

**(1957) 01 KL CK 0009**  
**In the High Court Of Kerala**  
**Case No : Second Appeal No. 709 of 1955**

Narayanan Parameswara Panicker

APPELLANT

Vs

Karthiayani

RESPONDENT

**Date of Decision :** 11-01-1957

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 154

**Citation :** AIR 1957 Ker 101

**Hon'ble Judges :** T.K. Joseph, J

**Bench :** Single Bench

**Advocate :** P. Govindan Nair, for the Appellant; K.C. Chacko, for the Respondent

**Final Decision :** Allowed

## Judgement

T.K. Joseph, J.—This second appeal arises from an order in execution of the decree in a small cause suit. Immovable property was sold in execution and the 4th defendant applied for cancellation of the sale on 13-11-1948 (28-3-1124). The application was dismissed by first court and the 4th defendant preferred an appeal to the District Court. Upholding a preliminary objection that the appeal was not competent the learned District Judge dismissed the same and the 4th defendant has preferred this second appeal. The respondent was not present at the hearing.

2. The only point arising for decision is whether the appeal in the lower appellate court was maintainable. The sale was conducted and the application for cancellation of the same was made at a time when the Travancore Civil Courts Act, II of 1084, was in force. Section 14(e) of the said Act provided that appeals and second appeals would lie against orders passed by the court in execution of small cause decrees against immovable property in the same manner and to the same extent as if such orders had been passed in the exercise or the ordinary original jurisdiction of such court. This Act was repealed when the Travancore-Cochin Civil Courts Act, XXI of 1951, was enacted on 1-4-1951. The new Act did not contain a similar provision. As the application for cancellation of the sale was

decided only after the new Act was passed, the learned District Judge held that the provisions of the Act read with Section 7 of CPC which became appellate to this State on 1-4-1951 did not allow an appeal or second appeal from such orders. The question for decision, therefore, is whether the repeal of the Travancore Civil Courts Act of 1084 during the pendency of the proceedings for cancellation of the sale has the effect of depriving the parties of the right of appeal which was available to them until the date of passing of the new Act. The learned District Judge relied on the decisions in Mohammed v. Mohammed Rowther 1946 Trav LR 675 (A); Padmanabhan Nadar v. Satyanesam (AIR 1952 TC 357 (B); Pappathi Ammal v. Sivagannam Pillai 1954 KLT 827: (AIR 1954 TC 526) (FB) (C); and Mathews Kathanar v. Easus Kathanar 1955 KLT 17: AIR 1954 Trav C 178 (FB)(D). These decisions dealt with only the the broad question whether procedural law is retrospective in its operation on pending actions. The question that arises in tin's case did not arise in any of these decisions. A similar question arose in Bhagvathi Piilai v. Sankara Pillai 1953 KLT 557: AIR 1954 TC 125 (E). Immovable propetty was sold in that case in execution of a small cause decree. There was an application to set aside the sale which was dismissed by the execution court and when the matter came up in appeal to this court, the respondent raised a preliminary objection on identical grounds. This court held that the repeal of the old Act under which the party had a right of appeal had not the effect of depriving him of the same. Following the decision of the Privy Council in Colonial Sugar Refining Co. Ltd. v. Irving 1905 AC 369 (F) and the decisions of Indian High Courts such as Daivanayaga Reddiar v. Renukambal Ammal ILR 1950 Mad 857; AIR 1927 Mad 977 (FB) (G); Ram Singha and Another Vs. Shankar Dayal and Another and Alley Rasul Ali Khan and Another Vs. Balkishun and Others it was held that the auction sale having taken place and the petition for cancellation having made before the law became changed, the right of appeal was not lost to the party under such circumstances. The following passage from the judgment of the Privy Council referred to above may with advantage be extracted:

"To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure. In principle, their Lordships see no difference between abolishing an appeal altogether and transferring the appeal to a new tribunal. In either case there is an interference with existing rights contrary to the well-known general principle that Statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested".

Following the decisions referred to above I hold that the appeal to the District Court was competent, As the same has been disposed of on the preliminary objection, the decision has to be set aside. Accordingly, I set aside the decision of the lower appellate court and remand the case to that court for fresh disposal on the merits.

3. The second appeal is allowed but in the circumstances I make no order as to

costs