

APPELLATE JURISDICTION (a)

*Special Appeal No. 101 of 1866.*RÁJA KUNDAN.....*Appellant.*MUTTAMMÁL and others.....*Respondents.*

Hypothecation creates an interest in immovable property such as is mentioned in Clause 12 of Section 1 of Act XIV of 1859, and therefore the period of limitation for suits arising out of documents of hypothecation is 12 years.

Chetti Kaundan v. Sundaram Pillai (2 M. H. C. Repts. 51) followed.

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of 1866.

THIS was a special appeal from the decision of H. E. Sullivan, the Acting Civil Judge of Salem, in Regular Appeal No. 33 of 1865, confirming the Decree of the Court of the Principal Sadr Amin of Salem, in Original Suit No. 20 of 1864.

The action was brought for the recovery of the principal and interest of a bond (unregistered) executed by the 1st defendant in favor of plaintiff's paternal uncle's son Rája Kaundan, upon the mortgage of one-half of the Sundamangalam Mutta, on 22nd July 1856.

The second and third defendants pleaded the statute of limitations.

The plaint was filed on the 27th September 1864, and the Lower Courts considered that (as the statute ran from the date of execution of the bond) the suit was barred by the law of limitation.

Advocate General, for the appellant, the plaintiff.

G. E. Branson, for the second and third respondents, the defendants.

The Court delivered the following

JUDGMENT:—For the plaintiff it was contended that, as the document sued upon contained a hypothecation of

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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.

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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.

THIS was a petition against an order of F. S. Child, the Civil Judge of Tinnevely, dated the 21st December 1865.

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Srinivasa Chariyar, for the petitioner.

Advocate General, for the counter-petitioners.

The facts appear sufficiently from the following

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