623 of 1893.

The appellant in second appeal preferred also a petition under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of the District Judge in appeal against order No. 46 of 1893.

“One Mahadevayyar instituted original suit No. 413 of 1892 against his brother Saminadayyar for partition and died. At the time of his death, he had no heir except Saminadayyar in existence. But it was said that he left an authority to his widow to adopt, and that an adoption was made of the minor Subbayya, the present appellant, who claimed to be the representative of the plaintiff. The adoption took place, and an application (petition No. 623 of 1893) under section 365, Civil Procedure Code, was made to the

\* Second Appeal No. 1339 of 1894 and Civil Revision Petition No. 30 of 1894.

District Munsif within six months from the date of the plaintiff's death that Subbayya's name should be entered on the record in the place of that of the deceased. On that application, the District Munsif held that, at the date of the plaintiff's death, his share passed by survivorship to the defendant, no adoption admittedly having taken place then; that the right to sue did not survive; and, consequently, that the applicant could not be admitted as representative of the plaintiff for the purpose of continuing the suit. He, therefore, dismissed his application on the 10th June 1893, and on the same date made an order dismissing the suit on the ground that it had abated.

Appeals having been preferred on behalf of the alleged adopted son, the District Judge held with reference to *Ahmad Ata v. Mata Badal Lal*(1) that no appeal lay against the order declaring that the right to sue had not survived, because there was no representative of the plaintiff on the record who could appeal, and as to the appeal against the District Munsif's refusal to bring the alleged adopted son on to the record, he concurred in the opinion of the lower Court.

This second appeal and revision petition were preferred on behalf of the alleged adopted son.

*Pattabhirama Ayyar* for appellant.

*Rama Rau* for respondent.

JUDGMENT.—In our opinion the order of the District Munsif of the 10th June 1893 and his decree dismissing the suit were wrong in point of law. It is quite clear that the adopted son is the legal representative of the person to whom he is adopted. This being so, section 371 would prevent the institution by him of any fresh suit. An application was made on his behalf within due time claiming to be the legal representative, and therefore under section 366 it was not competent to the Court to order that the suit should abate. The order of the District Munsif above mentioned must be taken to be an order within the meaning of section 367; for we agree with the Judge that a 'dispute' within the meaning of that section need not be between persons claiming to represent the deceased plaintiff. The title to represent being denied, there is in the present case a dispute between the claimant and the defendant. We therefore think the District Judge ought to have entertained the appeal: We also think that an appeal lay

(1) I.L.R., 3 All., 844.

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against the decree dismissing the suit—*Bhikaji Ramchandra v. Purshotam*(1).

We must set aside the decrees of the Courts below, and also the order of the District Munsif, and remand the case to the Court of first instance for disposal.

The costs incurred in the Lower Appellate Court and in this Court must be paid by respondent, the other costs must be provided for in the fresh decree.

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## APPELLATE CIVIL.

*Before Mr. Justice Best and Mr. Justice Subramania Ayyar.*

1895.  
March 25, 27.

RAMACHANDRA RAU AND OTHERS (PLAINTIFFS),

v.

KANDASAMI CHETTI AND OTHERS (DEFENDANTS).\*

*Companies Act—Act VI of 1882, s. 187—Powers of liquidator after dissolution of company.*

Suit on a promissory note of the defendant in favour of a company. The note was payable to the company or order. The company had gone into liquidation and a liquidator had been duly appointed. The plaintiffs had purchased, together with certain other assets of the company, the note sued on, but did not obtain the liquidator's endorsement of the note until after the dissolution of the company was completed :

*Held*, that the liquidator had no power to endorse the note to the plaintiffs.

CASE stated for the opinion of the High Court under Provincial Small Cause Courts' Act IX of 1887, section 17, by S. Krishna-swami Ayyar, District Munsif of Erode, in small cause suit No. 995 of 1893.

Suit on a promissory note payable to a certain company or order and endorsed to the plaintiffs on the 10th of August 1893 by one Seshayyar. The company being in course of liquidation, certain of its assets, including the note in suit, were sold to the plaintiffs. In January 1892 a general meeting of the shareholders was held under Companies Act VI of 1882, section 186, at which it was, *inter alia*, resolved that Seshayyar be appointed sole liquidator in the place of others who had sent in their resignations,

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(1) I.L.R., 10 Bom., 220.

\* Referred Cases Nos. 13 to 24 of 1894.