

KALELOOLA  
SAHIR  
v.  
NUSEERUDEEN  
SAHIR.

Straits Settlements, *Yeap Cheah Neo v. Ong Oheng Neo*(1). Had it been shown that such perpetuities were recognised as valid under Muhammadan law, we should have felt constrained to uphold the deed; but in the absence of such proof, we think the general rule of public policy should prevail.

We must reverse the decree of the learned Judge and direct that a decree be passed in plaintiff's favour as prayed. As the point is a new one, we shall make no order as to costs.

*Ramanujachariar*, attorney for appellant.

## APPELLATE CIVIL—FULL BENCH.

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

PICHUVAYYANGAR (DEFENDANT No. 1), PETITIONER,

v.

SESHAYYANGAR (PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1882, s. 206—Amendment of decree—Power of Court of First Instance after appeal.*

In a suit for land with mesne profits the District Munsif delivered judgment for the plaintiff and recorded therein a finding that he was entitled to mesne profits as from a certain date, it having previously been arranged that the amount, if any, awarded for mesne profits should be determined in execution. In the decree no mention was made of the date from which the mesne profits were to be calculated, but it was stated merely that the amount was to be determined in execution. The case went on appeal before the District Judge, who modified the decree in certain particulars unconnected with mesne profits. With a view to execution the plaintiff applied to the Court of First Instance to bring the decree into conformity with the judgment. The Court having made an order accordingly, it was objected in the High Court on revision that the order was made without jurisdiction:

*Held*, that the jurisdiction of the Court of First Instance to amend the decree under section 206 was ousted by the confirmation of his decree on appeal.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the order of S. Dorasami Ayyangar, District Munsif of Valangiman, dated 28th December 1889, and made on civil miscellaneous petition No. 1037 of 1889.

In the last-mentioned petition the plaintiff in original suit No. 137 of 1886, on the file of the District Munsif, applied under Civil

(1) L.R., 6 P.C., 381.

\* Civil Revision Petition No. 364 of 1891.

Procedure Code, section 206, for the amendment of the decree in that suit by bringing it into conformity with the judgment. In the suit above referred to the plaintiff sought to recover his half share in the property of his family together with mesne profits, and in its judgment the Court recorded that the plaintiff was entitled, *inter alia*, to recover mesne profits from the month of August 1885; but there was no declaration with reference to this matter inserted in the decree, which provided merely that the amount to be paid to the plaintiff on account of mesne profits should be ascertained in execution. An appeal was preferred against this decree which was modified by the District Court in regard to certain particulars not relating to the mesne profits. On the plaintiff proceeding to execution in respect of mesne profits, he was met with the objection that the decree was too vague to be executed by reason of the omission to fix the period for which the plaintiff was entitled to recover mesne profits. He accordingly preferred his petition for amendment above referred to, and the District Munsif passed an order as prayed by him.

Defendant No. 1 preferred this petition under Civil Procedure Code, section 622.

*Subramanya Ayyar* for petitioner.

*Sadagopachariar* for respondent.

This petition first came on for hearing on the 15th September 1892 before MUTTUSAMI AYYAR and WILKINSON, JJ. when the Court made the following order :—

ORDER OF REFERENCE TO FULL BENCH.—The decision in *Sundara v. Subbanna*(1) was dissented from in *Muhammad Sulaiman Khan v. Muhammad Yar Khan*(2), and in *Chathappan v. Pydel*(3), the learned Judges said that if it had been necessary to decide the question, they would have referred the matter to the Full Court. The final decree in the present case was the decree of the Appellate Court, and the only Court which had jurisdiction to amend that decree was the Court of the District Judge. (See *Manavikraman v. Unniappan*(4) and cases quoted there.)

We therefore refer the following question to the Full Bench :—  
Whether the jurisdiction of the District Munsif to amend the decree under section 206 was ousted by the confirmation of his decree by the District Court on appeal.

(1) I.L.R., 9 Mad., 354.

(2) I.L.R., 11 All., 267.

(3) I.L.R., 15 Mad., 403.

(4) I.L.R., 15 Mad., 170.

PICHU-  
VAYYANGAR  
v.  
SESHAYAN-  
GAR.

This petition came on for hearing on the 23rd November 1893 before the Full Bench.

*Mahadera Ayyar* for petitioner.

*Rajagopalachariar* for respondent.

Reference was made in the argument to Civil Procedure Code, sections 230, 235, 545, 579, 582, 587, 610; Limitation Act, Schedule II, Article 176; *Kristo Kinkur Roy v. Rajah Burrodacant Roy*(1), *Noor Ali Choudhuri v. Koni Meah*(2), and *Daukt and Jagjivan v. Bhukandas Manekchand*(3), as well as to the cases mentioned in the order of reference.

JUDGMENT.—We are of opinion that when there has been an appeal against the decree of the District Munsif and a decree has been passed thereon, the District Munsif has no longer any power to amend his decree.

We therefore answer the question in the affirmative.

This petition coming on for final disposal before MUTTUSAMI AYYAR and SHEPARD, JJ., the Court delivered the following judgment:—

JUDGMENT.—Following the ruling of the Full Bench we dismiss the petition for amendment and cancel the amendment made with reference to it.

The petitioner is entitled to his costs.

## APPELLATE CIVIL.

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

VENKATA NARASIMHA NAIDU (PLAINTIFF), APPELLANT,

v.

RAMASAMI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Rent Recovery Act (Madras)—Act VIII of 1865, ss. 9 and 11—Enforceable terms of patta—Established rates of rent.*

The Zamindar of Valhur sued certain raiyats in his pargana of Gudur to enforce the acceptance of pattas providing, among other conditions, that the raiyats should relinquish their holdings at the end of the term unless fresh pattas were tendered to them, that they should pay half the cost of repairs by a cess proportioned to the wet rate, that if they irrigated dry land they should pay a wet rate to the

(1) 14 M.I.A., 465, 490.

(3) I.L.R., 11 Bom., 172.

(2) I.L.R., 13 Calc., 13.

\* Second Appeals Nos. 449 to 456 of 1892.

1893.  
July 13.  
1894.  
July 10, 16.  
December 20.