

SAMI-
NATHAN
CHETTIAR
v.
SWAMIAPPA
NAICKER.

sale-proceeds applied in accordance with section 97 of the Transfer of Property Act. The second defendant will be at liberty to apply for sale under this decree. If the plaintiff's claim is not satisfied out of the surplus proceeds of the sale as aforesaid he may proceed to sell the other properties mortgaged to him only.

The main contest in this case has been with reference to certain large items in respect of which the plaintiff and the second defendant have lost. Having regard to the fraudulent nature of the claims set up by them we think the proper order to make in regard to costs is to order the three contending parties to bear their own costs throughout.

APPELLATE CIVIL.

*Before Sir S. Subrahmanya Ayyar, Officiating Chief Justice,
and Mr. Justice Sankaran Nair.*

BALASUNDARA MUDELLY (DEFENDANT), APPELLANT,

v.

RAJALINGAM CHETTIAR (PLAINTIFF), RESPONDENT.*

1905.
September
4.

*Court Fees Act VII of 1870—Advalorem fee chargeable on appeals against decrees
under section 330 of the Code of Civil Procedure.*

Where a claim under section 330 of the Code of Civil Procedure has been registered as a suit, an appeal against the decree directing delivery of property in such suit ought to be stamped with an *ad valorem* fee.

THE plaintiff obtained a decree for possession of the plaint house against the father of the defendant. In executing the decree, the plaintiff was obstructed by the defendant, whose claim was registered as a suit under section 330 of the Code of Civil Procedure. The lower Court passed a decree in favour of the plaintiff.

Defendant preferred this appeal.

*T. V. Muthukrishna Ayyar for T. V. Seshagiri Ayyar for
appellant.*

*C. V. Anantakrishna Ayyar for P. R. Sundara Ayyar for
respondent.*

* Appeal No. 164 of 1903, presented against the decree of S. Gopalachariar Esq., District Judge of Salem, in Original Suit No. 16 of 1902.

JUDGMENT.—A preliminary objection is taken that the stamp duty paid is insufficient. There can be no doubt that the stamp duty payable with reference to the order appealed against which directs the appellant to surrender possession to the respondent, is an *ad valorem* fee. *Mahbuban v. Umrao Begum* (1) and *Narayan Raghunath v. Bhagvant Anant* (2). The case of *Srinivasa Ayyangar v. Peria Tambi Nayakar* (3) is not inconsistent with this view. Apparently the order then in question was treated as one in execution and the appeal was therefore held to be properly stamped as a miscellaneous appeal.

S. D. SUNDARA
MUDELLY
v.
RAJA-
LINGAM
CHETTIAR.

Now as to the sufficiency of the stamp duty paid on this appeal, viz, Rs. 10, there is nothing to show that the house in dispute is of a value which will not be covered by that amount. We have consequently heard the appeal on the merits and in our opinion it fails. The findings in the previous suits establish that the debt for which the sale took place was one which bound the appellant as the vendor's son. The respondent is therefore entitled to possession of the appellant's share also. The appeal is dismissed with costs.

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,
and Mr. Justice Boddam.*

CHOWAKARAN MAKKI AND OTHERS (PLAINTIFFS), APPELLANTS,
v.
VAYYAPRATH KUNHI KUTTI ALI AND OTHERS (DEFENDANTS)
RESPONDENTS.*

1905
September
12.

Land Acquisition Act I of 1894—Parties bound by decision as to right to claim compensation in proceedings under—Res judicata.

An adjudication as to the right of persons claiming compensation under the Land Acquisition Act I of 1894 concludes the question between the same parties in subsequent proceedings.

Mahadevi v. Neelamani, (I.L.R., 20 Mad., 269), distinguished.

(1) I.L.R., 8 Cal., 720.

(2) I.L.R., 10 Bom., 233.

(3) I.L.R., 4 Mad., 420.

* Appeal No. 88 of 1903, presented against the decree of M. R. Ry. M. Achutan Nair, Subordinate Judge of North Malabar, in Original Suit No. 11 of 1902.