

difficulties at all in conducting a suit like the present one, in granting a decree, and in executing it.

We are therefore of opinion that all objections to the maintainability of this suit have failed.

This appeal will therefore be allowed to the extent of setting aside the decree of the lower appellate Court which should restore the appeal to its file and dispose of it and the memorandum of cross-objections on the remaining issues. The sixth respondent must pay the appellants' costs in second appeal. Otherwise costs to abide the event. Court-fee to be refunded to the appellants.

A.S.V.

ARUMUGA
BATHAN
v.
SEMBA
GOUNDAN.
KING J.

APPELLATE CIVIL.

Before Mr. Justice Wadsworth.

BANAKAR BASAPPA *alias* DODDA BASAPPA AND
ANOTHER (PETITIONERS), APPELLANTS,

1935,
December 17.

v.

HANSAJI GULABCHAND FIRM (RESPONDENTS),
RESPONDENTS.*

Provincial Insolvency Act (V of 1920), sec. 75 (3)—Order made by District Court in appeal—Meaning of—Appeal—Ex parte order of District Court in—Order of that Court refusing to set aside—Order in appeal, if—Appeal from—Competency of.

An order of a District Court refusing to set aside an *ex parte* order in appeal is not itself an order in appeal within the meaning of section 75 (3) of the Provincial Insolvency Act. An appeal from such an order is therefore competent.

* Appeal Against Order No. 321 of 1934 and Civil Revision
Petition No. 1106 of 1934.

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A proceeding under Order IX, rule 13, of the Code of Civil Procedure to set aside an *ex parte* decree in appeal is not a proceeding in the appeal, the appeal itself having terminated.

Venkata Narasimha Rao v. Suryanarayana, (1925) 23 L.W. 409, and *Salar Beg Saheb v. Karumanchi Kotayya*, (1925) 23 L.W. 538, applied.

APPEAL against and petition to revise the order of the District Court of Bellary, dated 16th October 1933 and made in Interlocutory Application No. 438 of 1933 in Civil Miscellaneous Appeal No. 15 of 1933 preferred against the order dated 31st January 1933 and made in Insolvency Petition No. 58 of 1932 on the file of the Court of the Temporary Subordinate Judge of Bellary.

V. S. Narasimhachar for appellants.

A. Gopalacharlu for respondents.

JUDGMENT.

The appellants in the civil miscellaneous appeal, who are the petitioners in the civil revision petition, attack an order refusing to set aside another order adjudicating the first appellant as an insolvent, the second appellant being one of the alienees in whose favour the alienations challenged in the insolvency are made. The adjudication was made by the learned District Judge in appeal reversing an order of the Subordinate Judge who dismissed the petition.

It is argued that no appeal lies from an order under Order IX, rule 13, Civil Procedure Code, read with section 75 of the Provincial Insolvency Act, on the ground that the order now under appeal is really itself an appellate order of the District Judge. It seems to me that this contention is not

tenable. Sub-section 3 of section 75 of the Provincial Insolvency Act reads :

“ Any such person aggrieved by any other order made by a District Court otherwise than in appeal from an order made by a Subordinate Court may appeal to the High Court by leave of the District Court or of the High Court.”

It may possibly have been the intention underlying this provision that it should apply only to orders of the District Court in the exercise of its original jurisdiction, but that is not what the section says. I do not think it can be contended that the order refusing to set aside an *ex parte* order in appeal is itself an order in appeal, though it might be contended that it is an order passed in the exercise of the appellate jurisdiction of the District Court. I have been referred to two decisions, *Venkata Narasimha Rao v. Suryanarayana*(1) and *Salar Beg Saheb v. Karumanchi Kotayya*(2), to the effect that a proceeding under Order IX, rule 13, is not a proceeding in the suit but quite independent of the suit, the suit itself having been disposed of. On the analogy of these rulings it must be held that a proceeding under Order IX, rule 13, to set aside an *ex parte* decree in appeal is not a proceeding in the appeal, the appeal itself having terminated. I therefore hold that an appeal does lie.

[His Lordship then discussed the merits of the case and held that the District Judge would have been well advised to have set aside the *ex parte* order and given the appellants an opportunity of stating their case, and proceeded :—]

In the result therefore the appeal is allowed and the *ex parte* order is set aside and the

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(2) (1925) 23 L.W. 538.

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District Judge is directed to restore the appeal to his file and dispose of it on its merits. The respondents will pay the costs of the appellants here and in the Court below.

No orders are necessary on the connected civil revision petition.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Burn.

DESU REDDIAR AND ANOTHER (DEFENDANTS 4 AND 7),
APPELLANTS,

v.

SRINIVASA REDDI (MINOR), BY NEXT FRIEND, SUBBA
REDDIAR, AND SIX OTHERS (PLAINTIFF AND DEFENDANTS
1, 2, 3, 5, 6 AND 8), RESPONDENTS. *

*Hindu Law—Presumptive reversioner—Declaratory suit by—
Who are proper parties to and what reliefs can be
granted in.*

On a question as to who are proper parties to a declaratory suit by a presumptive reversioner and what reliefs can be granted in the same,

held, in dealing with suits by reversioners a distinction has to be drawn between reliefs in respect of the individual or personal title of the particular reversioner (plaintiff) and reliefs claimed for the benefit of the body of reversioners represented by the presumptive reversioner; reliefs of the former kind have generally been refused on the ground that an anticipatory declaration of the kind might be rendered valueless by future events, but reliefs of the latter kind are not open to the same objection especially after the recognition of the representative character of a reversioner's suit and of the consequent applicability of the rule of *res judicata* even in favour of, or as against, the actual reversioner who might not have been a party to the presumptive reversioner's suit.

*Appeal No. 43 of 1934.