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having agreed to compromise subsequently fall out, has been held in *Karuppan v. Ramasami*(1) and *Appasami v. Manikam*(2). The District Munsif found that Rs. 80 was paid by the defendants as consideration for the promised withdrawal of the suit by plaintiffs, but that plaintiffs failed to fulfil their promise. We do not think that there is any necessity to consider the validity of the sale deed which is said to have been executed. The only question is whether the defendants paid the plaintiffs Rs. 80 on the plaintiffs' promise to withdraw the suit. If they did, the compromise ought to be enforced.

We must ask the District Judge to return a finding on this issue, on the evidence already recorded, within three weeks of the receipt of this order. Seven days will be allowed for filing objections after the finding has been posted up in this Court.

APPELLATE CIVIL.

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

VENGANAYYAN AND OTHERS (DEFENDANTS), APPELLANTS,

v.

RAMASAMI AYYAN (PLAINTIFF), RESPONDENT.*

*Civil Procedure Code, s. 588, cl. 28—Appeal against order of remand—
Finding of fact—Letters Patent, s. 15.*

Where an appeal is preferred against an appellate order under section 588, Civil Procedure Code, the finding of fact by the Lower Appellate Court is conclusive as between the parties on the proper construction of sections 584 and 588, Civil Procedure Code.

There is no appeal under the Letters Patent, s. 15 against an order of a single judge passed under Civil Procedure Code, s. 588, cl. 28.

APPEAL under Letters Patents, section 15, from the judgment of Mr. Justice Muttasami Ayyar, in appeal against order No. 96 of 1893.

The facts of this case were as follows :—

The plaintiff, sued as reversioner to recover certain movable and immovable properties, valued at Rs. 2,548, said to have

(1) I.L.R., 8 Mad., 482.

(2) I.L.R., 9 Mad., 103.

* Letters Patent Appeal No. 55 of 1894.

belonged to one Sitaramayyan of Sinanipatty in the Sivaganga Zamindary, and last held by Sitaramayyan's widow, Subbalakshmi Ammal, who died at Sinanipatty in November 1881.

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The principal fact in dispute was comprised in the first issue, viz., whether the plaintiff is related to Sitaramayyan as alleged by him, and is he the next reversionary heir after Subbalakshmi Ammal? Several other issues were framed by the Subordinate Judge, but he dismissed the suit with costs holding with regard to first issue that the plaintiff failed to prove that he is the dayadee of Sitaramayyan or that there was any common link between him and Sitaramayyan so as to constitute him the next heir after the death of Subbalakshmi Ammal.

On appeal the District Judge reversed the judgment of the Lower Court, and remanded the suit for trial for a fresh decree after findings are recorded on the other issues framed in the suit. Against this order of remand the defendants filed an appeal under section 588, clause 28, Civil Procedure Code.

Ramachendra Rau Sahab and Rangachariar for appellants.

Desikachariar for respondent.

MUTTUSAMI AYYAR, J.—The first issue recorded for decision in this case was whether the plaintiff was the next reversionary heir of Sitaramayyan, deceased. The Court of First Instance determined the question against the plaintiff and dismissed the suit without deciding the other issues. On appeal the District Judge found upon the evidence that the plaintiff was Sitaramayyan's reversionary heir and reversing the decree of the first Court, remanded the case under section 562 of the Code of Civil Procedure for disposal on the other issues. Hence this appeal from the order of remand under clause 28 of section 588, Civil Procedure Code. It is conceded that the order of remand satisfies the requirements of section 562 both in form and in substance. It was held in *Ramachandra Joishi v. Hazi Kassim*(1) that it was competent to the Lower Appellate Court to pass an order of remand under section 562 when the Court of First Instance records evidence on all the issues and at the final hearing dismisses the suit erroneously on some particular point without expressing any opinion on the other issues. It is contended, however, that the Judge's finding as to the plaintiff being the reversioner is contrary to the weight of

(1) I.L.R., 16 Mad., 207.

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evidence on the record and that this Court is bound to consider whether the Lower Appellate Court's finding is correct. The following cases were cited at the hearing—*Badam v. Imrat*(1), *Bhaubala v. Bapaji Bapuji*(2), *Abrahim Khan v. Faizumnessa Bibi*(3), and *Sohan Lal v. Azizumnessa Begam*(4).

The question now raised for decision was not decided in any of those cases, the only point decided therein being whether the decision of the Lower Appellate Court on the preliminary point was on the facts found by it open to any legal objection. I am of opinion that section 584 defines the powers of the High Court in second appeals and that no reason can be conceived for larger powers being conferred in appeals from what is termed an order in an appeal, and what is in substance an appellate decree on a particular or preliminary point or issue. Sections 588 and 584 ought to be read together and on so reading them, I can discover no legal foundation for holding that in appeals from orders of remand made in regular appeals by District Courts, this Court is not bound by the findings of fact on which the decision of the Lower Appellate Court rests. Otherwise in second appeals preferred from appellate decrees, the High Court would be bound to accept the findings of fact recorded by the District Courts whilst in appeals from remand orders which are substantially second appeals from the decision of the District Judge on appeal on a preliminary or particular point, the High Court would not be bound to accept the findings of fact. This seems to me to be an anomaly.

I dismiss this appeal with costs.

The defendant preferred the present appeal under Letters Patent, section 15.

Rangachariar for appellants.

Desikachariar for respondent.

JUDGMENT.—No appeal is allowed by law in this case.

(1) I.L.R., 3 All., 675.

(3) I.L.R., 17 Calc., 168.

(2) I.L.R., 14 Bom., 14.

(4) I.L.R., 7 All., 136.