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the Judicial Committee, regard is had to "the ordinary expectations of persons entering into a mortgage transaction." We should only be defeating those expectations if we held with the District Judge that the mortgage document carried no interest after the due date. We are, therefore, of opinion that according to the right construction of the instrument the mortgagor incurred the obligation to pay interest on the principal amount remaining unpaid on the 14th July 1886.

APPELLATE CIVIL.

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

1896. August 5, 25.

SANKARAN (RESPONDENT), APPELLANT,

v.

RAMAN KUTTI AND OTHERS (APPELLANTS), RESPONDENTS.*

Letters Patent, s. 15—Appeal under Letters Patent—Civil Procedure Code, s. 588 —Powers of Appellate Court under s. 588.

A Judge of the High Court when hearing an appeal under Civil Procedure Code, section 588, against an erroneous order of remand under section 562 may, if he thinks fit, pass a final decree in the suit instead of merely remanding the suit to the Lower Appellate Court. No appeal lies against such decree under Letters Patent, section 15.

APPEAL under Letters Patent, section 15, against the judgment of Mr. Justice Parker, in appeal against order No. 18 of 1894, setting aside the decree of E. K. Krishnan, Subordinate Judge of South Malabar, and restoring the decree of T. A. Ramakrishna Ayyar, District Munsif of Chowghaut, in original suit No. 404 of 1892.

The facts of this case and the nature of the earlier proceedings appear sufficiently for the purposes of this report from the judgment of the High Court.

This appeal under the Letters Patent was preferred by the plaintiff.

Sankaran Nayar for appellant.

Sundara Ayyar for respondents.

* Letters Patent Appeal No. 16 of 1895.

JUDGMENT.—Plaintiff and defendants Nos. 1 and 2 are brothers. Third defendant is their father. All four form an undivided family of Tiyans following the Makkattayam rule of inheritance. A kanom was granted by a land-owner in the name of the first defendant. On redeeming the kanom, the landlord paid into Court the amount of the kanom, together with compensation for trees and a house on the land redeemed. The decree in the suit (original suit No. 29 of 1892) directed that all the money should be paid to first defendant, as the kanom was in his name, 'unless defendants Nos. 2, 3 and 5' (the present second and third defendants and plaintiff) 'sue to establish their right to it.'

The plaintiff alleged that the kanom and the trees, for which compensation was paid, were joint family property, but that the house was his own sole property, having been built solely with his own funds. He sued for a declaration of his right to recover his one-fourth share of the money deposited for the kanom and as compensation for the trees, and for a declaration of his right to the whole of the money deposited as compensation for the house.

The third defendant supported the plaintiff's claim. The first defendant claimed the whole of the money as his own on the ground that the kanom was not joint family property, but his own acquisition. The second defendant alleged that all the property was joint family property. The District Munsif found that the suit for a bare declaration was not sustainable with reference to section 42 of the Specific Relief Act, and also that plaintiff without suing for partition could not sue for a declaration of his right to a share of the joint family property, nor for a declaration of his sole right to the compensation for the house since the latter had become merged in the family property. He therefore dismissed the suit. The Subordinate Judge reversed this decree and remanded the suit for trial on the merits, holding that the plaintiff could maintain the suit as framed. Against this order of remand the first defendant appealed to the High Court and the appeal was heard by Mr. Justice Parker sitting alone. He held that the passing of the decree in original suit No. 29 of 1892 gave the plaintiff no cause of action for a declaratory suit, though it was open to plaintiff to sue first defendant for the value of the house, if the latter belonged to the plaintiff, and also that plaintiff could sue for his share of the family property, but not for his share of

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a particular part of it. He, therefore, set aside the order of the Subordinate Judge and restored that of the District Munsif.

Against this order the plaintiff now appeals under section 15 of the Letters Patent.

A preliminary objection is raised that, as Mr. Justice Parker's order was passed under section 588, Civil Procedure Code, such order is final under the last clause of that section, and is not open to appeal.

We have no doubt but that the objection is valid. Section 588, Civil Procedure Code, is by section 632 of the same Code declared to be applicable to the High Court, and the right of appeal given by section 15 of the Letters Patent against an order of a single Judge of the High Court is subject to the limitations prescribed by the Code of Civil Procedure, *Achaya* v. *Ratnavelu*(1).

It is however contended that section 588 only empowered Mr. Justice Parker to determine whether the order of the Subordinate Judge in remanding the suit was right or wrong, but did not give him jurisdiction to go further and pass a decree in the suit, as he did when he restored the District Munsif's decree dismissing the suit, and in support of this contention it is pointed out that had Mr. Justice Parker merely decided that the Subordinate Judge's remand was wrong, and remanded the suit to him for disposal according to law, instead of himself restoring the District Munsif's decree, then the plaintiff would have been entitled to a second appeal to a Division Bench of two Judges of this Court in the event of the Subordinate Judge dismissing his appeal; whereas by the procedure adopted by Mr. Justice Parker, the plaintiff is obliged to abide finally by the opinion of a single Judge of this Court on a point of law instead of being entitled to have the point decided by a Bench of at least two Judges. Such a result may be to some extent anomalous; but the existence of an anomaly does not justify us in overruling the provisions of the law. That the Court when hearing an appeal under section 588, Civil Procedure Code, against an order of remand under section 562, Civil Procedure Code, may deal with the correctness of the Lower Court's decisions on the preliminary point, and may, if it sees fit, pass a final decree in the suit, instead of merely remanding the suit to the Lower Appellate Court, has been decided by the High Courts of Calcutta and

(1) I.L.R., 9 Mad., 253.

Allahabad in *Loki Mahto* v. *Aghore Ajail Lall*(1) and *Hasan Ali* v. *Siraj Husain*(2), respectively, and this appears to be also the view taken by the Full Bench of the Bombay High Court in *Bhau Bala* v. *Bapuji Bapuji*(3), and by the Full Bench of the Allahabad High Court in *Badam* v. *Imrat*(4), Spankie, J., dissenting. It has also been so decided by a Bench of this Court in *Kothandaramasami Naidu* v. *Krishnasami Naicken*(5). We see no sufficient reason for dissenting from these authorities.

The result is that the order now appealed against must be regarded as having been legally passed under section 588, Civil Procedure Code. Such an order is not open to appeal under the Letters Patent. We must, therefore, dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

TIRUPATI RAJU (DEFENDANT NO. 3), PETITIONER,

v.

VISSAM RAJU AND ANOTHER (DEFENDANTS NOS. 1 AND 2), RESPONDENTS. *

1896. November 30. December 1.

Civil Procedure Code—Act XIV of 1882, s. 470—Inter-pleader suit—Act IX of 1889—Provincial Small Cause Courts Act, sched. II, arts. 11 and 14—Claim for compensation awarded under Land Acquisition Act.

Land having been compulsorily acquired under Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at Rs. 468. A conflict having arisen as to the right to receive the compensation and the District Court having declined to determine it under Land Acquisition Act, section 15, an inter-pleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under section 622, Civil Procedure Code:

Held, that the inter-pleader suit was not within the jurisdiction of a Provincial Small Cause Court and was rightly brought on the ordinary side of the District Munsif's Court and consequently where the petitioner's remedy was by way of second appeal the petition for revision was not admissible.

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(1) I.L.R., 5 Calc., 144.
(2) I.L.R., 16 All., 252.
(3) I.L.R., 14 Bom., 14.
(4) I.L.R., 3 All., 675.
(5) Letters Patent Appeal No. 35 of 1894 unreported.

* Civil Revision Petition No. 201 of 1896.