

KOSURI
RAMARAJU
v.
IVALURY
RAMALINGAM.

without determining whether the sale by him would or would not bind the interests of the second and third defendants in the property agreed to be sold. The Subordinate Judge's decree is modified to this extent and confirmed in other respects. The appellant will be entitled to recover his costs throughout from the first defendant and will pay the costs of second and third defendants throughout.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

1902.
March 3.

NIDAMARTHI MUKKANTI (PLAINTIFF), APPELLANT,

v.

THAMMANA RAMAYYA (DEFENDANT), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 521.—Petition by both parties requesting the District Munsif to examine site and peruse documents and agreeing to abide by his decision—Award—Appeal.

In the course of a suit, in which plaintiff claimed an order directing defendant to close a doorway and an injunction, plaintiff and defendant jointly presented a petition requesting the District Munsif to inspect the site and peruse the documents filed in the suit and agreeing to abide by the decision which the Court might be pleased to pass, as the final decision. The District Munsif passed an order in terms of the petition and inspected the site and considered the documents, and ultimately passed a decree in plaintiff's favour. Against that decree, defendant appealed:

Held, that the District Munsif had acted as an arbitrator by consent of the parties, and no appeal lay from his decision, which must be looked upon as an award. And as no reasons had been shown for setting aside the award under section 521 of the Code, the decree must be taken to have been passed in accordance with the award, and, as such, upheld.

Suit for an order directing a doorway constructed by defendant to be blocked up and for a perpetual injunction restraining him from again constructing a doorway in that place. Defendant claimed the right to use the doorway, and issues were framed, and a commissioner was appointed to measure the sites belonging to both

* Second Appeal No. 1152 of 1900, against the decree of S. Gopalashari, Subordinate Judge of Kistna, at Masulipatam, in Appeal Suit No. 675 of 1889, against the decree of A. Ramaswami Sastri Avergal, District Munsif of Masulipatam, in Original Suit No. 374 of 1897.

parties. He made his report, and plaintiff filed an objection to it. Eventually, the parties jointly presented a petition, in the Court of the District Munsif, in the following terms:—

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“Petition presented by plaintiff and defendant under section 394 of Civil Procedure Code.

“This suit is in respect of dispute of land.

“Both parties will abide by the decision of the Court that may be passed, as it thinks just, after perusing the documents filed by both parties and all the records in the said suit, and after measuring the sites and inspecting the marks, etc., which are thereon. Therefore, both parties will abide by the decision which the Court may be pleased to pass, as the final decision.” (Signed) NIDU-MARTI MUKKANTI, *plaintiff*; THAMMANA RAMAYYA, *defendant*; K. VIRACHARYULU, *pleader for plaintiff*; and K. LAKSHMINARASU, *pleader for defendant*.

The District Munsif “ordered accordingly,” and inspected the site, in company with the parties and their pleaders. He then found in favour of plaintiff and pronounced judgment and gave him the order claimed, and granted the injunction. Defendant appealed to the Subordinate Judge, who considered, in the first place, whether, having regard to the petition to the District Munsif, the defendant was entitled to appeal. He held that he was, and, on the merits, modified the decree.

Plaintiff preferred this second appeal.

P. Nagabhushanam for appellant.

P. S. Sivaswami Ayyar for respondent.

JUDGMENT.—It must be held that the District Munsif acted as an arbitrator by consent of parties and that consequently no appeal lay from his decision, which must be looked on as an award (vide *In re Durham, &c., Building Society*(1)). As no attempt has been made to attack that award on any of the grounds specified in section 521 of the Civil Procedure Code, we must look on the decree of the District Munsif as one passed in accordance with the award and uphold it as such. There was consequently, under section 522 of the Civil Procedure Code, no appeal to the lower Appellate Court. We set aside the decree of the Subordinate Judge and restore that of the District Munsif. The respondent must pay the costs of the appellant in this Court and the lower Appellate Court.

(1) L.R., 7 Ch., 45.