

immoveable property, the remedy against such property was not barred. For the defendants it was attempted to distinguish this case from the case reported in 2 M. H. C. Repts. 51, (a) but it was admitted that, if hypothecation creates an interest in immoveable property, the plaintiff's remedy against the property specified in the document sued upon is not barred. It is quite clear that hypothecation does create such an interest, and it has already been so decided by this Court in the case referred to. It is clear that the plaint, though not in very scientific language yet with sufficient certainty, prayed for relief by sale of the property hypothecated. Under Section 351 we reverse the Decrees of the Courts below and remand the suit to the Court of First Instance that it may be there restored to its place in the register, and investigated and decided upon the merits. The costs hitherto to be costs in the cause.

1866.  
May 7.  
S. A. No. 101  
of 1866.

(a) *Chetti Kaundan v. Sundaram Pillai.*

APPELLATE JURISDICTION (b)

*Civil Petition No. 80 of 1866.*

KAVIRÁJA SUNDARA MURTIYA PILLAI...*Petitioner.*

NALLA NÁIKAN PILLAI and others.....*Counter-Petitioners.*

Where a Civil Judge upon a petition, applying, under Section 18 of Act XX of 1863, for leave to institute a suit, made an order disposing at once of the matter in dispute, and his successor, reversing the former order, decided by an order upon the rights of the parties.

*Held,* that though both orders were made without jurisdiction, that fact does not give the High Court an Appellate jurisdiction in the matter.

**T**HIS was a petition against an order of F. S. Child, the Civil Judge of Tinnevelly, dated the 21st December 1865.

1866.  
May 7.  
C. P. No. 80  
of 1866.

*Srinivasa Chariyar,* for the petitioner.

*Advocate General,* for the counter-petitioners.

The facts appear sufficiently from the following

(b) Present Innes and Collett, J. J.

1866.  
 May 7.  
 C. P. No. 80  
 of 1866.

ORDER :—It is clear that there is no provision allowing of an appeal to this Court from the order complained of. It is clear that this order, except so far as it was a refusal to execute the previous order, and that order of the 15th September which preceded it were equally made without jurisdiction, and the conflicting opinions of the two Civil Judges were alike extra-judicial. The first order was made upon a petition, applying, under Section 18 of Act XX of 1863, for leave to institute a suit, and the then Civil Judge, instead of either granting or refusing the leave, disposed at once of the matter in dispute. He had no jurisdiction to do so. The present Civil Judge was equally without jurisdiction to decide by an order upon the rights of the parties, and further, would have been without jurisdiction, if his predecessor's order had been made with jurisdiction, to have reversed such order. But the fact that both orders were made without jurisdiction does not give us jurisdiction to hear this appeal and it must be dismissed.

It is accordingly ordered that this appeal be, and the same hereby is, dismissed.

*Appeal dismissed.*

APPELLATE JURISDICTION (a)

*Regular Appeal No. 17 of 1866.*

KÁMÁKSHI AMMÁL.....*Appellant.*

CHIDAMBARA REDDI and others.....*Respondents.*

A suit on behalf of a minor for partition will lie, if the interests of the minor are likely to be prejudiced by the property being left in the hands of the co-parceners from whom it is sought to recover it.

*Special Appeals Nos. 286 of 1862 and 299 of 1862 [1 M. H. C. Reps., p. 105.] distinguished.*

1866.  
 May 12.  
 R. A. No. 17  
 of 1866.

THIS was a regular appeal from the decree of T. I. P Harris, the Civil Judge of Trichinopoly, in Original Suit No. 3 of 1854.

*Srinivasa Chariyar*, for the appellant, the plaintiff.

*Rangaiya Nayudu*, for the 1st respondent, the 1st defendant.

(a) Present Innes and Collott, J. J.