

Defendant petitioned the High Court under section 622 of the Civil Procedure Code.

K. Subrahmania Sastri and V. Ramesam for petitioner.

P. Nagabhuhanam for respondent.

JUDGMENT.—The District Munsif had, in my opinion, jurisdiction to review his order, and though the second order which he made purports to be under chapter VII of the Code of Civil Procedure, I ought not to interfere under section 622, if the right result has been reached and that which was irregularly done has been set right (*Vide Navayanasamal v. Natesa*(1)).

It seems to me that, in the first instance, the District Munsif might perhaps have proceeded under section 158, but he did not, as a matter of fact, decide the suit on the evidence before him, but expressly and wrongly proceeded under section 177. He had jurisdiction to review this wrong order for sufficient reason.

The petition is dismissed with costs.

BOLLA-
FRAGADA
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BOLLA-
FRAGADA
JANAKI
RAMIAH
GARU.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, Mr. Justice Davies,
and Mr. Justice Benson.*

THE SECRETARY OF STATE FOR INDIA (APPELLANT,
IN SECOND APPEAL No. 1277 of 1900), PETITIONER,

1904.
April 8.

v.

MANJESHWAR KRISHNAYA (RESPONDENT), RESPONDENT
IN THE ABOVE SECOND APPEAL.*

*Second appeal—Evidence not placed before lower Appellate Court not
receivable in second appeal.*

A party cannot, on second appeal, let in evidence which was not placed before the lower Appellate Court.

Ramchandra v. Krishnaji (I.L.R., 28 Bom., 4), referred to.

Raru Kutti v. Mamad (I.L.R., 18 Mad., 480), referred to.

(1) I.L.R., 16 Mad., 424.

* Civil Miscellaneous Petition No. 535 of 1904, praying that in the circumstances stated therein the High Court will be pleased to order the production of the select documents filed as additional evidence in Second Appeal No. 1276 of 1900 under Civil Miscellaneous Petition No. 507 of 1902 as additional evidence in Second Appeal No. 1277 of 1900.

THE
SECRETARY
OF STATE
FOR INDIA
MANJESH-
WAR
KRISHNAYA.

THE facts are set out in the judgment.

The Hon. the Advocate-General for petitioner.

The Hon. Mr. C. Sankaran-Nair and K. P. Madhava Rao

for respondent.

ORDER.—Objection has been taken to the admissibility of fresh evidence in second appeal, and we have been referred to *Rama-chandra v. Krishnaji*(1) and *Raru Kutti v. Mamal*(2). We must uphold the objection and dismiss the petition.

APPELLATE CRIMINAL.

Before Mr. Justice Munro and Mr. Justice Sankaran-Nair.

1908.
July 21.

RAGAVA AIYANGAR (SECOND PETITIONER) PETITIONER IN
CRIMINAL REVISION CASE No. 9 OF 1908,

KRISHNASAMYA AIYAR (FIRST PETITIONER), PETITIONER IN
CRIMINAL REVISION CASE No. 10 OF 1908,

v.

KRISHNASAMI AIYAR AND OTHERS (COUNTER-PETITIONERS),
RESPONDENTS IN BOTH.*

Criminal Procedure Code, Act V of 1898, s. 145—Mere delivery certificates to purchaser at Court sale without proof of delivery of actual or symbolical possession of property not sufficient to prove possession.

A purchaser at a Court sale of immoveable properties, to whom delivery certificates have been granted, but to whom possession either actual or symbolical was not delivered cannot, on the strength of such certificates alone, be declared to be in possession of such properties in proceedings under section 145 of the Criminal Procedure Code.

Gulraj Marawari v. Sheikh Bhatar, (I.L.R., 32 Cal., 796), distinguished.

Kunja Behari Das v. Khetro Pal Singh Roy (6 C.W.N., 38), distinguished.

PETITION under section 145, Criminal Procedure Code.

The facts of the case are thus set out in the judgment of the Magistrate.

(1) I.L.R., 28 Bom., 4.

(2) I.L.R., 18 Mad., 480.

* Criminal Revision Cases Nos. 9 and 10 of 1908, presented under sections 430 and 439 of the Code of Criminal Procedure, praying the High Court to revise the orders of M. R. Ry. Seshia, Subdivisional Magistrate of Tanjore, in Possession cases Nos. 3 and 2 of 1907.