

the meaning of the Estates Land Act, but he will not be bound by any patta or muchilika. In fact his possession would be one of absolute ownership, for it has been finally decided that he is not entitled to be a tenant. The result therefore of holding that the prior decision is not *res judicata* would result in making the plaintiff, who only claims occupancy rights, the absolute owner of the land. It is to prevent such absurdity that the legislature has enacted section 57 and section 189 (3).

A further point has been raised by the appellant and that is that the finding of the lower Courts as to the plaintiff's occupancy right is wrong in law and should be reversed, but in the view I have taken on the question of *res judicata* it is unnecessary to discuss this point.

In the result the appeal is allowed and the plaintiff's suit dismissed with the costs throughout.

MADHAVAN NAIR, J.—I agree and have nothing to add.

K.R.

APPELLATE CIVIL.

*Before Sir Murray Coultts Trotter, Kt., Chief Justice and
Mr. Justice Pakenham Walsh.*

SAMBAMURTHI AYYAR (PETITIONER—15TH CREDITOR),
* APPELLANT,

1928,
September
13.

v.

E. RAMAKRISHNA AYYAR AND TWO OTHERS
(RESPONDENTS—INSOLVENTS), RESPONDENTS.*

*Provincial Insolvency Act (V of 1920), ss. 41, 27 (2), 75 (1) (2)
—Order extending time to apply for discharge, by Subordinate Court—Appeal to District Court—No Second Appeal to High Court.*

From an order of a District Court on appeal from an order of a Subordinate Court which extended under section 27 (2) of

* Letters Patent Appeal No. 183 of 1927.

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the Provincial Insolvency Act, the time for an insolvent applying for his discharge, a second appeal to the High Court is incompetent, according to section 75 (2) of the Act. Such an order is not one under section 4 of the Act so as to give rise to a second appeal under Schedule I of the Act.

APPEAL under clause (15) of the Letters Patent, against the Judgment of the Hon'ble Mr. Justice JACKSON, dated 28th June 1927, and passed in A.A.A.O. No. 120 of 1927 preferred to the High Court against the Order of the District Court of Madura, dated 16th February 1927 in C.M.A. No. 201 of 1926 preferred against the order of the Court of the Subordinate Judge of Dindigul, dated 7th August 1926, in M.P. No. 223 of 1925 in I.P. No. 21 of 1922.

In this case, a creditor of the insolvents applied for extension of time to apply for the insolvents' discharge. Rejecting the contention that the insolvents alone can so apply, the Subordinate Judge granted the application. On appeal by one of the three insolvents, the District Judge reversed the order, holding that section 43 (1) of the Provincial Insolvency Act was mandatory and left the Court no option but to annul the adjudication when the insolvents had not applied for discharge within the time allowed. He accordingly directed the Subordinate Judge to annul the adjudication.

The creditor preferred a Second Appeal to the High Court which was dismissed by JACKSON, J., on the ground that it was not an order falling under section 4 so as to give rise to a Second Appeal. Hence this Appeal under clause (15) of the Letters Patent.

K. V. Sessa Ayyangar for appellant.—The order is one falling also under section 4 (1) of the Provincial Insolvency Act; hence a second appeal lies though only on questions of law; see section 75 (1), provisos 1 and 2. This cannot be curtailed by any inference from section 75 (2); compare certain orders in execution passed under the Civil Procedure Code which have got a right of second appeal if they fall also under section 47 of the Code.

T. S. Anantarama Ayyar for respondent.—The order does not fall under section 4; hence section 75 (1) proviso does not apply.

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The JUDGMENT of the Court was delivered by PAKENHAM WALSH, J.—This is an appeal against the judgment of JACKSON, J., in appeal against the order of the District Court of Madura in C.M.A. No. 201 of 1926 which was preferred against the order of the Subordinate Judge of Dindigul, dated 7th August 1926, in M.P. No. 223 of 1925. The original order granted an extension of the time during which to apply for discharge under section 27 of the Provincial Insolvency Act. On appeal to the District Court, this order was reversed. An appeal against the order of the District Court was laid to the High Court. Mr. Justice JACKSON held that no appeal lay, evidently under the proviso to section 75 (2). Section 75 (2) runs as follows :—

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“ Any such person aggrieved by any such decision or order of a District Court as is specified in Schedule I, come to or made otherwise than in appeal from an order made by a Subordinate Court, may appeal to the High Court.”

This order is one made under Schedule I and quite obviously on the terms of this section there is no Second Appeal in the matter. It has been sought however to argue from the second proviso to section 75, that the order can be taken to be one under section 4 of the Act and a Second Appeal lies against any order passed under section 4 on a question of law. To say that this order is passed under section 4 amounts to saying that every order under the Act can be brought under section 4 and that therefore a Second Appeal lies on a question of law against every order passed under the Act. That is to render the schedule and the plain proviso of section 75 (2) meaningless. A sort of analogy was sought to be drawn from the Civil Procedure Code but that does not in our opinion apply. There is nothing in

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the decisions quoted in that analogy which renders one part of that Act inconsistent with another whereas the effect here is to wipe out a definite proviso as to appeal. It is a settled principle of construction that an Act must be construed if possible consistently with itself. We, therefore, find against the contention and dismiss the appeal with costs.

N.R.

APPELLATE CIVIL:

Before Mr. Justice Devadoss.

1928,
 August 31.

RAMASWAMI ASARI (PLAINTIFF), APPELLANT.*

Court Fees Act (VII of 1870), as amended by Madras Act (V of 1922)—Art. 17 (a) (iii) of the 2nd schedule—Suit to set aside an adoption—Valuation.

Article 17 (a) (iii) of the second schedule of the Court Fees Act, as amended by Madras Act V of 1922 enacts that the court-fee to be paid in suits to set aside an adoption is "hundred rupees, if the value for purposes of jurisdiction is less than rupees ten thousand and five hundred, if the value is ten thousand rupees or upwards."

Held, construing the above article, (a) that the plaintiff in such a suit is not entitled to put his own valuation upon the relief claimed, and (b) that the market value of such interest and not the value thereof as in a suit for possession is the proper valuation; *Keshava v. Lakshminarayana*, (1882) I.L.R., 6 Mad., 192, followed.

STAMP REFERENCE No. 11458 of 1927 in Appeal sought to be preferred against the decree of the Court of Subordinate Judge of Dindigul in O.S. No. 25 of 1925.

* Stamp Reference No. 11458 of 1927.