

APPELLATE JURISDICTION. (a)

*Civil Petition No. 141 of 1862.**Ex parte BĀSHIYAGĀRULU NĀYUDU.*

When a suit has been dismissed for want of evidence and the plaintiff's special appeal was dismissed, and the wanting evidence was subsequently discovered, the High Court's special permission is not necessary to enable the plaintiff to apply for a review to the Court in which the suit was brought.

Semle he has no right to make such application under Act VIII of 1859, Sec. 376.

Orders on *Civil Petitions Nos. 203 and 230 of 1862* not followed.

1863.
March 12.
Civ. No. 141
of 1862.

THE petition stated as follows. The suit of *Bāshiyāgarulu Nāyudu v. Gurusvāmi Nāyakkān* was dismissed by the Principal Sadr Amin of Chingleput on the ground that there was no evidence to shew that the plaintiff (the petitioner) or his ancestors ever possessed any land in either of the two villages mentioned in the plaint. The petitioner applied to the High Court, but his Special Appeal, No. 799 of 1861, was dismissed on the 15th of November 1862. Since the decision in the Court of the Principal Sadr Amin the petitioner has discovered documents which supply the evidence declared by that Judge to be wanting. This evidence can only be used as a ground for applying for a review in the lower Court; but under Section 376 of Act VIII of 1859 (*b*), no such application can now be made without special permission.

The petitioner therefore prayed for a declaration that the Principal Sadr Amin was at liberty, if he should think proper, to take into consideration the fresh evidence, and to review his judgment.

(a) Present: Strange and Holloway, J.J.

(b) This section enacts that any person considering himself aggrieved by a decree of a Court of original jurisdiction, from which no appeal shall have been preferred to a Superior Court—or by a decree of a District Court in appeal from which no special appeal shall have been admitted by the Sadr Court—or by a decree of the Sadr Court, from which either no appeal may have been preferred to her Majesty in Council, or an appeal having been preferred, no proceedings in the suit have been transmitted to Her Majesty in Council—and who from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time when such decree was passed, or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him—may apply for a review of judgment by the Court which passed the decree.

Mayne for the petitioner, cited an unreported decision of the late Madras Sadr 'Adalat in *Civil Petitions Nos. 203 of 1862*, and 230 of 1862, on 11th August 1862, where it was held that the discovery of new evidence was on ground for appeal in the Sadr 'Adalat: that the application for review should be addressed to the lower court, but that the Sadr Adalt will sanction such application.

1863.
March 12.
Civ. P. No 141
of 1862.

Sadagopilachari for the defendant.

PER CURIAM.—We are not inclined to follow the decision cited by Mr. Mayne. This application appears to us unnecessary. If section 376 can be construed so as to admit of the right to a review of judgment in the present case (a point on which it is unnecessary to give an opinion), we think that the Court in which the petitioner brought his suit is the proper Court to apply to. The refusal of the present petition will of course not prejudice the right (if any) to make such application.

Petition dismissed.

APPELLATE JURISDICTION. (a)

Regular Appeal No. 38 of 1861.

SUBBAYA and others.....*Appellants.*

YARLAGADDA ANKINIDU.....*Respondent.*

When an island was formed in a river, the lands adjacent to the banks of which were part of a zamindari:—*Held*, that the island was not the waste land of any village or a portion of the holding of any ryots in the zamindari, but that the Zamindar possessed in it all the incidents of ownership, including the power of making leases.

THIS was a regular appeal from the decision of C. R. Pelly, the Acting Civil Judge of Masulipatam, in Original Suit No. 47 of 1857.

1863.
March 12.
R. A. No. 38
of 1861.

Mayne and *Sloan* for the appellants, the first and second defendants.

Ramanuja Ayyangar for the third appellant, the third defendant.

Norton for the respondent, the plaintiff.

(a) Present: Strange and Holloway, J J.