

the time of his death, of which he has not made any other testamentary disposition which is capable of taking effect." Here the testator has made a testamentary disposition which is incapable of taking effect because the bequest is in favour of a party who is an attesting witness. It seems to me that the share of James Joseph falls into the residue and does not go to Cornelius and Florence. I think the construction adopted by the learned Judge is right and that this appeal should be dismissed. Costs of all the parties as between attorney and client (including the Administrator-General) should be paid out of the estate.

MOORE, J.—I concur.

Mr. James Short, Attorney, for appellants.

Mr. A. E. Rencontre, Attorney, for first and second respondents.

CANANI  
2.  
BAREFOOT.

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Boddam.*

APPASAMI PILLAI (PLAINTIFF), APPELLANT,

*v.*

SOMASUNDRA MUDALIAR AND TWO OTHERS (DEFENDANTS),  
RESPONDENTS.\*

1902.  
September  
10.

*Letters Patent—Art. 15—"Judgment"—Order refusing leave to appeal in formâ pauperis—Appeal.*

There is no appeal under article 15 of the Letters Patent, against an order, passed by a single Judge, under section 592 of the Code of Civil Procedure, refusing leave to appeal *in formâ pauperis*. By section 592 a discretion is vested in the Judge to allow or disallow the application, and an order passed in the exercise of such a discretion is not a "judgment" within the meaning of article 15 of the Letters Patent.

*Sriramulu v. Ramasam*, (I.L.R., 22 Mad., 109), *Venkatarama Ayyar v. Madalai Ammal*, (I.L.R., 23 Mad., 169), and *Srimantu Raja Durga Naidu v. Srimantu Raja Mallikarjuna Naidu*, (I.L.R., 24 Mad., 358), followed.

PETITION for leave to prefer an appeal, *in formâ pauperis* against the decree of the District Court of Tanjore in Appeal Suit No. 205

\* Appeal No. 1 of 1902, under section 15 of the Letters Patent, presented against the order of the Honourable Sir Charles Arnold White, Chief Justice, dated 9th January 1902, passed on Civil Miscellaneous Petition No. 39 of 1902, presented to the High Court for leave to appeal *in formâ pauperis* against the decree in Appeal Suit No. 205 of 1901 on the file of the District Court of Tanjore (Original Suit No. 14 of 1900 on the file of the Sub-Court, Negapatam).

APPASAMI  
PILLAI  
v.  
SOMASUNDRA  
MUDALIAR.

of 1901. The petition came on for hearing in the first instance, before the Chief Justice, who made an order refusing to give the leave asked for. Against that order, petitioner preferred this appeal, under article 15 of the Letters Patent.

V. *Krishnasamy Ayyar*, for respondent, took the preliminary objection that no appeal lay under article 15.

C. R. *Tiruvengkatachariar* for appellant.

JUDGMENT.—The respondents take the preliminary objection that no appeal lies under the Letters Patent against an order of a single Judge refusing to allow an appeal *in forma pauperis*. We think the objection is valid. The use of the words “may be allowed to appeal” in section 592, Civil Procedure Code, implies that a discretion is vested in the Judge to allow or disallow the petition. The exercise of such discretion is not a “judgment,” *i.e.*, an adjudication on any right or liability in dispute between the parties to the suit, and unless it is a “judgment” within the meaning of section 15 of the Letters Patent there is no appeal. We think this view is in accordance with the principle underlying the decisions in *Sriramulu v. Ramasam*(1), *Venkatarama Ayyar v. Madalai Ammal*(2), and *Srimantu Raja Durya Naidu v. Srimantu Raja Mallikarjuna Naidu*(3).

We therefore dismiss this appeal with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Boddam.*

THOMAS SOUZA (PLAINTIFF—DEGREE-HOLDER), APPELLANT,

v.

GULAM MOIDIN BEARI AND ANOTHER (JUDGMENT-DEBTOR),  
RESPONDENTS.\*

*Specific Relief Act—1 of 1877, s. 9—Decree for possession—Order in execution proceedings—Appeal.*

Where a decree for possession of land has been passed in a suit brought under section 9 of the Specific Relief Act, and an order is passed in proceedings in

(1) I.L.R., 22 Mad., 109.

(2) I.L.R., 23 Mad., 169 at p. 170.

(3) I.L.R., 24 Mad., 358.

\* Appeal against Appellate Order No. 2 of 1902 passed by J. W. F. Damergue, District Judge of South Canara, in Appeal Suit No. 243 of 1901, presented against the order of T. V. Anantan Nair, District Munsif of Mangalore, in Miscellaneous Petition No. 840 of 1901 (Original Suit No. 248 of 1900).