reference was made by either side to the question of limitation, and the District Judge gave a decision on the merits. The fourth defendant now appeals, and the only ground urged before us is that the suit is time-barred for the reason stated by the District Munsif in the first trial. From what has been stated it is manifest that the question of limitation was put aside by the consent of the parties, and that they desired to have the case decided, not with reference to any such plea, but on the merits; and it was so decided in both the Courts below. This being so, it is impossible to allow the appellant now to fall back on the plea which he abandoned in both the Lower Courts, and, the more so, since it is a plea dependent on a variety of facts on which findings would have to be obtained before a decision could be given on it. It would be impossible to deal with the litigation of the country if such procedure were countenanced.

We confirm the decree of the Lower Court and dismiss this appeal with costs.

APPELLATE CIVIL.

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

1896. July 24.

APPASAMI NAYAKAN (DEFENDANT No. 2), APPELLANT,

v.

VARADACHARI AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code, s. 375—Power of Court to frame additional issues as to an alleged compromise effected subsequent to the institution of the suit.

The Civil Procedure Code, s. 375, was intended to meet cases where the parties having agreed to compromise subsequently fall out. The original Court has power to frame an additional issue to decide whether a lawful compromise has been effected between the parties subsequent to the institution of the suit.

SECOND APPEAL against the decree of S. Russell, District Judge of Chingleput, in appeal suit No. 206 of 1893, reversing the decree of M. Visvanatha Aiyar, District Munsif of Conjeeveram, in original suit No. 640 of 1892.

The facts of this case were as follows:—

* Second Appeal No. 717 of 1895.

APPASAMI NAYAKAN v. VARADA-CHARI.

This is a suit to have the plaintiffs' right established to a certain site and to recover with costs possession thereof from the defendants after getting the thatched shed erected thereon by the first and second defendants removed.

In the plaint presented on 6th October 1892, the plaintiffs allege that the site mentioned at the foot of the plaint belongs to them, a part of it being their ancestral property and the remaining having been acquired by purchase on 16th March 1880 by their deceased undivided brother Narasimha Chari, that it forms part of the backyard of their house, that the said Narasimha Chari first let out the ancestral portion of the site on 14th June 1878 to one Aulai as per rental agreement, and subsequently on 15th July 1880 let out the whole site to the first defendant taking from him also a rent bond that the first plaintiff also allowed the second defendant to live on the site taking a rent bond from him also on 16th May 1885, that the first and second defendants have been accordingly living on it having erected a thatched shed thereon, that the defendants have no right whatever to the site in question, that although the defendants Nos. 1 and 2 had been repeatedly asked, both orally and through writing, to vacate the site and to surrender it to the plaintiffs, they did not do so.

In the written statement presented on 21st November 1892 by the defendants' pleader, it is alleged that the plaintiffs' suit is fraudulent, that the allegation that the first and second defendants executed rent bonds to the plaintiffs is false, that the defendants' family have been living in the thatched shed on the site in dispute for the past sixty years, that the site in dispute has been in their exclusive enjoyment during that period, and that the plaintiffs have brought this false suit because the defendants filed a criminal complaint against them before the Sreeperumadur Magistrate for having tried to remove their thatched shed.

The following issues were recorded on 21st October 1892:—

(1) Are the rent bonds relied upon by the plaintiffs genuine?

(2) How long have the defendants been in occupation of the site sued for and under what title?

The following additional issue was recorded on 21st March 1893:—

Did the plaintiffs sell the site sued for along with an adjacent site for Rs. 80 on 25th October 1892, and

execute a sale deed and receive that sum and agree on 21st October 1892 to withdraw this suit?

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The Munsif found that the rent bonds relied on by the plaintiffs are genuine and that defendants had been in occupation as the tenants of the plaintiffs, but that the plaintiffs sold the site sued for for Rs. 80 on 25th October 1892, by an unregistered sale deed of that date, that the said sale was accompanied by possession and was valid in law. On these findings the suit was dismissed with costs.

On appeal the District Judge in reversing this decree remarked as follows:—

"The documents, exhibits A, B, C and D, which have, I think, "very properly been found to be genuine establish the title of the "plaintiffs beyond any doubt.

"The defendants also in a manner, admit the title, for their "present case is that they have during the course of the suit pur- "chased from plaintiffs the site in dispute for Rs. 80.

"The procedure adopted by the District Munsif in recording "the additional issue is not in accordance with any procedure which "has been pointed out in appeal. The third issue is not framed "on the pleadings of the parties.

"The procedure which might have been followed, that, namely, "sanctioned by section 375, Civil Procedure Code, has not been "followed; so that it appears to me the plaintiff is still at liberty "to prosecute his suit to a conclusion on the merits."

On a consideration of the sale deed of 25th October 1892, the District Judge held that, as it was not registered, it was not valid in law and passed a decree for possession without costs.

The defendant No. 2 appealed to the High Court.

Srirangachariar for appellant.

Rangaramanujachariar for respondents.

ORDER.—We do not understand the grounds on which the District Judge objects to the procedure of the District Munsif in framing the third issue. When the defendants alleged a compromise for consideration in the course of the suit and the plaintiffs denied it, an issue arose between them, and the District Munsif was right to record it and determine it, so as to enable him to deal with the suit under section 375, Code of Civil Procedure. That section 375 was intended to meet cases in which the parties,

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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.

1896. August 26.

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 Muttusami 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.