APPELLATE CIVIL—FULL BENCH.

Before Sir. Arnold White, Chief Justice, Mr. Justice Miller and Mr. Justice Abdur Rahim.

KOLLIPARA SEETAPATHY (PETITIONER IN CIVIL REVISION PETITION NO. 444 OF 1907), APPELLANT,

v.

KANKIPATI SUBBAYYA (RESPONDENT IN CIVIL REVISION PETITION NO. 444 OF 1907), RESPONDENT.*

1908. September 1. 1909. March 5. October 14.

Jurisdiction—Appellate decree passed without jurisdiction—High Court bound to set aside such decree.

Where a small cause suit is tried by a Munsif on the original side and his decision is reversed on appeal, the High Court is bound to set aside the appellate decree as having been passed without jurisdiction.

Parameshwaran Nambudri v. *Vishnu Embrandiri* [(1904) I.L.R., 27 Mad., 478], dissented from,

Ramasamy Chettiar v. *Orr*, [(1903) I.L.R., 26 Mad., 176], approved.

Shankarbhai v. *Somabhai*, [(1901) I.L.R., 25 Bom., 417], approved,

APPEAL under section 15 of the Letters Patent against the judgment of Wallis, J., in Civil Revision Petition No. 444 of 1907, presented under section 622 of the Code of Civil Procedure to revise the decree of the Subordinate Judge of Kistna at Ellore in Appeal Suit No. 7 of 1906.

The appeal first came on for hearing before (Sankaran-Nair and Abdur Rahim, JJ.) when their Lordships made the following Order of Reference to the Full Bench :—

ORDER OF REFERENCE TO A FULL BENCH (SANKARAN-NAIR, J.).—The plaintiff in Original Suit No. 385 of 1904 on the file of the Court of the District Munsif of Ellore sued to recover Rs. 45 under an award made by an arbitrator under a muchilika executed by the parties. The defendant denied the reference, and raised various other objections which were overruled by the District Munsif who passed a decree in favour of the plaintiff. This decree was reversed on appeal by the Subordinate Judge of Ellore who held that the reference was vague and the arbitrator, therefore, might have decided questions not referred to him for arbitration. The plaintiff applied to this Court under

* Letters Patent Appeal No. 6 of 1908.

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section 622, Civil Procedure Code, to set aside the decree of the Subordinate Judge on the ground that, as the suit was one cognizable by a Small Cause Court, no appeal lay to the Subordinate Judge and his decision was passed without any jurisdiction.

The learned Judge, who heard the Revision Petition following the case of *Parameshwaran Nambudiri* v. *Vishnu Embrandiri*(1), declined to interfere for the reason that the plaintiff himself instituted the suit on the original side and could not therefore be heard to complain that the defendant filed an appeal against the decree in the original suit.

This is an appeal against his order. It is conceded on both sides that the suit ought to have been tried as a small cause suit. Section 16 of the Provincial Small Cause Courts Act is in these terms: "Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable." This section apparently only regulates the procedure and does not deprive the District Munsif of the jurisdiction vested in him by the Madras Civil Courts Act. However that may be, this has to be read with section 646 (B) which gives power to the District Court to submit to the High Court for revision, the records in a suit erroneously decided by a subordinate Court under a mistake as to its jurisdiction. I agree with the decision of the Allahabad High Court in *Ram Lal* v. *Kabul Singh*(2) that the words "by reason of erroneously holding" in that section implies that it is only when the question of jurisdiction is raised before the first Court that the parties are entitled under that section to request the District Judge to make a reference to the High Court. Before judgment, the Court may make the reference under section 646 (A) if it entertains any doubt as to the jurisdiction: after judgment the District Judge may refer, if he considers the decision of the first Court on the point of jurisdiction erroneous, and, on reference by the District Judge, the High Court "may pass such order as it thinks fit." It is clear, therefore, that the decision of the Court of First Instance is not to be set aside on the sole question of jurisdiction.

(1) (1904) I.L.R., 27 Mad., 478 at p. 479. (2) (1903) I.L.R., 25 All., 135.

