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P.  
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NAKAL  
PARVATHI.

Procedure Code, this question can be, and ought to be, decided only under section 214 (c) and not by separate suit (*Chowdry Wapad Ali v. Mussamul Jumma*(1)). The cases cited by the respondent (*Ramanathan Cheltiar v. Leovai Marakayar*(2), *Kayyankot Kunhacha v. Kayyankot Kannan*(3)) have no bearing on the question.

On the merits, we find no sufficient ground for differing from the District Judge's conclusion that the improvements were the self-acquisition of the deceased member of the family and as such is liable in the hands of the appellants to satisfy the decree.

The appeals are dismissed with costs.

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## APPELLATE CIVIL.

Before Mr. Justice Subrahmaniam Ayyar and Mr. Justice Davies.

SRESHAGIRI ROW (PLAINTIFF), APPELLANT,

v.

NAWAB ASKUR JUNG AFTAB DOWLA (DEFENDANT),

RESPONDENT.\*

*Letters Patent—Art. 15—Order on a plaintiff to give security for defendant's costs—Judgment—Appeal.*

An order, passed on the Original Side of the Madras High Court, on a plaintiff to give security for the costs of a suit, under section 380 of the Code of Civil Procedure, is a judgment, within the meaning of article 15 of the Letters Patent, and an appeal lies therefrom.

The term "judgment," in that article, includes any order which determines some right or liability of the parties before the Court.

ORDER on a plaintiff to furnish security for costs. Plaintiff instituted a suit on the Original Side of the High Court, Madras, whereupon the defendant applied on a Judge's summons for an order on plaintiff to give security for the defendant's costs of the suit. The learned Judge made the order.

Plaintiff preferred this appeal.

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(1) 11 B.L.R., 149.

(2) T.L.R., 23 Mad., 195.

(3) S.A. No. 455 of 1900 (unreported).

\* Original Side Appeal No. 37 of 1902 presented against the judgment of Mr. Justice Boddam in Original Suit No. 97 of 1902.

The Advocate-General (Hon'ble Mr. J. P. Wallis), for respondent, took the preliminary objection that no appeal lay.

Mr. *Allan Daly* for appellant.

SERDAGIRI  
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NAWAB  
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DOWLA.

JUDGMENT.—We are unable to accept the learned Advocate-General's contention that no appeal lies. We consider the order in appeal was a "Judgment" within the meaning of article 15 of the Letters Patent of this Court, inasmuch as it adjudicated on the liability of the plaintiff to furnish security under section 380 of the Code of Civil Procedure. 'It is not easy to reconcile the language employed in the various cases upon the point, but all the cases where it has been held that an appeal lies proceed on the same principle, namely, that the term "Judgment" includes any order which determines some right or liability of the parties before the Court.

Passing to the merits, we are of opinion that the plaintiff has shown that he was a resident of Madras at the time the suit was instituted and for several years previously. He has categorically given the various places in which he has resided in Madras during the past eight years, and his statements have not been contradicted as they easily could have been had they been untrue. His residence in Madras is corroborated by the fact that he contracted for the purchase of property in Madras, two years prior to his bringing this suit. The learned Judge seems to have proceeded on the view that if the particulars in the plaint were true, it would be unlikely that the plaintiff could have resided in Madras, but we think it is premature to enter into the merits of the plaint, which may be exaggerated or unfounded. Our decision on the facts as they are before us must be that the plaintiff has established that he is a resident of Madras. We accordingly reverse the order of the learned Judge requiring security from the plaintiff and charging him with the costs of the application. The respondent must pay the appellant the costs of this appeal. The costs in the Original Court will be costs in the cause.

Messrs. *Branson & Branson*—Solicitors for appellant;

Mr. *James Short*—Solicitor for respondent.