

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Forbes.

DARMA ÁYYAN (PLAINTIFF), PETITIONER, *v.* RÁJAPA ÁYYAN AND ANOTHER (DEFENDANTS), COUNTER-PETITIONERS.*

1879.
April 8.

Claim for the produce of land—Denial of plaintiff's title—Jurisdiction of Small Cause Court.

If the right of the plaintiff be a question raised in a suit brought in a Court of Small Causes for recovery of value of produce, it is quite open to the Judge of the Court of Small Causes to try it, and determine it incidentally to the main question in the suit—the right to the produce claimed.

THE plaintiff alleged that he and the first defendant were in joint possession of a parcel of land, and that his share of the produce for the year 1877 was carried away by the first defendant with the aid of the second defendant. He claimed Rupees 18-7-0, the value of his share of the produce. The defendants pleaded that the plaintiff had no right to the possession of the land. The Judge was of opinion that a question of title was raised in good faith by the defendants, and that the suit was not cognizable by a Court of Small Causes. The plaintiff applied to the High Court, under Section 622 of Act X of 1877, to direct the Judge to decide the case on merits.

P. Ráma Ráu, for the Petitioner.

The Court (INNES, J., and FORBES, J.) delivered the following

JUDGMENT :—It appears to us that the District Munsif clearly had jurisdiction in this case. The suit was for the produce of the land. There seems to be ground for saying that the right of plaintiff to the share of the land from which the produce claimed was derived had been already determined; but, even if this still remained undetermined, and was a question raised in the suit, it was quite open to the Munsif to try it and determine it incidentally to the main question in the suit—the right to the produce claimed. The District Munsif having refused to exercise a jurisdiction which appertained to him, we set aside his order and direct that the suit be replaced on his file and proceeded with in due course. Costs will abide the result.

* Civil Miscellaneous Petition No. 425 of 1878, under Section 622 of Act X of 1877, against the decree of Ránkata Ráu, District Munsif of Manargudi, in Small Cause Suit No. 5 of 1878, dated 18th March 1878.