

SRIMATH  
DAIVA-  
SUKAMANI  
PANDARA  
SANMNIDHI  
v.  
NOOR  
MAHOMED  
ROUTHAN.

appeal. A further point was raised on behalf of the appellant, viz., that as no express charge over the income of the mutt was created by the defendant's predecessor, the decree against the income of the mutt is bad in law. We were asked to apply the rule in the case of executors to the present case. The analogy which is properly applicable, as pointed out by the Privy Council in *Konwur Durganath Roy. v. Ramchun-ter Sen*(1) is that of the manager of an infant heir. The estate of an infant may be liable for a contract by his guardian without any express charge over the estate having been given. See for instance *Sundararaja Ayyangar v. Pattanathusami Tever*(2), *Maharana Shri Ranmal Singji v. Vadilal Vakhatchand*(3) on which the appellant relied, merely decided that an infant could not be made personally liable for a contract entered into by his guardian. Here it is not sought to make the defendant personally liable.

The second appeal is dismissed with costs. The memorandum of objections also is dismissed with costs.

## APPELLATE CIVIL.

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

GOPALA AIYAR (DEFENDANT), APPELLANT,

v.

RAMASAMI SASTRIAL (PLAINTIFF), RESPONDENT.\*

1907.  
October 30..

*Civil Procedure Code, Act XIV of 1882, ss. 584, 591, 623, 629—When review granted, no appeal lies against the final decree on grounds other than those mentioned in s. 629—Sufficiency of the reason on which review granted no ground for appeal against the final decree.*

Sections 584 and 591 of the Code of Civil Procedure do not control section 629, and do not, where a review is granted and a final decree passed, confer a right of appeal, when such appeal is not based on one of the grounds mentioned in section 629.

Where an application for review of judgment is granted 'for any other sufficient reason' under section 623 of the Code, the sufficiency or other-

(1) L. R., 4 I.A., 52.

(2) I.L.R., 17 Mad., 306.

(3) I.L.R., 20 Bom., 61.

\* Second Appeal No. 1334 of 1904, presented against the decree of F. D. P. Oldfield Esq., District Judge of Tanjore, in Appeal Suit No. 554 of 1900 presented against the decree of M. R. Ry. T. R. Kuppuswamy Ayyangar District Munsif of Tiruvalur, in original Suit No. 403 of 1899.

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wise of the reason is not a good ground of appeal against the order and is not, notwithstanding the general provisions of sections 584 and 591, a good ground of appeal against the final decree.

THE facts are sufficiently stated in the judgment.

Of the grounds in the memorandam of appeal to the High Court, all except the third were based on the merits of the case. The third ground was that the Subordinate Judge ought not to have granted a review on the facts alleged in the application for review. The defendant appealed to the High Court.

SIR, *V. C. Desika Charivar* for *T. R. Ramachandra Ayyar* and *T. R. Krishnaswami Ayyar* for appellants.

The Hon. the Acting Advocate-General and *T. R. Venkatarama Sastri* for respondent.

JUDGMENT.—In this case the Munsif gave the plaintiff a decree, and the Subordinate Judge on appeal, in the first instance, reversed this decree and dismissed the plaintiff's suit. The plaintiff, then applied to the Subordinate Judge for an order of review, and the Subordinate Judge granted a review. In his order granting the review the Subordinate Judge states certain reasons which go to show that in his opinion in reversing the Munsif's decree he had been wrong on the facts and he then states "For these and other reasons there has probably been a failure of justice, and I think there are sufficient reasons in the terms of section 623 of the Civil Procedure Code to grant a review and have the appeal reargued."

The appeal was reheard by the District Judge and the decree or the Munsif was affirmed.

The defendant now appeals to this Court against the decree of the District Judge.

On behalf of the plaintiff it has been contended that no appeal lies since objection to the admission of the review had not been taken under any of the grounds mentioned in section 629 of the Code of Civil Procedure. This is no doubt so, and the question for our determination is—when the objection is taken in the appeal against the final decree, does an appeal lie on any ground other than one of the grounds mentioned as ground for objections in section 629? We do not think that either section 584, or section 591, controls section 629 so as to confer a right of appeal in a case where the appeal is not based on one of the objections mentioned in section 629, and, in our opinion in the present case, no appeal lies. Section 629, expressly provides that the objections mentioned

in the section may be made either by an appeal against the order or may be taken in appeal against the final decree. It was held in *Ali Akbar v. Khurshed Ali* (1) that where an application for review of judgment was granted "for any other sufficient reason" the sufficiency or otherwise of the reason is not a good ground of appeal against the order. The same view was taken in *Muani Ram Chowdhry v. Bishen Perbush Narain Singh* (2). The principle of these decisions appears to us to be applicable to cases where the objection is taken in the appeal against the final decree notwithstanding the general provisions of section 584 and section 591. The contention that the decree of the District Judge is bad because the appeal in the first instance was heard by, and the order for review was granted by, the Subordinate Judge, does not seem to us to be sustainable. The case of *Kumarasami Reddiar v. Subbaraya Reddiar* (3) does not apply.

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The second appeal must be dismissed with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Miller.*

MOGERA NANDI (PLAINTIFF), APPELLANT

v.

PARAMESWARA UDPA AND OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1907  
December 2.

*Limitation Act, Act XV of 1877, sched. II, art. 144—Suit for possession under an Arthamulgeni lease governed by art. 144.*

A suit to recover possession of land leased under an *Arthamulgeni* lease is not based on the contract to deliver possession contained in the lease deed, but on the completed title to possession acquired under the lease.

The period of limitation applicable to such a suit is that provided in article 144 of schedule II of the Limitation Act.

(1) I. L. R., 27 All., 695.

(2) I. L. R., 24 Calc., 878

(3) I. L. R., 23 Mad., 314.

\* Second Appeal No. 1048 of 1905, presented against the decree of H. O. D. Harding, Esq., District Judge of South Canara, in Appeal Suit No. 160 of 1904, presented against the decree of M. R. Ry. V. B. Ramaswami Ayyar, District Munsif, Kundapur, in Original Suit No. 60 of 1904.