

PRIVY COUNCIL.

P. C.*
1906
February 15.

VENGANAT SWAROOPATHIL VALIA NAMBIDI AVERGAL

v.

CHERAKUNNATH NAMBIYATHAN NAMBUDRIS
KRISHNAN NAMBUDRIPAD AND ANOTHER
ex parte VENGANAT SWAROOPATHIL VALIA NAMBIDI
AVERGAL.

[On appeal from the High Court of Judicature
at Madras.]

*Appeal to Privy Council—Practise—Application to High Court for certificate for
leave to appeal to Privy Council—Grounds for refusal of leave.*

It is desirable that the High Court, in refusing a certificate for leave to appeal to His Majesty in Council, should state their reasons for refusing it.

PETITION for special leave to appeal from two decrees (15th February 1905) of the High Court of Judicature at Madras.

The subject-matter of the petition related to a dispute as to the right to superintend and manage an ancient temple or pagoda in Palghat, of which the respondents were vernalers or trustees, and over which the petitioner claimed what are known as melkoima rights. Disputes as to the respective rights of the parties or their predecessors in title had been compromised in 1845 and 1874 on which occasions the melkoima rights had been recognized; and in 1887 disputes having again arisen, a suit was brought by the respondents against the petitioner in which they claimed the exclusive right of management. This suit eventually came before the Privy Council who upheld the decree of the High Court that the parties had a joint right of management see [*Nilkandhen Nambudirapad v. Padmanabha Revi Varma*(1)]. In 1899 the respondents brought a suit to have the exclusive rights they claimed declared; and the petitioner also brought a suit asserting his melkoima rights and asking for a declaration of their extent; and in those suits, on appeal, the High Court made the two decrees from which the petitioner now desired leave to appeal.

The petition stated that the value of the subject-matter of the suit in Court of First Instance and on appeal was over Rs. 10,000; that the appeal involved substantial question of law, particularly,

* Present: Lord DAVEY, Sir ANDREW SCORCE, and Sir ARTHUR WILSON.

(1) L. R., 21 I. A., 128; I. L. R., 18 Mad., 1.

as to whether the petitioner was estopped by the compromises of 1845 and 1874 from setting up the melkoima rights claimed by him, and whether the judgment of the Privy Council in the previous suit was conclusive as to the nature and extent of the right of superintendence and management vested respectively in the melkoima and the uralers; and that on 8th August the petitioner had filed two applications to the High Court for leave to appeal to the Privy Council against the decrees of 15th February 1905, but the High Court had, on 23rd September 1905, dismissed them without giving any reasons.

DeGruyther for the petitioner.

15th February 1906.—The judgment of their Lordships was delivered by

Lord DAVEY.—Their Lordships do not think that this is a case in which they can advise His Majesty to grant special leave to appeal. Their Lordships desire to add that it would be convenient if the High Court, on future occasions, in refusing a certificate for leave to appeal, would be good enough to state the grounds on which they refused it.

Application refused.

Solicitors for the appellant: *Lawford, Waterhouse & Lawford.*

APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, and Mr. Justice Subrahmanya Ayyar, and Mr. Justice Davies.

AVANASI GOUNDEN AND OTHERS (DEFENDANTS NOS. 1, 2 AND 4 AND SECOND DEFENDANT'S LEGAL REPRESENTATIVES), APPELLANTS,
v.
NACHAMMAL (PLAINTIFF), RESPONDENT.*

1905
October
18, 19.
November 10

Civil Procedure Code Act XIV of 1882, s. 13—Res judicata—'Of competent Jurisdiction' meaning of 'Decision against which no second appeal allowed, no bar to suit open to second appeal.

The words 'of jurisdiction competent' in section 13 of the Code of Civil Procedure admit of the provisions of law relating to appealability being

* Second Appeal No. 975 of 1903, presented against the decree of Vernon A. Brodie, Esq., District Judge of Coimbatore, in Appeal Suit No. 98 of 1902, presented against the decree of M. R. Ry. T. Sadasiva Ayyar, District Munsif of Coimbatore, in Original Suit No. 1036 of 1900.