

1908.

KAVERIAMMA
v.
LINGAPPA.

It has been contended on behalf of the plaintiffs that section 50 has no application to a case in which there has not been an assignment by the lessor during the tenancy.

The section, however, is not in terms limited to such cases, and, we think, its language is general enough to cover the case before us. We must therefore hold that the first defendant is not chargeable with the rents sued for, and we therefore confirm the decree of the lower Court and dismiss the suit.

The defendant in the course of the suit raised contentions as to the right of the plaintiff as heir of her brother Ramkrishna and it became necessary to investigate closely the rights of Subraya and Ramkrishna with reference to the property in question. In those contentions the defendant has failed. For these reasons we think that the proper order as to costs will be that each party do bear her or his own costs throughout.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Chief Justice Scott and Mr. Justice Batchelor.

1908.

October 7.

BAI MANI AND ANOTHER (ORIGINAL PLAINTIFFS—PETITIONERS),
APPELLANTS, v. KHIMCHAND GOKALDAS (ORIGINAL DEFENDANT 1—
OPPONENT), RESPONDENT.*

*Civil Procedure Code (Act XIV of 1882), sections 503, 505 and 588—
Recommendation by Subordinate Judge of a person to be appointed receiver—
Refusal by District Judge—Appeal.*

A Subordinate Judge recommended to the District Judge that a certain person be appointed receiver and in case of the recommendation not being accepted, the Nazir of his Court should be appointed. The District Judge refused to authorize the Subordinate Judge to appoint either of the persons so recommended.

Against the order of the District Judge an appeal was preferred to the High Court.

* Miscellaneous Appeal No. 16 of 1908.

Held, that no appeal lay. The District Judge's order was passed under section 505 of the Civil Procedure Code (Act XIV of 1882) and not under section 503. It was therefore an order which was not appealable not being specified in the list of orders in section 588.

Birajan Kooer v. Ram Churn Lall Mahata (1), followed.

APPEAL against an order passed by W. Baker, District Judge of Surat, in Miscellaneous Application No. 33 of 1908.

One Savaichand Ichhachand died on the 27th July 1902 leaving him surviving a widow Bai Mani and a minor son Khimchand. Bai Mani being an illiterate woman and being unable to manage the property which included a sum of Rs. 23,000 of her minor son, appointed four trustees to manage the property. The name of one of the trustees was Khimchand Gokaldas. Subsequently Bai Mani for herself and as next friend of her minor son brought a suit, No. 35 of 1907, against Khimchand Gokaldas and the other trustees in the Court of the First Class Subordinate Judge of Surat, for an account and for carrying out the trusts under the deed by which the defendants had been appointed trustees. Before the suit came on for hearing Bai Mani applied under section 503 of the Civil Procedure Code (Act XIV of 1882), for the appointment of a receiver. The Subordinate Judge after hearing both the parties nominated defendant Khimchand Gokaldas himself as the receiver and in case of his not consenting to accept the office, appointed the Nazir of his Court to be the receiver and submitted the nomination to the District Judge under section 505 of the Code.

The District Judge declined to make the appointment holding that there was no necessity for the appointment and that "to appoint a receiver is to commit the Court to the view that the plaintiff's interpretation of the document and not the defendant's interpretation is correct."

Against the said order Bai Mani and her minor son appealed.

Setalvad (with *Manubhai Nanabhai* and *N. K. Mehta*) for the appellants (plaintiffs—petitioners):

Branson (with *K. N. Koyaji* and *M. M. Karbhari*) for the respondent (defendant 1—opponent):—We raise a preliminary

(1) (1881) 7 Cal. 719.

1908.

BAI MANI
v.
KHEMCHAND.

1908.

BAI MANI
v.
KHEMCHAND.

objection that the order of the District Judge is not appealable. The order was passed under section 505 of the Civil Procedure Code and section 588 of the Code does not provide for an appeal against such order.

Setalvad for the appellant:—The governing section is 503 of the Code. It is the substantial section in the Chapter in which it occurs. Section 505 only extends the powers given by section 503 to Subordinate Judges. Looking to the policy of the Code it allows an appeal against an order appointing a receiver. Therefore there is greater reason that an appeal should be allowed against an order refusing to appoint a receiver. Again when an order is passed by a competent Court under section 503 either appointing or refusing to appoint a receiver, an appeal will lie against that order. Necessarily then an appeal will lie from an order refusing to appoint a receiver on the recommendation of the Subordinate Judge under section 505. The District Judge in the present instance really acted under section 503 and the order passed by him is appealable: *Venkatasami v. Stridavamma*⁽¹⁾, *Sangappa v. Shirbasawa*⁽²⁾, *Boidya Nath Adya v. Mahan Lal Adya*⁽³⁾, *Khagendra Narain Singh v. Shashadhar Jha*⁽⁴⁾.

Branson, in reply, referred to *Birajan Kooer v. Ram Churn Lal Mahata*⁽⁵⁾.

SCOTT, C. J.:—This is an appeal from an order of the District Judge of Surat in Miscellaneous Application No. 33 of 1908 of the District file. That application was one in which the District Judge considered the recommendation of the First Class Subordinate Judge of Surat that the defendant Khimchand should be appointed a receiver in a suit No. 35 of 1907, and, in case of the recommendation not being accepted, that the Nazir of his Court should be appointed.

The District Judge having considered the recommendations refused to authorise the Judge to appoint either of the persons so recommended.

(1) (1896) 10 Mad. 179.

(3) (1890) 17 Cal. 680 at p. 682.

(2) (1899) 24 Bom. 38.

(4) (1904) 31 Cal. 495.

(5) (1881) 7 Cal. 719.

The application was made to him under the proviso to section 505 of the Civil Procedure Code, and under that section he had power to authorise the Subordinate Judge to appoint one of the persons recommended and he had also power to pass any other order. The order which he decided to pass was to refuse to allow the appointment of any receiver at all.

We are of opinion that that was an order passed under section 505, and not under section 503. It is, therefore, an order which is not appealable not being specified in the list of orders in section 538. We are supported in this conclusion by the decision of *Birajan Kooer v. Ram Churn Lall Mahata*⁽¹⁾.

We, therefore, think, that the preliminary objection which has been taken that no appeal lies is a good one, and we dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

(1) (1881) 7 Cal. 712.

APPELLATE CIVIL.

Before Chief Justice Scott and Mr. Justice Heaton.

PUTLABAI KOM SADASHIV (ORIGINAL DEFENDANT), APPELLANT, v.
MAHADU VALAD SADASHIV (ORIGINAL PLAINTIFF), RESPONDENT.*

1908.

October 9.

Hindu widow—Gift of a son by first husband in adoption by widow after her re-marriage—Hindu Widow Re-marriage Act (XV of 1856), sections 2, 3, 4 and 5.

According to the texts the right of a female parent to give her son in adoption results from the maternal relation and is not derived by delegation from her husband. Assuming that the mother has by Hindu Law a right to give her son in adoption the Hindu Widow Re-marriage Act (XV of 1856) does not afford any indication that the legislature intended to deprive her of it.

The right of guardianship, which under the provisions of Act XV of 1856, section 3, may, under certain conditions, be transferred from the mother to one of the other relations of the child, does not carry with it the right to give in adoption, for that is a right which can only be exercised by a parent.

Punchappa v. Sanganbasawa (1), considered.

* Second Appeal No. 205 of 1907.

(1) (1899) 24 Bom. 89.