

**Clara and ors. Vs. Augustine and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/718678](http://sooperkanoon.com/718678)

**Court :** Kerala

**Decided On :** Mar-12-1984

**Reported in :** AIR1985Ker186

**Judge :** G. Balagangadharan Nair and; V. Bhaskaran Nambiar, JJ.

**Acts :** [Kerala Civil Courts Act, 1957](#) - Sections 13(1); Kerala Civil Courts Ordinance, 1984 - Ordinance 9

**Appeal No. :** A.S. Nos. Nil of 1984

**Appellant :** Clara and ors.

**Respondent :** Augustine and ors.

**Advocate for Def. :** Govt. Pleader

**Advocate for Pet/Ap. :** Vimala Jacob and; P.N. Ramakrishnan Nair, Adv.

**Judgement :**

**Balagangadharan Nair, J.**

1. These appeals have been brought by defendants 2 and 3 in O.S. No. 166 of 1982 on the file of the Additional Subordinate, Judge, Cochin and the defendant in O.S. No. 220 of 1979 on the file of the Additional Subordinate Judge, Alleppey from the judgments and decrees dated 20-8-1983 and 15-4-1981 respectively. The

former appeal was filed in this court on 20-2-1984 and the latter on 13-2-1984. These suits were instituted, O.S. No. 166 of 1982 on 5-7-1982 and O.S. No. 220 of 1979 on 5-9-1978(9?). After the decrees in the two cases. Section 13 of the Civil Courts Act was amended by substituting the words 'Rs. 25,000/-' for the words 'Rs. 10,000/-'. This was done by ordinance 9 of 1984 which came into force on 6-1-1984. The office has raised a doubt whether in view of the amendment brought about by the ordinance, the appeals could be maintained in this court or whether they lie in the District Court as in both cases the valuation was above Rs. 10,000/- and below Rs. 25,000/-. As the appeals have not been numbered and respondents have not entered appearance, we heard Mr. Krishnamoorthy, learned Government Pleader for assistance.

2. Section 12 Civil Courts Act enacts that save as provided in Section 13, regular and special appeals shall, when such appeals are allowed by law, lie from the decrees or orders of a District Court or a Subordinate Judge's Court to the High Court. Section 13( 1) before it was amended by the ordinance, provided that appeals from the decrees and orders of a Munsiff s Court and where the amount or value of the subject-matter of the suit does not exceed ten thousand rupees from the original decrees and orders of a Subordiante Judge's Court shall, when such appeals are allowed by law, lie to the District Court. It is the words 'ten thousand rupees' that occur in the sub-section that have been now substituted by the ordinance with the words 'Twenty five thousand rupees'. The short point to be considered is whether the enhancement of the value by the ordinance is retrospective so as to take in suits instituted before the introduction of the amendment or not.

3. For a decision of the point it would be helpful to extract the following passage from paragraph 23 of *Garikapati v. Subbiah Choudhry*, AIR 1957 SC 540 :

'(23) From the decisions cited above the following principles clearly emerge :

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

- (ii) The right of appeal is not a mere matter of procedure but is a substantive right.
- (iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.
- (iv) The right of appeal is vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.
- (v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.'

It is clear from the above pronouncement that the right of appeal is a substantive right and not a mere matter of procedure and that the institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties till the rest of the career of the suit. It also established that this vested right of appeal can be taken away only by a subsequent enactment if it so provides expressly or by necessary intendment and not otherwise. The appellants in these appeals had a right vested in them on 5-7-1982 and 5-9-1978(9?), the dates at which the suits were instituted, to bring adverse decisions (provided of course they are appealable) on appeal to this Court. That right was available to them on the dates they brought the appeals unless it was taken away in the meanwhile by Ordinance 9 of 1984. We considered the Ordinance and we could find nothing in its provisions that either expressly or even by necessary implication takes away that right. That being the position, the appeals lie to this Court and have to be entertained.

4. Although the learned Government Pleader brought to our notice the provisions of Section 13(2) of the Civil Courts Act there is nothing in them that affects the above conclusion. We are not therefore studying that sub-section in detail.

Register the appeals.

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