

1869.  
December 13.  
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of 1869.

that act rests is not attributable in any way to breach of contract or neglect on the part of the plaintiff, nor does it involve the doing of anything prejudicial to the 1st defendant. On every just principle, therefore, the 1st defendant is under an obligation to renew the sale deed at the expense of the plaintiff and so place the plaintiff in the position to register the sale, in which he had been rightfully placed before the executed instrument was rendered useless, and having refused to do so, there should be a decree to compel the execution. It follows that the decision of the Civil Court against the plaintiff's right to relief is in our judgment wrong, if the assumption above made should prove correct. But the final decree of the Court must abide the findings of the Civil Court upon the questions raised in that Court by the 1st defendant's 3rd and 4th grounds of appeal, and the question of title raised by the 2nd defendant's grounds of appeal, and there must be an order directing the Civil Court to return such findings after due consideration of the evidence on the record.

*Issues directed.*

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### Appellate Jurisdiction. (a)

*Referred Case No. 54 of 1869.*

M. GANGAPPA *against* M. KAPINAPPA.

The Court to which an application should be made to enforce an award under Section 327 of the Civil Procedure Code is a Court having jurisdiction in the matter to which the award relates, that is in respect of the whole matter of the award.

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**T**HIS was a case referred for the opinion of the High Court by H. P. Gordon, the acting Judge of the Court of Small Causes at Chittore in Suit No. 1036 of 1869.

No counsel were instructed.

The Court delivered the following

**JUDGMENT** :—An application under Section 327, Civil Procedure Code, must be made to a Court having jurisdiction

(a) Present : Scotland, C. J. and Collett, J.

in the matter "to which the award relates," and the Court is required to give notice to all the parties to the arbitration other than the applicant calling upon them to show cause why the award should not be filed for the purpose of being proceeded upon. From this it appears quite clear to us that the Court applied to must be one having jurisdiction in respect to the *whole* matter. If the award is ordered to be filed, judgment is to be given according to the award and execution may then be taken out of the decree. It never could have been intended that the same award might be proceeded upon under Chapter VI of the Code in several different Courts. If the liabilities of the several parties to the award are several and distinct, the Court having jurisdiction over the whole matter will in its decree provide for the distinct rights and liabilities of the parties as in any ordinary case involving separate liabilities. It is clear that the whole matter of the award in the present instance considerably exceeds the pecuniary limit of the jurisdiction of the Court of Small Causes. This affords a sufficient answer to the several questions submitted.

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**Appellate Jurisdiction. (a)**

*Special Appeal No. 209 of 1869.*

RAJARAM LALA.....	{	<i>Special Appellant.</i>
		<i>2nd (Plaintiff.)</i>
KALIYAPPEN.....	{	<i>Special Respondent</i>
		<i>(Defendant.)</i>

A Collector has no power to set aside the decision of a Head Assistant Collector when the latter is exercising the powers conferred on a Collector by Madras Act VIII of 1865.

**T**HIS was a special appeal against the decree of the Civil Court of Salem in Regular Appeal No. 281 of 1868, reversing the decision of the Head Assistant Collector of Salem in Original Suit No. 29 of 1867.

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*December 15.*  
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of 1869.

(a) Present : Scotland, C. J. and Collett, J.