

Initials of the Munsif. This was obviously a very inconclusive ground, as the omission might have been the result of a mere accident, and certainly it was a most unsatisfactory ground to go upon when the question might have been settled beyond dispute by sending for the record of the suit which ought to have been in the Civil Judge's own record-room. We have already in more than one reported decision of this Court had occasion to point out that, what may be termed the penal provisions of Section 170, however necessary in this country to meet extreme cases, ought to be exercised with the most temperate discretion, and we think that if due forbearance and deliberation had been shown by the Lower Courts in the present case both would have recognized the impropriety of dealing with the case under Section 170. Under Section 351, we therefore reverse the decrees below and remand the suit through the Civil Court to the Court of First Instance to be heard and determined upon the merits, and this must necessarily be as to all the parties to the suit. The party who may ultimately succeed will be entitled to his costs hitherto throughout the suit and appeals.

1869.
February 12.
S. A. No. 369
of 1868.

Appellate Jurisdiction. (a)

Referred Case No. 3 of 1869.

SUBBUVIYAN.....*Petitioner.*

The summary remedy under Section 53 of the Registration Act is made applicable only as between the immediate parties to the registered obligation. Such remedy cannot therefore be enforced by the representative of an obligee.

THIS was a case referred for the opinion of the High Court by Appahvya, the District Munsif of Perumbalore.

1869.
February 15.
R. C. No. 3
of 1869.

The petitioner presented a petition to the District Munsif under Section 53 of the Indian Registration Act (XX of 1866,) praying for a decree for rupees 385-12-0 due by virtue of a duly registered bond executed to his deceased undivided younger brother Aiyatorai Aiyan by the defendants. The petitioner produced a certificate under Act XXVII of 1860 authorizing him, as the uncle and guardian of the adopted minor son of the said Aiyatorai Aiyan, to collect the debts due to the estate of the latter.

(a)* Present: Scotland, C. J. and Ellis, J.

1869.
February 15.
R. C. No. 3
of 1869.

The question raised for determination was whether the petitioner, who was not a party to the registration of the bond sued on, could be allowed summarily to recover the amount thereof under the provisions of the said Section as the representative of the deceased obligee.

The District Munsif was of opinion that the petitioner was entitled to recover, but submitted the question for the decision of the High Court.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—We are of opinion that the petitioner was not entitled to proceed under Section 53 of the Registration Act. The decision of the Court in the case reported in 3, *Madras High Court Reports*, 199, is an authority for the construction that the summary remedy under that Section is made applicable only as between the immediate parties to the registered obligation, and we see nothing in the language of the Sections 53 to 55 to warrant a distinction in favor of the representative of an obligee.

Appellate Jurisdiction. (a)

Special Appeal No. 451 of 1868.

N. KRISHNAMMA *Special Appellant.*

N. PAPA and 2 others *Special Respondents.*

The words "the heirs of the preceding Kurnum" in Section 7 of Regulation XXIX of 1802 mean his next of kin according to the order of succession of several grades of legal heirs and not heirs in the order of succession to undivided divisible ancestral property.

A daughter's son is one of the nearer sapindas, and in the line of heirs before a brother's son according to Hindu Law.

Semble, an illegitimate son of a Sudra by his concubine is his heir in preference to a brother's son.

1869.
February 15.
S. A. No. 451
of 1868.

THIS was a special appeal against the decision of P. Srinivasa Rao, the Principal Sadr Amin of Vizagapatam, in Regular Appeals Nos. 102 and 117 of 1867, reversing the decree of the Court of the District Munsif of Vizagapatam in Original Suit No. 18 of 1864.

(a) Present: Scotland, C. J. and Innes, J. •