

“residing with him, and such a person first defendant undoubtedly
 “was. If first defendant is to be deemed to have been duly served,
 “then such service is enough to bind second defendant also.”

SUBRAMANIA
 PILLAI
 v.
 SUBRAMANIA
 AYYAR.

Defendant No. 1 preferred this petition.

Ramasubba Ayyar for petitioner.

Seshagiri Ayyar for respondent.

JUDGMENT.—We do not think that the service in this case was proper. Mere temporary absence of the person to be served does not justify the process-server affixing the summons to the door (*Bhomschetti v. Umabai*(1)). It is the duty of the peon to take some pains to find out the person to be served, so that, if possible, personal service may be effected.

We must set aside the decree and direct that the Subordinate Judge do restore the suit to his file and dispose of it according to law. Costs will abide and follow the result.

APPELLATE CIVIL.

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

RAMAKISSOOR DOSSJI (DEFENDANT No. 3), APPELLANT,

1898.
 January 17.

v.

SIRIRANGA CHARLU AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, ss. 2, 588—Religious Endowments Act—Act XX of 1863, s. 18—Order for payment of plaintiffs' costs out of the funds of the institution—Appeal on behalf of the institution.

A suit having been instituted under Religious Endowments Act, 1863, section 14, *bonâ fide* in the interests of a Hindu temple, the plaintiffs desired to withdraw the suit with liberty to sue again and an order was made permitting them to do so and directing that the costs be paid from the funds of the institution :

Held, that no appeal lay against the order as to costs.

APPEAL against the order of E. J. Sewell, District Judge of North Arcot, on Miscellaneous Petition No. 349 of 1896.

The order appealed against was an order permitting the withdrawal of Original Suit No. 3 of 1892 and gave liberty to the

(1) I.L.R., 21 Bom., 223.

* Appeal against Order No. 158 of 1897.

RAMAKRISHNAN
DOSSH
P.
SRIBANGA
CHARLU.

plaintiff to file a fresh suit and directed that the plaintiffs' costs be paid out of the funds of the Tirumalai and Tirupati devastanams, of which the first defendant had been, and the second defendant at the time of the suit was, the mahant. The suit was one brought under Religious Endowments Act XX of 1863, section 14, and the Judge considered that it had been brought *bonâ fide* in the interests of the devastanams. The order relating to costs was made under section 18 of that Act. The third defendant, who had been brought on to the record pending the suit on the death of the second, applied against the order so far as it related to costs.

The Acting Advocate-General (Hon. F. *Bhashyam Ayyangar*), *Sadagopachariar* and *Gopalasami Ayyangar* for appellant.

Sundara Ayyar for respondents.

JUDGMENT.—The order of the District Judge as to costs is not a "decree" within the definition of that word in section 2, Civil Procedure Code, nor is the order one of those enumerated in section 588, Civil Procedure Code, as subject to appeal. No appeal therefore lies (*Joyodindro Nath v. Sarut Sunduri Debi*(1)).

We dismiss the petition with costs.

APPELLATE CIVIL.

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

1898.
February 1.

REFERENCE UNDER STAMP ACT, s. 46.*

Stamp Act—Act I of 1879, s. 3 (9), (19)—Settlement—Gift—Conveyance.

An instrument whereby a life interest in land is created with remainder to the settlor and his heirs is a settlement within the meaning of the Stamp Act.

A transfer of land, in pursuance of a compromise of a widow's suit for maintenance, is a conveyance and must be stamped accordingly.

CASE stated under Stamp Act, 1879, section 46, by N. S. Brodie, Acting Secretary to the Board of Revenue.

The case was stated as follows :—

"Copies of two documents presented for registration in the Godavari district, together with their English translations, are herewith forwarded. Of these one has been treated as a gift and

(1) I.L.R., 18 Calc., 322.

* Referred Case No. 20 of 1897.