I agree, therefore, with the learned Judges in *Parameshwaran Numbudiri* v. *Vishnu Embrandiri*(1), that the principle of the express provision in 646 (B) should be followed in the exercise of the discretion allowed by section 622 and that we should not interfere solely on this ground with the decision of a Court of First Instance even when the question was raised and *a fortiori* when the question was not raised.

Does the same principle apply in favour of the decision of an Appellate Court? In the case in *Parameshwaran Numbudiri* v. *Vishnu Embrandiri*(1), it was perhaps unnecessary to decide the point, as the decision of the Appellate Court confirmed the decree of the first Court and, unless that decree was set aside, the petitioner before the High Court could not derive any benefit.

In the case of *Suresh Chunder Maitra* v. *Kristo Rangini Dasi*(2) the Calcutta High Court have decided that we are to apply the same principle to the Appellate Courts. The learned Judges say, "If no objection to jurisdiction is raised, the District Court is left to act in exercise of its own discretion either to decide the appeal or to submit the case to the High Court." They further add that, if the parties require it, the District Judge is bound to submit the case for the orders of the High Court. In the case before us the appeal was heard by the Subordinate Judge who has apparently no power to act under section 646 (B). The learned Judges, it appears to me, have ignored the fact that the District Court under section 646 (B) does not act as a Court of Appeal; that even in cases where no appeal lay or where no appeal is filed, the Court may or shall act under that section, and that section 646 (B) does not enable the High Court to deal with the decision of the Appellate Judge on the merits of the case. For these reasons, I am of opinion that, in considering whether we ought to interfere with the decree of an Appellate Court, no inference is to be drawn from section 646 (B). It stands to reason that a suit tried by the Munsif on the original side should not be sent to the same Munsif to be tried as a small cause suit. But the same reasons do not obviously apply to a decision in appeal.

Disregarding section 646 (B) I am of opinion that in this respect, the decisions in *Shankarbhai* v. *Somabhai*(3) and

(1) (1904) I.L.R., 27 Mad., 478 at p. 479. (2) (1894) I.L.R., 21 Calc., 249.
(3) (1901) I.L.R., 25 Bom., 417.

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Ramasamy Chettiar v. *Orr*(1), so far as the appellate decision is concerned should be followed and that the decree of the lower Appellate Court should be set aside and that of the Munsif be restored with costs throughout. I need hardly add that consent cannot give jurisdiction to the District Court. *Ledgard* v. *Bull*(2), *Minakshi* v. *Subramanya*(3).

But, as the case *Suresh Chunder Maitra* v. *Kristo Rangini Dasi*(4) has received the approval of this Court in *Parameshwaran Nambudiri* v. *Vishnu Embrandiri*(5), I would refer to the Full Bench the following question:—

"Where a small cause suit is tried by the Munsif on the original side and his decision in appeal is reversed by the subordinate Court, is the High Court bound to set aside the decree in appeal as having been passed without jurisdiction?"

ABDUR RAHIM, J.—I agree.

The case again came on for hearing before the Full Bench constituted as above.

P. Nagabushanam for appellant.

P. Narayanamurthi for respondent.

The Court expressed the following

OPINION.—We are unable to agree with the view taken by the learned Judges in *Parameshwaran Nambudiri* v. *Vishnu Embrandiri*(5), as regards the appellate decision in that case. As the decision of the Appellate Court in the case before us was made without jurisdiction, we think this Court is bound to set it aside. As regards the decision of the Appellate Court, we think the cases *Ramasamy Chettiar* v. *R. G. Orr*(1), and *Shankarbhai* v. *Somabhai*(6) were rightly decided. We would answer the question which has been referred to us in the affirmative.

The appeal again came on for final hearing before (Sankaran Nair and Abdur Rahim, JJ.) who delivered the following judgment:—

JUDGMENT.—Following the opinion of the Full Bench, we reverse the order of the learned Judge and of the lower Appellate Court and restore that of the Munsif with costs throughout.

(1) (1903) I.L.R., 26 Mad., 176.
(2) (1887) I.L.R., 9 All., 191 (P.C.).
(3) (1888) I.L.R., 11 Mad., 26 (P.C.).
(4) (1894) I.L.R., 21 Calc., 249.
(5) (1904) I.L.R., 27 Mad., 478 at p. 479.
(6) (1901) I.L.R., 25 Bom., 417.