

APPELLATE JURISDICTION. (a)

Special Appeal No. 41 of 1862.

CHIDAMBARA PILLAI.....Appellant.

KAMAN..... Respondent.

Where a decree is passed *ex parte* in an original suit the defendant has no right to a special appeal, even though his appeal have been entertained by the Civil Court.

THIS was a special appeal from the decree of J. W. Cherry, the Civil Judge of Salem, in Appeal Suit No. 159 of 1860, affirming the decree of W. Hodgson, the Subordinate Judge of Salem, in Original Suit No. 43 of 1853. The suit was brought to recover, certain *mālguzāri nanjēy lands*, consisting of acres 10-1-11, producing annually rupees 250 and assessed at rupees 107-10-9.

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The case was heard *ex parte* as regarded the fifth defendant, and the Subordinate Judge decreed for the plaintiff.

Ritchie for the appellant, the fifth defendant.

Sadagopacharlu, for the respondent, the plaintiff objected that, as the special appellant was *ex parte* in the original suit, he could not, under Section 119 of the Code of Civil Procedure, be allowed to appeal. That section enacts that no appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared or from a judgment against a plaintiff by default for non-appearance. But in all cases in which judgment may be passed *ex parte* against a defendant, he may apply within a reasonable time not exceeding thirty days after any process for enforcing the judgment has been executed, to the Court by which the judgment was passed, for an order to set it aside.

Ritchie :—As the appellant has been allowed to appeal to the Civil Court against the original decree, it is too late to object to the special appeal. The objection must be regarded as waived.

SCOTLAND, C. J. :— I cannot see how the objection can be got over. The defendant had the opportunity of appearing, but did not do so. The original decree was passed *ex*

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parte. Then under section 119 he might have applied within thirty days to set aside such decree if he had any sufficient cause to assign. He did not do so. But it is said that inasmuch as he appealed to the Civil Court, and his appeal was then entertained, therefore we ought to admit a special appeal from the decree of the Civil Judge. But the Civil Judge's assumption of jurisdiction is no reason why we should assume it if we see, as we do here, that the party has no legal right to appeal.

HOLLOWAY, J.—This is a special appeal from a matter *coram non iudice*. The Civil Judge had no jurisdiction to entertain the appeal. He was not hearing it as Civil Judge. The present appeal must be dismissed.

Appeal dismissed with costs.

APPELLATE JURISDICTION. (a)

Referred Case No 4 of 1863.

RĀMASVAMI CHETTI and others *against* PĀPPĀ REDDI.

The security bond executed by a third party to the *ābkāri* renter is not exempt from stamp-duty.

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of 1863.

CASE referred by R. J. Melville, the Acting Judge of the Small Causes Court at Chittur, for the decision of the High Court.

No counsel were instructed.

The facts sufficiently appear from the following

JUDGMENT :—The question is whether the security bond executed by a third party to the *ābkāri* renter is exempt from stamp duty.

The Regulation I of 1820 has no reference to such an instrument, and it does not seem to us to fall within any of the exemptions as respects bonds in Schedule A, Act XXXVI of 1860, which upon the case as stated, we take to be the Stamp Act in force when the bond was given.

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