District Court. In the event he reversed the decree of the District Munsif and remanded the suit.

The plaintiff preferred this appeal.

Narayana Rau for appellant.

Pattabhirama Ayyar for respondents.

JUDGMENT.—We have all the materials before us to form our opinion and have arrived at the conclusion that the District Judge acted illegally in admitting the appeal on the 12th June 1895. At that date the appeal was many months out of time, and the affidavit shows no ground for excusing the delay. The Subordinate Judge considers that he was not entitled to question the order of the District Judge and relies on *Jhotee Sahoo* v. *Omesh Chunder Sircar*(1).

But seeing that the order was *ex parte* and that the appeal was transferred by the District Judge to the Subordinate Judge, we think that upon that transfer all the powers of an Appellate Court became vested in the Subordinate Judge. Otherwise an appeal would be partly in one Court and partly in another.

We do not agree with the decision in *Jhotee Sahoo* v. *Omesh Chunder Sircar*(1). It is urged before us that the point of time cannot be taken on appeal from an order of remand, but if the Subordinate Judge was wrong in entertaining the appeal, it is clear that he ought not to have made an order of remand.

We must allow the appeal and set aside the order of the Subordinate Judge and restore the decree of the District Munsif with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

SANJIVI (DEFENDANT NO. 1), APPELLANT,

1897. July 8.

v.

JALAJAKSHI AND ANOTHER (PLAINTIFF AND HER REPRESENTATIVE), RESPONDENTS.*

Hindu law—Devadasi—Adoption—Illegal purpose.

The plaintiff sued as the adopted daughter of a deceased dancing woman to recover a share of the property left by her. It appeared that the adoption of the

(1) I.L.R., 5 Calc., 1.

* Appeals Nos. 227 and 236 of 1895.

SANJIVI v. JALAJAKSHI.

plaintiff, which took place in 1871 when she was six years old, was made with the intention of bringing her up to practise prostitution even during her minority:

Held, that the adoption was invalid.

APPEAL against the decree of O. Chandu Menon, Subordinate Judge of South Canara, in Original Suit No. 41 of 1894.

The plaintiff sued to recover a moiety of the property left by a deceased dancing woman who had adopted successively the defendant and the plaintiff. The plaintiff's adoption took place about the year 1871. Issues were raised as to the validity of the adoption of the plaintiff. These issues were determined by the Subordinate Judge in favour of the plaintiff. He referred to *Chalakonda Alasani* v. *Chalakonda Ratnachalam*(1), *Kamakshi* v. *Nagarathnam*(2), *Venku* v. *Mahalinga*(3), and *Muttukannu* v. *Paramasami*(4), and in the result he passed a decree for the plaintiff.

The defendant No. 1 preferred this appeal.

Ramachandra Rau Saheb and *Madhava Rau* for appellant.

Narayana Rau for respondent No. 2.

JUDGMENT.—The plaintiff and first defendant are dancing girls. The plaintiff claims a share in the property of her adoptive mother, the deceased Lacha. The first defendant, another adopted daughter of Lacha, denies the plaintiff's adoption.

We have no doubt but that the plaintiff was brought up as an adopted daughter with the first defendant by the deceased Lacha. The evidence as to the fact of adoption is not very clear, but on the whole we accept the conclusion of the Subordinate Judge that there was an adoption and such adoption was, in effect, admitted by the first defendant so long ago as 1885. But the validity of the adoption is questioned on two grounds: firstly, because the adoption of the plaintiff, who was then a minor, was made after the Penal Code came into force, and with the intention of bringing her up to practise prostitution even during her minority and, secondly, because there is no sufficient proof of local usage to support the validity of an adoption by a dancing girl during the lifetime of a daughter previously adopted. We think that the first objection is valid. That the intention of the adoption was, as alleged, is clear from the evidence of the plaintiff's own second witness. The evidence shows that Lacha herself practised

(1) 2 M.H.C.R., 56.
(2) 5 M.H.C.R., 161.
(3) I.L.R., 11 Mad., 393.
(4) I.L.R., 12 Mad., 214.

prostitution and took the plaintiff and defendant with her to nautches during their minority.

The evidence also shows that, from the time that plaintiff and first defendant arrived at puberty, they have been prostitutes.

In these circumstances it is idle, in the absence of any trustworthy evidence to that effect, to contend, as plaintiff's vakil now does, that the plaintiff's adoption was with a view to giving her in marriage rather than for prostitution. An adoption made as this was with such intention after the Indian Penal Code came into force is illegal, and can give the plaintiff no right to claim the property of Lacha by inheritance. In this view it is not necessary to consider the second objection to the validity of the adoption. Both appeals must, therefore, be allowed with costs and the plaintiff's suit dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

LOBO (DEFENDANT), APPELLANT,

v.

BRITO (PLAINTIFF), RESPONDENT.*

1897. September 22.

Specific Relief Act—Act I of 1877, s. 42—Benami purchase by a Government officer prohibited from acquiring land—Suit for declaration against benamidar.

The plaintiff sued for declaration of his title to certain land which had been purchased by him in the name of the defendant. The object of the transaction was to conceal from the Collector the fact that the plaintiff, who was a Tahsildar, had acquired property in his taluk contrary to the rules of his department:

Held, that the plaintiff was entitled to the declaration sought.

APPEAL against the decree of U. Achutan Nayar, Acting Subordinate Judge of South Canara, in Original Suit No. 33 of 1895.

The plaintiff sued for a declaration of his title to certain land. The title-deeds of the land stood in the name of the defendant, but it had, in fact, been acquired by the plaintiff who was a Tahsildar and as such prohibited, by the order of Government, from acquiring property within his taluk either in his own name or in the

* Appeal No. 134 of 1896.