

to pay 300 paras of paddy annually to Shalakshi's heirs. The plaintiff is entitled to his share in this income, and on this ground the decrees of the Courts below can be supported.

KRISHNA  
 AYYAN  
 v.  
 VYTHIANATHA  
 AYYAN.

The second appeal is dismissed with costs.

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## APPELLATE CIVIL.

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

BALAMBAL AMMAL (PLAINTIFF), APPELLANT,

v.

ARUNACHALA CHETTI (DEFENDANT), RESPONDENT.\*

1894.  
 December  
 13, 21.

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*Registration Act—Act III of 1877, s. 77—Compulsory registration—Execution of document admitted—Cancellation pleaded.*

On 26th January, 1892 the defendant executed a conveyance of certain land to the plaintiff. On 26th May 1892 the plaintiff presented the conveyance for registration, but registration was refused. The plaintiff now sued for a decree directing that the conveyance be registered under Registration Act, 1877, section 77. The defendant pleaded that the conveyance had been cancelled :

*Held*, (without determining the question of cancellation) that the plaintiff was entitled to the decree prayed for.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of South Arcot, in appeal suit No. 184 of 1893, affirming the decree of K. Rangamannar Ayyangar, District Munsif of Villupuram, in original suit No. 369 of 1892.

The plaintiff alleged that the defendant had sold her certain land and executed a conveyance thereof dated 26th January 1892 and had received the purchase money, and she brought this suit to compel the defendant to register the conveyance and deliver the land to her. The prayer for possession of the land was withdrawn. The defendant admitted the execution of the conveyance, but pleaded that it had been since cancelled. The conveyance had been presented for registration on 26th May 1892 when the registrar refused to register it.

The District Munsif dismissed the suit and his decree was affirmed on appeal by the District Judge.

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\* Second Appeal No. 540 of 1894.

BALAMBAL  
AMMAL  
v.  
ARUNACHALA  
CHETTI.

The plaintiff preferred this second appeal.

*Ranga Ramanujachariar* for appellant.

*Krishnasami Ayyar* for respondent.

JUDGMENT.—The plaintiff sued to compel the defendant to register a conveyance executed by him to her on 26th January 1892 and to recover possession of the property comprised therein. In consequence of objections raised to the frame of the suit the plaintiff withdrew the prayer for delivery of possession and the sole point tried was whether the plaintiff was entitled to a decree that the deed should be registered. The instrument was presented for registration on 26th May 1892.

The District Munsif dismissed the suit on the ground that the contract of sale was cancelled after execution of the instrument and the earnest money returned. On appeal the District Judge confirmed the decision on a different ground, which he allowed to be argued though it does not appear to have been taken before the District Munsif or in the grounds of appeal. The Judge held that the question of the cancellation of the contract of sale was immaterial in the suit; that the only question was whether plaintiff had observed the formalities entitling her to registration of the instrument; but that, as she had taken no steps to compel defendant to appear at the registration office, she was not entitled to have the document registered, and that her suit was rightly dismissed.

As the prayer for the performance of the contract, viz., the delivery of the property, was withdrawn, we agree with the District Judge that the only question was whether, under the provisions of the Registration Act, the plaintiff was entitled to demand that an instrument, the execution of which was admitted, should be registered. The document was presented in time, and it has been held in *Hasanalli Khan Bahadur v. Elkambaram*(1) that the question to be considered in a suit under section 77 of the Registration Act is limited to the *factum* of execution. No time is fixed by law within which the registration of an instrument presented and accepted within four months of its execution must be completed (*Sah Mahmun Lall Panday v. Sah Koondun Lall*(2), *Shama Charan Das v. Joyenoolah*(3), *Satcourie Pyne v. Luckey Narain Khetry* (4), and *In re Shaik Abdul Aziz*(5)).

(1) Second Appeal No. 1541 of 1893, (unreported).

(2) L.R., 2 L.A., 210.

(3) I.L.R., 11 Calc., 750.

(4) I.L.R., 15 Calc., 538.

(5) I.L.R., 11 Bom., 691.

We must reverse the decrees of the Courts below and give plaintiff a decree directing the document to be registered under section 77 of the Registration Act. The plaintiff is entitled to her costs in this Court and in the Lower Appellate Court, but we direct that each party pay her and his own costs in the Court of First Instance since this point was not there taken.

BALAMBAL  
AMMAL  
v.  
ARUNACHALA  
CHETTI.

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## APPELLATE CIVIL.

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

BADI BIBI SAHIBAL AND OTHERS (DEFENDANTS NOS. 1, 3, 5,  
6, 7, 15, 16, 18, 39 AND 49), APPELLANTS,

1892.  
March 18, 21,  
22 and 23.

v.

SAMI PILLAI (PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1882, ss. 13, 43—Res judicata—Court of jurisdiction competent to try subsequent suit—Suit for interest on a bond waiving right already accrued to sue for principal—Second suit for principal and interest subsequently accrued—Limitation Act—Act XV of 1877, sched. II, art. 116—Mortgage—Interest post diem in absence of covenant—Muhammadan Law—Shares of males and females in subject of altumga grant—Hypothecation by gosha women—Rule as to proof of bona fides.*

Certain Muhammadans hypothecated to the plaintiff to secure repayment of a debt, their interest in lands, which had been enfranchised as a personal inam—a claim that the lands constituted the endowment of certain mosques having been rejected at the inam enquiry. The hypothecation deed was executed in 1875 and registered, and it contained the following terms with regard to interest and the repayment of the debt:—"We (the obligors) shall pay interest at 7 per cent. per annum before the 30th October of each year; we shall pay in full the principal amount on 30th October 1878 after clearing off the interest and redeem this deed: "should we fail to pay the interest regularly according to the instalments, we shall "at once pay the principal, together with the amount of interest." Default was made in the payment of interest in 1876; and in 1877 the plaintiff sued in a District Munsif's Court for the interest then due, expressly stating in the plaint that he agreed to accept payment of the principal and the subsequent years' interest at the times fixed in the deed, and he obtained a decree as prayed. The plaintiff in 1888 now sued the executants of the above instrument and their heirs and

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\* Appeal No. 58 of 1891.