

**Krishna Bhatta Vs. Subraya and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/790493](http://sooperkanoon.com/790493)

**Court :** Chennai

**Decided On :** Apr-02-1897

**Reported in :** (1898)ILR21Mad228

**Judge :** Arthur J.H. Collins, C.J. and ;Shephard, J.

**Appellant :** Krishna Bhatta

**Respondent :** Subraya and ors.

**Judgement :**

1. We have all the materials before us to form our opinion and have arrived at the conclusion that the District Judge acted illegally in admitting the appeal on the 12th June 1895. At that date the appeal was many months out of time, and the affidavit shows no ground for excusing the delay. The Subordinate Judge considers that he was not entitled to question the order of the District Judge and relies on *Jhotee Sahoo v. Omesh Chunder Sircar* I.L.R. 5 Cal. 1.

2. But seeing that the order was ex parte and that the appeal was transferred by the District Judge to the Subordinate Judge, we think that upon that transfer all the powers of an Appellate Court became vested in the Subordinate Judge. Otherwise an appeal would lie partly in one Court and partly in another.

3. We do not agree with the decision in *Jhotee Sahoo v. Omesh Chunder Sircar* I.L.R. 5 Cal. 1 . It is urged before us that the point of time cannot be taken on appeal from an order of remand, but if the Subordinate Judge was wrong in

entertaining the appeal, it is clear that he ought not to have made an order of remand.

4. We must allow the appeal and set aside the order of the Subordinate Judge and restore the decree of the District Munsif with costs throughout.

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