

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

KAROOTH PARAKOTE AMMUKUTTY *alias*
LAKSHMIAMMA (PLAINTIFF), APPELLANT,

1920,
February
24.

v.

K. P. K. P. T. MANAVIKRAMAN *alias* KUNHUNNI
THAMBURAN AND SIX OTHERS (DEFENDANTS NOS. 2, 3, 4, 6, 7,
8 AND 9), RESPONDENTS.*

Receiver, suit against—Sanction of Court for institution of the suit—Want of previous sanction—Effect of—Jurisdiction, whether affected—Sanction, subsequently obtained—Illegality, whether cured.

Where a suit is instituted against a Receiver appointed by a Court, without obtaining the previous sanction of that Court, the omission to obtain such sanction does not affect the jurisdiction of the Court in which the suit is laid but is an illegality which can be effectively cured by the plaintiff obtaining the sanction during the course of the litigation.

Banku Behari Dey v. Harendra Nath Mukerjee, (1919) 15 C.W.N., 54, and *Jagat Turini Dasi v. Naba Gopal Chaki*, (1907) I.L.R., 34 Calc., 305, followed.

SECOND APPEAL against the decree of G. H. B. JACKSON, District Judge of South Malabar, in Appeal Suit No. 679 of 1915, preferred against the decree of K. GOPALAN NAYAR, District Munsif of Walluvanad, in Original Suit No. 235 of 1914.

The material facts appear from the judgment. The District Munsif decreed the suit in favour of the plaintiff. On appeal the District Judge held that the suit ought to have been dismissed on the ground that sanction of the Sub-Court of Calicut, which had appointed the Receiver, ought to have been obtained previous to the institution of this suit in the District Munsif's Court, and that the defect was not cured by sanction having been obtained after the institution of the suit. He also held that specific performance could not be decreed, as there was no proof of a definite contract for renewal of the kanom or of payment of consideration. The plaintiff preferred this Second Appeal.

K. P. M. Menon and Padmanabham Pillai for appellant.

C. Madhavan Nayar and T. Esoman Unni for respondents.

ANMUKUTTY

The JUDGMENT of the Court was delivered by

v.
 MANA-
 VIKRAMAN.
 —
 SADASIVA
 AYYAR, J.

SADASIVA AYYAR, J.—The plaintiff is the appellant. Her suit for specific performance of an alleged contract of 20th March 1910 (under which the plaintiff was entitled to obtain a deed of renewal of a kanom mortgage which had been enjoyed by her deceased sister from 1897) was dismissed by the District Court on two grounds: (1) the present suit having been commenced in June 1914 against the Receivers (defendants Nos. 3 to 5), appointed by the Sub-Court of Calicut in Suit No. 13 of 1913 (brought for removal of the first defendant, the promisor under the plaint contract, from his position of karnavan by some members of his tavazhi), without previously obtaining the sanction of the Sub-Court, it could not be sustained even though in July 1914 (before even the Receivers filed their written statements) the plaintiff obtained the Sub-Court's sanction to proceed with the present suit against the Receivers, (2) though "there was a general understanding" between the plaintiff and the first defendant that the first defendant "would be agreeable to the plaintiff" (in the matter of the renewal of the kanom of 1897 in the plaintiff's name) "if she evicted one Syed Ali" (in possession of one of the kanom lands), "there was no definite contract" for renewal.

We are unable to agree with the learned District Judge as regards the first ground of his decision. Though the judgment in *Pramatha Nath Gangooly v. Khetra Nath Banerjee*(1) (the decision of a single Judge) is in favour of the view of the District Judge, and though a decision of this High Court (again, that of a single Judge), *C. Venkatasubbaramiah v. Nambura Ramiah Sethi*(2), also contains observations in support of the same view, we think that the better opinion is the one enunciated by Division Benches of the Calcutta High Court in *Banku Behari Dey v. Havendra Nath Mukerjee*(3) and *The Maharajah of Burdwan v. Apurba Krishna Roy*(4) and in *Jagat Tarini Dasi v. Naba Gopal Chaki* (5) (one of the members of the said Benches having been that very learned Judge Sir ASHUTOSH MOOKERJEE). That

(1) (1905) I.L.R., 32 Calc., 270.

(2) (1914) 24 I.C., 222.

(3) (1910) 15 C.W.N., 54.

(4) (1911) 15 C.W.N., 872.

(5) (1907) I.L.R., 34 Calc., 305.

opinion is also supported by text writers of acknowledged authority, like High, Woodroffe (page 91) and Kerr (page 167). That opinion is to the effect that the omission to obtain previous sanction (a sanction which is not a condition imposed by statutory law like the sanction mentioned in section 92 of the Code of Civil Procedure, or section 17 of the Presidency Insolvency Act, but one imposed by the common law to enforce due respect towards Courts of Justice) does not affect the jurisdiction of the Court, but is an illegality which can be effectively cured by the plaintiff obtaining the sanction during the course of the litigation.

[Their Lordships then proceeded to deal with the facts of the case and agreeing with the findings of the lower Appellate Court, dismissed the Second Appeal.]

K.R.

AMMUKUTTY
v
MANA-
VIKRAMAN.
SADASIVA
AYYAR, J.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

LAKSHMINDRATHIRTHA SWAMIAR, MINOR, BY GUARDIAN
RAJAGOPALACHARYA (DEFENDANT), APPELLANT,

1920,
February 26.

v.

K. RAGHAVENDRA RAO (PLAINTIFF), RESPONDENT.*

Mutt, head of—Sanyasi—Simple money debts incurred by head for necessities of the mutt—Suit against successor—Liability of mutt properties—Personal liability of the debtor—Lay trustee, executor or administrator, analogy of.

In a suit to recover a simple money debt, incurred by the sanyasi head of a mutt for the necessary purposes of the mutt, the properties of the mutt can be made liable, whether the suit is brought during the lifetime of the incumbent who incurred the debt or his successor.

Cases of debts incurred by lay trustees of religious or charitable institutions, executors or administrators, distinguished.

Shankar Bharati Swami v. Venkapa Naik, (1885) I.L.R., 9 Bom., 422, followed.

SECOND APPEAL against the decree of L. G. MOORE, District Judge of South Kanara, in Appeal Suit No. 251 of 1918, preferred

* Second Appeal No. 648 of 1919.