

1870. the transfer by the Civil Court in the present case was in-
ember 2. operative to bring the suits within the Small Cause juris-
No 39 diction of the Principal Sadr Amin.
 1870.

Secondly, on the ground that, supposing the transfer not to be invalid under Section 6 of the Code, the jurisdiction conferred by the Notification applied under Section 12 of Act XI of 1865 only to suits that had not been "heard or determined,"* and in the present case a decree dismissing the suit had been passed before the Notification came into force and the pending application was to set aside the decree and proceed with the suit. It is unnecessary to say more in answer to the questions submitted. But we think it right to intimate that we think Section 12 of Act XI of 1865 took away the District Munsif's jurisdiction to proceed with the hearing or determination of suits for sums above Rupees 50 cognizable by a Court of Small Causes after the Notification came into force, and to point out that the only course proper to be taken is dismissal by the District Munsif of such suits as have not been determined, and of the suit in question should the decree be set aside, upon the ground of the want of jurisdiction to proceed with the hearing, leaving the parties to bring fresh suits in the proper Court ; or an application to the High Court for an order to transfer the suits to the Court of the Principal Sadr Amin.

APPELLATE JURISDICTION (a)

Civil Miscellaneous Special Appeal No. 123 of 1870.

SUBRAYA GOUNDEN.....*Petitioner.*

VENKATAGIRI AIYAR, and 5 others.....*Counter-Petitioners.*

In execution of a decree the District Munsif made an order which he was not legally authorized to make at the instance of the purchaser of the property sold in execution. No appeal could be made against the order, but the Civil Judge entertained an appeal and reversed the order of the District Munsif.

The High Court set aside the order of the Civil Judge under Section 35, Act XXIII of 1861, but, by virtue of the powers given by the Section, the order of the District Munsif was also annulled.

1870.
ember 2.
M. S. A.
No. 123
 1870.

THIS was an appeal against the order of the Civil Court of Salem, dated the 10th January 1870, passed on Civil

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

Petition No. 640 of 1869, modifying the order of the Court of the District Munsif of Salem, dated 1st November 1869.

1870.
December 2.
C. M. S. A.
No. 123
of 1870.

The petitioner was a purchaser of immoveable property under a sale in execution of a decree. The decree was subsequently set aside by the Civil Court. The petitioner applied to the Court of the District Munsif of Salem, which executed the decree, for repayment of the purchase money, for interest upon the amount, and for the value of improvements effected by the petitioner whilst he was in possession. The District Munsif granted the prayer of the petitioner with respect to the purchase money, the interest, and the value of the improvements.

Upon appeal the Civil Judge disallowed the interest and the value of the improvements. The interest was disallowed because the Civil Court in setting aside the decree said nothing about such interest; and the value of improvements upon the ground that the petitioner made them at his own risk, and the District Munsif had no power to award payment to the petitioner in respect of the interest or of the improvements.

The petitioner presented a Special Appeal to the High Court on the grounds that the Civil Judge had no jurisdiction to entertain the appeal, and that the petitioner was entitled to the sums awarded by the District Munsif.

Craig, for the petitioners.

Rama Row, for the counter-petitioners.

The Court delivered the following

JUDGMENT:—It is clear that an appeal did not lie to the Civil Court from the order of the District Munsif Court upon the application of the 2nd purchaser (the present petitioner) for interest and the cost of improvements. It required an express provision to give the right of appeal, and the Code of Civil Procedure contains no such provision.

The order of the Civil Court now in question must therefore be set aside under Section 35 of Act XXIII of 1861. But as the effect of simply ordering that redress would be to entitle the petitioner to enforce the order of the District Munsif's Court, it is necessary for us, under the discretion given by that

1870. Section to set aside the decision of the Civil Court or pass
December 2, such other order as may appear proper, to consider whether
M. S. A. the petitioner is entitled to the sums allowed by that order
No 123 for interest and cost of improvements of the property after
of 1870. it was put in his possession as purchaser. With respect to
 the interest, the order, we think, is clearly not valid. The
 power given by Section 258 of the Civil Procedure Code to
 grant interest in the event of a sale being set aside for the
 time that the purchase money has been lying idle in the
 Court is expressly confined to the Court setting aside the
 sale, and in the present case the sale to the petitioner was
 confirmed by the District Munsif's Court and set aside under
 the order of the Civil Court. The order to pay interest, there-
 fore, was made without authority. The petitioner, by pro-
 ceeding to invalidate the former order of the Civil Court
 setting aside the sale and establish the sale to him, might
 have protected himself from any grievance on this account.
 But having acquiesced in that order the District Munsif
 could not exercise the power to give interest in his favor.

We are also of opinion that the order is invalid as to
 the amount allowed for the costs expended by the petitioner
 in improvements on the ground that there is no provision
 of the law of Procedure empowering the Courts to order the
 re-imbusement of such an outlay upon a sale being set aside.
 It was probably never contemplated that a purchaser would
 risk expenditure on improvements while an appeal was pend-
 ing against the order or confirmation necessary to make the
 sale absolute, and the petitioner must, in the present case, be
 left to bear the consequences of his own imprudence.

The result is that the order of this Court must annul
 the order of the District Munsif's Court awarding interest
 and the costs of improvements as well as the order of the
 Civil Court passed on the appeal from that order, and so leave
 the petitioner entitled only to retain the amount of the pur-
 chase money which has been refunded to him. We think the
 case is one in which the parties should bear their own costs
 in this and both the Lower Courts.