

be allowed for filing objections after the finding has been posted up in this Court.

[In compliance with the above order, the District Judge returned his finding in the second issue which was as follows:—

I find on this issue that pattas were tendered in faslis 1299 and 1300, but that the pattas were not proper or such as the defendant was bound to accept in that they imposed improper conditions as to buildings and raised the rent without the Collector's sanction.

The District Judge reported that the second appeals with reference to which the first issue was framed, had been compromised. In the result the second appeal having been posted again for disposal, some of them were withdrawn, and the High Court delivered judgment dismissing the rest.]

RANGAYYA
APPA RAU
v.
RATNAM
AND OTHERS.

PRIVY COUNCIL.

RAJA RAO VENKATA SURIYA MAHIPATI RAM KRISHNA
RAO BAHADUR (PLAINTIFF), APPELLANT,

P.C.*
1897.
July 31.

v.

THE COURT OF WARDS AND ANOTHER (DEFENDANTS),
[RESPONDENTS.

[On petition from the High Court at Madras.]

Preparation of the copy of the record—Papers to be omitted.

In a suit in which the Original Court had framed and decided several issues, the High Court on appeal confined their decision to the questions which, in their opinion, governed the case, leaving other issues undecided as not affecting the result after the decision to which they had come.

Afterwards the suit was admitted to appeal in conformity with section 609, Code of Civil Procedure.

In the preparation of the printed copy of the record the question arose whether the copy should be made of the whole record, or of only so much of it as was material to the correctness of the High Court's decision.

Their Lordships directed that only so much of the original record as bore upon, and was material to the questions decided by the High Court, and the subject of the appeal, should be printed in the copy.

* Present: Lord MACNAGHTEN, Lord MORRIS, Mr. WAY, Sir HENRY DE VILLIERS and Sir HENRY STRONG.

RAJA RAO
VENKATA
SURIYA
MAHIPATI
RAM KRISHNA
RAO BAHADUR

v.
COURT OF
WARDS AND
ANOTHER.

PETITION for an order amending directions (30th April 1897) of the High Court as to the preparation of the copy of the record of an appeal.

The petitioner was the plaintiff in a suit which had been admitted to appeal in conformity with section 603, Code of Civil Procedure. He asked for a direction, reversing that made on petition to the High Court, as to the course to be followed in preparing the copy of the record for the hearing an appeal by the Judicial Committee. The direction asked for was that a copy of only so much of the original record should be printed for transmission to the Registrar as was material to the questions decided by the High Court in the judgment under appeal.

The petition stated that the suit to which it had reference was filed in 1891 in the District Court of Godavari for a declaration that the minor defendant was not the legitimate son of the late Raja of Pittapur; that a will, dated the 7th March 1890, whereby that Raja had bequeathed the whole of his property to the minor defendant, was invalid as against the plaintiff; and that the latter, as the adopted son of the late Raja, was entitled to succeed to the entire estate.

The Court of Wards, as defendant on behalf of the minor, admitted the adoption of the plaintiff, but asserted that the minor defendant was the legitimate son of the late Raja, and that the will, whereby this son had become entitled, was valid and effectual.

The most important of the several issues framed by the District Court questioned the validity of the will, and the legitimate birth of the minor. The District Judge, upon the issues, decided that the minor was not the son of the Raja, and that the plaintiff had been given to be adopted by the Raja on the clear understanding between the Raja and the child's natural father that upon the adopted son the inheritance should devolve. The decision, therefore, was that the plaintiff's title prevailed; and from this judgment, in 1895, the defendants appealed to the High Court.

There was no dispute in the Appellate Court that the estate was an impartible one. That Court, having found that there was no proof that the estate was not subject to be alienated by the last owner, held that the will of 1890 was not invalid, or imperative, by reason of any settlement having been made by the Raja in the plaintiff's favour. Thus the High Court decided that the will was a valid one, and this involved the dismissal of the suit, and they

held that it was unnecessary to inquire into the matter of the legitimacy of the minor, or to hear the appeal on any further issue (*See Court of Wards v. Venkata Surya Mahipati Ramakrishna Row*(1)).

RAJA RAO
VENKATA
SURIYA
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vs.
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ANOTHER.

On the 27th January 1897, an appeal against this judgment was admitted in conformity with section 603, Code of Civil Procedure. On the 19th February following, the Deputy Registrar of the High Court forwarded to the pleaders, on each side in the above appeal, a list of the papers on the record for them to select which should be printed for the copy to be transmitted.

The petitioner's vakil submitted a list limited to papers which, in his opinion, were material to the question decided by the High Court. But the pleader for the defendants proposed what would have been, practically, the printing of the entire record. The reasons given by the latter were that the Judicial Committee, according to what was believed to be their practice, would go into the whole case, if they should reverse the decree of the High Court, and would not remit the suit to be heard in India. For this it would be necessary that the whole record should be before them. On the other hand, on behalf of the plaintiff, it was contended that a copy of the whole record would, at this stage, be unnecessary in whatever way the appeal might be disposed of. If the High Court's judgment should be affirmed there would be an end. If that judgment should be reversed, the suit would be remitted to India, each party being entitled to have the High Court's decision upon the whole of the facts.

On the 30th April 1897, the High Court ordered that the Registrar should take the usual course, and have the whole record transcribed; and that he should decide, after consulting the parties, what paper was part of the record.

Against this order the present petition was filed.

Mr. *J. D. Mayne*, for the petitioner, submitted that to carry out the order of the High Court would cause unnecessary delay and expense. The evidence of as many as seventy-five witnesses for the plaintiff had been recorded, and of one hundred and twenty-five for the defendants. One hundred and eighty-six documents had been filed for the plaintiff, and more than four hundred for the defendants. Next to nothing of the oral evidence, very few

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of the documents, and probably only the deed of adoption, and the testamentary papers of the late Raja, had any bearing in the questions decided by the High Court which were of law. If the record should be limited to what was material to the only issues to which the appeal related, the appeal could be heard in a few months. If the whole record had to be transmitted, it would be some years before the appeal could be heard.

There was no appearance for the respondents.

Their Lordships were of opinion that the direction asked for should be given. The order of Her Majesty in Council upon their report was that the order of the High Court be reversed, and that the Registrar of the High Court be directed to transmit only so much printed copy of the original record as properly bears upon, and may be material for, the decision of the questions of law which were decided by the High Court and form the subject of the present appeal.

Solicitors for the petitioner — *Messrs. Frank Richardson & Sadler.*

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Davies.

RANGA PAI AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

BABA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1896.
January 21,
23, 24, 30.
September 1,
1897.
August 6.

*Limitation Act—Act XV of 1877, s. 10—Suit between Co-trustees—Breach of trust—
Court Fees Act—Act VII of 1870, s. 5—Objection as to Court fee paid on appeal.*

The plaintiffs and defendants together with one Subbaraya Pai who died in 1884, were trustees of a temple, having been appointed by the committee under Act XX of 1863. For some years before his death Subbaraya Pai was left in exclusive management. Subsequently the defendants were in sole management of the temple until 1891, when the plaintiffs brought the present suit charging that the defendants had excluded them from the right of management, and claiming that they should make good sums lost to the institution by reason of breaches of trust alleged to have been committed by them. Some of the breaches of trust took place before 1884. Of the others, which took place subsequently, some consisted in improper dealings with the temple property to the detriment of the temple and to the advantage of certain relatives of the defendants. The

* Appeal No. 136 of 1894.