

APPELLATE CIVIL.

*Before Mr. Justice Curgenvven and Mr. Justice
Bhashyam Ayyangar.*

SANKAPPA RAI AND TWO OTHERS (FIRST DEFENDANT,
TWENTY-FIRST DEFENDANT AND NIL), APPELLANTS,

1930,
November
24.

v.

KORAGA PUJARY AND OTHERS (PLAINTIFFS 2 TO 19 AND
DEFENDANTS 2 TO 16, 18, 20, 21 TO 43), RESPONDENTS.*

*Indian Evidence Act (I of 1872), sec. 33—Court having no
jurisdiction—Proceeding before—If “judicial proceeding”
—Deposition given in such proceeding—Admissibility of.*

A proceeding before a Court which has no jurisdiction to entertain it is not a “judicial proceeding” within the meaning of section 33 of the Indian Evidence Act, and a deposition given in such a proceeding is inadmissible in evidence under the section.

APPEAL against the decree of the Court of the Subordinate Judge of South Kanara, dated 7th November 1924, in Original Suit No. 9 of 1924.

A suit was filed in the Court of the District Munsif at Kasaragod and numbered as Original Suit No. 350 of 1921. After the examination of certain witnesses, the Court returned the plaint on the ground that the value of the subject-matter was above its pecuniary jurisdiction. Thereafter the present suit was filed in the Court of the Subordinate Judge of Kasaragod. The case of the plaintiffs was that they and defendants 2 to 43 were members of a family of Bilavars of South Kanara District who follow the Aliyasanthana Law, and that the first defendant was a mortgagee under two mortgage bonds executed by various members of the family for purposes not binding on the other members of the

* Appeal No. 266 of 1925.

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family. The defendants contended that the mortgages were executed for purposes binding on the family, and that the plaintiffs were not members of that family and as such had no right to question the said mortgages. The Subordinate Judge, relying upon a deposition given before the District Munsif of Kasaragod in Original Suit No. 350 of 1921 by the twentieth defendant, who died before the trial of Original Suit No. 9 of 1924, held that the plaintiffs were also members of that family and that the mortgages were binding on the family to the extent of Rs. 700 only. The present appeal was filed by the first defendant, Sankappa Rai. He transferred his rights to the twenty-first defendant, Dooma alias Dunappa, a member of the family of defendants 2 to 43, and his (twenty-first defendant's) sister Sanke, who were added as appellants in the place of Sankappa Rai by an order, dated 13th November 1925, in Civil Miscellaneous Petition No. 4109 of 1925.

K. Y. Adiya for second and third appellants.

B. Sitarama Rao and *K. Srinivasa Rao* for first to third and fifth respondents.

JUDGMENT.

[Their Lordships after stating the facts proceeded as follows:—]

The twentieth defendant had died before she could be examined again and accordingly her deposition was made use of in the manner stated. Now section 33 requires that evidence of this character, to be relevant, should have been given by a witness in a judicial proceeding, and it is contended before us that no proceeding is a judicial proceeding within the meaning of that section if it is conducted by a Court which has no jurisdiction to undertake it. There can be no doubt in our view that a Court which engages in the trial of a

suit the value of which is beyond its pecuniary jurisdiction is doing something which it has no jurisdiction to do, just as much as if it tried a suit of a nature which it was not empowered to try or originating in some place to which its jurisdiction did not extend. The provisions of section 11 of the Suits Valuation Act with regard to pecuniary jurisdiction, and the parallel provision in section 21 of the Code of Civil Procedure with regard to territorial jurisdiction, no doubt allow exceptions to the rule that proceedings without jurisdiction are void and of no effect. They do not, as has been suggested to us, except in the circumstances in which they are applicable, give jurisdiction where it would not otherwise be enjoyed. If that is the effect of the decision in *Raghavachariar v. Raghavachariar*(1), we are unable to agree with it and we do not find that it has since been followed or referred to. It is not possible in our view to draw any distinction, for the purpose of applying this section of the Evidence Act, between want of jurisdiction of one kind and of another, and it seems that a necessary test to discover whether what purports to be a judicial proceeding is in fact one lies in the competence of the judicial officer who conducted it. The circumstance that, before he can verify his incompetence, he must often try the issue of jurisdiction by taking evidence does not necessarily make even that evidence admissible, as taken in a judicial proceeding, and much less so where, as here, the evidence which it is desired to use relates not to the question of jurisdiction at all but to the merits of the case. On the general question of the effect of a lack of jurisdiction, there is the authority of a case in this Court, namely, *In the matter of Rami Reddi*(2). It has

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(1) (1893) 20 M.L.J. 723.

(2) (1831) I.L.R. 3 Mad. 48.

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also been held in *Buta Singh v. The Crown*(1) that a proceeding before a Judge or Magistrate who has no jurisdiction is not a judicial proceeding and the evidence of a witness given in such a proceeding cannot be used under section 33 of the Evidence Act on a retrial before a competent Court, the particular kind of jurisdiction involved in that case being territorial. For an expression of the general proposition, that if a Court has no jurisdiction over the subject-matter of the litigation its proceedings are mere nullities, reference may be made to *Rajalakshmi Dasee v. Katyayani Dasee*(2). We must accordingly hold that the contents of the statement, Exhibit A, cannot be used in evidence in this case.

[Their Lordships discussed the remaining evidence with regard to the relationship of the plaintiffs to the family and came to the conclusion that their claim to be members of the family had not been established. Their Lordships dealt with the question of the validity and the binding character of the suit mortgage bonds and concluded as follows:—]

Now that the original plaintiffs have been non-suited on the question of relationship, there is no one upon the record before us qualified to dispute the binding character of these mortgages. Apart from that circumstance however, we are clearly of opinion that they are binding upon the family property and we must accordingly allow the appeal and set aside the decree of the lower Court and direct that the suit be dismissed with costs. Plaintiffs 1 to 11 will pay the costs of the twenty-first defendant in this appeal. The memorandum of objections preferred by the plaintiffs is dismissed with costs.

G.R.

(1) (1926) I.L.R. 7 Lah. 396.

(2) (1910) I.L.R. 38 Calo. 639.