

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice and
Mr. Justice Hannay.

M. JALLALDEEN MARAKAYAR AND OTHERS (DEFENDANTS
Nos. 1, 2, 12, 13, 14, 21, AND THE LEGAL REPRESENTATIVE
OF SECOND DEFENDANT), APPELLANTS,

1915.
February 10.

2979 L. 514

v.

VIJAYASWAMI *alias* MUTHU VIJAYA RAGHUNATHA
ANNASWAMI THEVAR AND NINETEEN OTHERS (PLAINTIFFS NOS. 1,
3, 5 AND 6 AND DEFENDANTS NOS. 4—7, 9—11, 15—20 AND THE LEGAL
REPRESENTATIVES OF THE DECEASED FIRST PLAINTIFF), RESPONDENTS.*

Madras Civil Courts Act (III of 1873), ss. 12 and 13—Court Fees Act (VII of 1870), sec. 7 (iv)—Suits Valuation Act (VII of 1887)—Suit to redeem—Suit in a Subordinate Court—Valuation for purposes of jurisdiction and Court Fees same—Court Fees, rightly payable only on principal debt secured below Rs. 5,000—Erroneous order of Subordinate Court to pay Court Fees on total amount payable on redemption above Rs. 5,000—Appeal—No jurisdiction to the High Court but to the District Court.

In a suit for redemption of a mortgage instituted in the Subordinate Judge's Court, the amount of the principal of the debt was Rs. 3,899 and odd; the plaintiffs paid court fees on that amount; but the Subordinate Judge erroneously ordered the plaintiffs to pay court fees on the total amount payable on redemption, viz., Rs. 7,218 and odd, and the plaintiffs paid the deficient court fees. The Subordinate Judge passed a decree in the suit in favour of the plaintiffs. The defendants preferred an appeal to the High Court. The respondents objected that the appeal did not lie to the High Court but to the District Court:

Held, that the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act, and consequently that the suit lay in the Subordinate Judge's Court and that the appeal lay to the District Court and not to the High Court.

The authority of the Full Bench decision in *Zamorin of Calicut v. Narayana*, (1882) I.L.R., 5 Mad., 284, is unaffected by the Suits Valuation Act (VII of 1887).

The order of the Subordinate Judge, erroneously levying court fees on the total amount payable on redemption, cannot deprive the District Court, of jurisdiction to hear the appeal and confer it on the High Court.

Vasudeva v. Madhava, (1893) I.L.R., 16 Mad., 326, followed.

Ijjetulla Bhuyan v. Chandra Mohan Bannerjee, (1907) I.L.R., 34 Cal., 954 (F.B.), distinguished.

JALLALDEEN
MABAKAYAR
D.
VIJAYASWAMI. APPEAL against the decree of S. RAMASWAMI AYYANGAR, the Subordinate Judge of Madura (East) in Original Suit No. 18 of 1900.

The material facts of the case appear from the judgment.

C. V. Ananthakrishna Ayyar for the appellants Nos. 1 and 3 to 10.

S. Srinivasa Ayyangar and *S. Desikachariyar* for the respondents Nos. 18 and 19.

WALLIS, C.J. AND HANNAY, J. The JUDGMENT of the Court was delivered by WALLIS, C.J., A preliminary objection is taken that the appeal lay to the District Court and not to this Court. The suit was to redeem a mortgage and an amount of the principal debt was Rs. 3,899-4-0. Prior to the enactment of the Suits Valuation Act, 1887, it was held in *Zamorin of Calicut v. Narayana*(1), by a Full Bench of this Court following earlier decisions that under the provisions of the Madras Civil Courts Act the method of valuation prescribed by the Court Fees Act for suits of this description ought to be followed in ascertaining the valuation of the suit for purposes of jurisdiction. The Suits Valuation Act has not fixed any method of valuing such suits, nor has it apparently enabled such a method to be prescribed by rule. Consequently the authority of the decision in *Zamorin of Calicut v. Narayana*(1) is unaffected, and the amount of the principal debt must be taken as determining the jurisdiction under the Civil Courts Act. The suit therefore lay in the Subordinate Court and the appeal lay to the District Court. The Subordinate Judge erroneously insisted on the payment of a court fee on Rs. 7,218-6-11, the total amount payable on redemption and the plaintiff paid the deficiency. The question then is whether this has deprived the District Court of jurisdiction to hear the appeal and conferred it on the High Court. Following the decision in *Vasudeva v. Madhava*(2), we think it has not. A reference to the printed papers shows that in that case the District Munsif erroneously returned a plaint in a redemption suit as beyond his jurisdiction although it was properly valued on the principles laid down in *Zamorin of Calicut v. Narayana*(1). The plaintiff accepted the valuation and filed the

(1) (1882) I.L.R., 5 Mad., 284 (F.B.)

(2) (1893) I.L.R., 18 Mad., 326.

suit in the Subordinate Court and the Subordinate Court entertained it no doubt on payment of the appropriate court-fee. It was held by this Court that the appeal lay none the less to the District Court, although the suit had been valued by the Subordinate Court at over Rs. 5,000. This appears to be a direct authority in support of the objection. The decision in *Ijyatulla Bhuyan v. Chandra Mohan Bannerjee*(1), related to a case in which the plaintiff was authorized to make a tentative valuation under section 50 of the Code of Civil Procedure and MOORERJEE, J., expressly confined his decision to such cases and abstained from expressing any opinion on a case like the present. The objection is allowed with costs, and the appeal will be returned for presentation to the proper Court.

K. R.

JALLALDEEN
MARAKAYAR
v.
VIJAYASWAMI.
WALLIS, C.J.
AND
HANNAY, J.

APPELLATE CRIMINAL.

Before Mr. Justice Spencer and Mr. Justice Seshayya Ayyar.

*Re ANNAVI MUTHIRIYAN (PRISONER), APPELLANT.**

Indian Evidence Act (I of 1872), sec. 32—Court's duty before admitting evidence under—Consent or want of objection on the part of the accused to the reception of inadmissible evidence—Duty of prosecution to prove the case—Indian Evidence Act (I of 1872), sec. 58—Hearsay evidence, inadmissibility of.

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Before admitting under section 33 of the Evidence Act, a deposition, given on a previous occasion, a Judge has to satisfy himself that the presence of the witness cannot be obtained without an amount of delay or expense which he considers to be unreasonable. It is not enough to have the statement of the Public Prosecutor to that effect; and even consent or want of objection on the part of the accused's pleader to the reception of such evidence will not, in spite of section 58 of the Evidence Act, entitle the Court to admit it under section 33.

Hearsay evidence as to the complicity of the accused in the crime charged and evidence as to the commission of other offences by the accused not relevant for the purpose of the trial are inadmissible.

Where a Sessions Judge convicted the accused relying mainly upon such inadmissible evidence as above described and did not warn the jury against acting on the same, their Lordships set aside the conviction as illegal.

Per SESHAGIRI AYYAR, J.—The Evidence Act is not exhaustive of the rules of Evidence.

(1) (1907) I.L.R., 34 Cal., 954 (F.B.).

* Criminal Appeal No. 641 of 1914.