

APPELLATE CIVIL.

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

KRISHNA BHATTA (PLAINTIFF), APPELLANT,

v.

SUBRAYA AND OTHERS (DEFENDANTS Nos. 1, 3 AND 2),
RESPONDENTS.*

Limitation Act—Act XV of 1877, s. 5—Appeal admitted after time by District Court—Power of Subordinate Court to whom the appeal is transferred.

A District Court by an *ex parte* order admitted an appeal filed after the expiry of the period of limitation and transferred it for disposal to the Subordinate Court, in which objection was taken that the appeal was time-barred. The Subordinate Judge held that he could not entertain the objection, he heard the appeal and remanded the suit :

Held, that the Subordinate Court had jurisdiction to entertain and dispose of the objection, and that the objection was sound and that the order of remand should be set aside.

APPEAL against the order of U. Achutan Nayar, Subordinate Judge of South Canara, in Appeal Suit No. 160 of 1895, remanding to be re-heard Original Suit No. 37 of 1894 on the file of the District Munsif of Puttur.

This was a suit for money in which the District Munsif passed a decree for plaintiff. Defendants presented their appeal in due time to the District Court, together with an application for permission to appeal *in forma pauperis*. After a protracted inquiry the District Judge refused the application and rejected the appeal, which, however, he said he would admit on payment of the Court-fee. The appellant accordingly paid the Court-fee and the District Judge made an order, *ex parte*, admitting the appeal, notwithstanding that the period of limitation had already expired. The appeal was then referred by the District Judge to the Subordinate Judge for disposal. Objection was taken at the hearing on the ground of limitation, and *Bishnath Prasad v. Jagarnath Prasad*(1) was quoted. The Subordinate Judge referred to *Patcha Sahab v. Sub-Collector of North Arcot*(2) and *Jhotee Sahoo v. Omesh Chunder Sircar*(3), and held that the appeal was not barred by limitation, and that, if it were, he had no jurisdiction to go behind the order of the

* Appeal against Order No. 58 of 1896.

(2) I.L.R., 15 Mad., 78.

(1) I.L.R., 13 All., 305.

(3) I.L.R., 5 Cal., 1.

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.

KRISHNA
BHATTA
v.
SUBBAYA.

APPELLATE CIVIL.

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

SANJIVI (DEFENDANT No. 1), APPELLANT,

v.

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

1897.
July 8.

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 Cal., 1.

* Appeals Nos. 227 and 236 of 1895.