

1872.  
December 20.  
R. A. No. 118  
of 1872.

command. Without, therefore, at all saying that the argument in appeal ought in any case to prevail, we are clear that it ought not in this case. The appeal will be dismissed.

*Appeal dismissed.*

### Appellate Jurisdiction(a)

*Special Appeal No. 251 of 1871.*

SAMI A'YYANGA'R.....*Special Appellant.*

GOPA'L A'YYANGA'R.....*Special Respondent.*

Defendant executed in favor of plaintiff at Combaconum, in the Zillah of Tanjore, a deed of mortgage of lands situated at a place within the jurisdiction of the District Munsif of Perambalúr, in the Trichinopoly Zillah. The deed, to make it enforceable, required registration, the place of registry (from the situation of the lands) being Perambalúr. Plaintiff appeared at the registry office, but defendant did not. In consequence the Sub-Registrar refused to register the deed. The present suit was brought to compel defendant to join in registering it. The District Munsif of Perambalúr dismissed the suit upon the ground that the cause of action did not arise within his jurisdiction, but at Combaconum. The Civil Judge confirmed this decision, as he found that the defendant was a permanent resident of Combaconum. Upon Special Appeal, *Held*, reversing the decree of the Civil Judge, that as Section 21 of the Registration Act (XVI of 1864) which governed this case, rendered it necessary that the deed should be registered in Perambalúr, the defendant was under an obligation to plaintiff to get the document registered at that place; that the breach of this obligation was the cause of action, and that, consequently, the Court at Perambalúr had jurisdiction, as it was the place of the fulfilment of the obligation.

1873.  
January 6.  
S. A. No. 251  
of 1871.

THIS was a Special Appeal against the decision of R. Davidson, the District Judge of Trichinopoly, in Regular Appeal No. 32 of 1869, confirming the revised decree of the Court of the District Munsif of Perambalúr, in Original Suit No. 156 of 1866.

The facts appear in the following judgment of the Lower Appellate Court :—

“ Plaintiff brought this suit to compel registration of a certain document.

The plaint set forth that on the 2nd January 1866, the defendant, a resident of Combaconum, executed a deed of mortgage to him at Combaconum for certain lands situated within the jurisdiction of the Perambalúr Munsif's Court,

(a) Present : Morgan, C. J., and Hæes, J.

and that as the defendant failed to appear in order to have the document registered before the Deputy Registrar, the plaintiff sued to compel the defendant to register it.

1878.  
January 6.  
S. A. No. 251  
of 1871.

The defendant was *ex parte*.

The Munsif dismissed the suit under the latter part of Section 5 of the Civil Procedure Code, as he held that the plaintiff ought not to have instituted the suit in his Court, because the plaintiff himself admitted that the defendant was a regular resident of Combaconum, in the Tanjore district, where the instrument Exhibit A was admittedly executed, and because the suit was not brought to recover the land.

The plaintiff appealed, and the late Acting Civil Judge remanded the case for the determination of the issues as to where the defendant really resides, and whether the lands in question were situated within the jurisdiction of the Perambalúr Munsif or not.

The Munsif found that the original plaint set forth that the defendant was a resident of Combaconum, which was the case, and that as set forth in his original judgment, the lands in question were situated within the Munsif's jurisdiction, but for the reasons originally assigned and adverted to in para. 5 of this judgment, he adhered to his original finding, and dismissed the suit with costs.

Inasmuch as it appears that the defendant was a permanent resident of Combaconum at the time when he executed the instrument A at Combaconum, I am of opinion that the Perambalúr Court was not that in which this suit ought to have been brought, and as no sufficient cause has been shown to warrant me in disturbing the Munsif's decision, it is affirmed, and this appeal dismissed with costs. Had the lands themselves formed subject-matter of contention, the case would have been very different."

The plaintiff appealed.

*Rama Rau*, for the special appellant, the plaintiff.

The Court delivered the following

JUDGMENT:—The question in this special appeal is whether the District Munsif of Perambalúr had jurisdiction to entertain the suit. The facts are as follows:—

1873.  
January 6.  
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num, in the Zillah of Tanjore, a deed of mortgage of lands  
situated at a place within the jurisdiction of the District  
Munsif of Perambalúr in the Trichinopoly Zillah. The mort-  
gage deed was one which, to make it enforceable, required to  
be registered, the place of registry (from the situation of the  
lands) being Perambalúr. Plaintiff appeared before the Sub-  
Registrar, but defendant did not appear, and the Sub-  
Registrar, consequently, refused to register the document.

The suit is brought to compel defendant to join in reg-  
istering it. The District Munsif of Perambalúr dismissed  
the suit, as he was of opinion that the cause of action did not  
arise within his jurisdiction. He considered that it arose at  
Combacnum. The Civil Judge, on appeal, confirmed this  
decision, as he found that the defendant was a permanent re-  
sident of Combacnum. To be available as a valuable security  
the document required to be registered, and Section 21 of the  
Registration Act of 1864 (by which registration in this case  
was governed) rendered it necessary that it should be register-  
ed in Perambalúr. The defendant was, therefore, under an  
obligation to plaintiff to get the document registered at that  
place. The breach of this obligation is the cause of action,  
and although, of course, if the suit had been brought at Combac-  
num, the Court there would have had jurisdiction, by reason  
of the residence there of the defendant, the question now is  
whether there is not also jurisdiction at Perambalúr, where  
the plaintiff has brought his suit, by reason of the cause of  
action having arisen within the local limits of the Court of the  
District Munsif of Perambalúr. And this was and is the sole  
question to be determined, because, if there is jurisdiction at  
Perambalúr, it does not matter where the defendant resides.  
We think that the proper forum of the obligation was Peram-  
balúr, as, from the nature of the act to be performed, it was  
the place of the fulfilment of the obligation. We, therefore,  
reverse the decrees and remand the suit for disposal on the  
merits. The costs will be costs in the cause.

*Appeal allowed.*