

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Muttusámi Áyyar.

KAMAYYA (PLAINTIFF) v. LEMAN (DEFENDANT).*

1878.
October 7.

Municipal Tax—Jurisdiction.

A suit was brought in the Court of the District Munsif of Gantúr to recover the amount of a profession tax for 1876 levied by the Municipal Commissioners of Gantúr on the plaintiff upon the supposition that he carried on business as an agent, while in fact he carried on no such business. The defendant pleaded that the Court had no jurisdiction. Upon reference, *Held* by the High Court (Innes, J., and Muttusámi Áyyar, J.) that the Court had not jurisdiction to adjudicate on the matter in contest.

Leman v. Damodaráya(1) distinguished.

THIS was a case stated under Section 22, Act XI of 1865, by the District Munsif of Gantúr in Small Cause Suit No. 423 of 1877.

There was no appearance for the plaintiff.

The *Advocate-General* appeared for the defendant.

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

JUDGMENT :—This suit was brought in the Court of the District Munsif of Gantúr to recover back the profession tax which had been levied by the Municipal Commissioners of Gantúr for 1876-77, under Act III of 1871. The plaint stated that the tax was imposed on the plaintiff upon the supposition that he carried on business as an agent, while in fact he carried on no such business. The defendant contended that the matter in dispute was not cognizable by the Civil Courts, but the District Munsif held that he had jurisdiction, and referred for our decision the question whether he is competent to decide whether the tax was lawfully imposed by the Municipal Commissioners.

We are of opinion that the Civil Courts have no jurisdiction to adjudicate on the matter in contest in this suit. It appears that the procedure prescribed by Section 61 for the imposition of the tax has been conformed to by the Commissioners, and the tax having thus a *legal* existence, no suit will lie to contest its incidence. In *Leman v. Damodaráya* (1) on which the District Munsif relies,

* Case No. 18 of 1877 stated under Section 22 of Act XI of 1865 by the District Munsif of Gantúr in Small Cause Suit No. 423 of 1877.

(1) I.L.R., 1 Mad., 158.

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the machinery prescribed for imposing the tax did not exist when it was imposed, and it was held that the suit would lie as there was no *legally* sanctioned tax. The matter of fact in dispute in this suit is no part of that machinery, and in the case of error in respect to it, the only remedy the plaintiff has is the appeal allowed by Section 85.

If he either fails to prefer the appeal or if the appeal preferred by him is disallowed by the Commissioners, Section 85 is a bar to a suit to contest the assessment.

APPELLATE CRIMINAL.

1878.
October 25.

*Before Mr. Justice Innes (Officiating C. J.) and Mr. Justice
Muttasámi Áyyar.*

IN THE MATTER OF AUROKIAM, PETITIONER.*

Act X of 1872, Sec. 297—High Court—Revision.

In the course of a serious riot one S. was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision,

Held, 1st, that under the provisions of Section 297 of the Criminal Procedure Code the High Court may exercise its powers of revision upon information in whatever way received :

2ndly, that it was not intended by the legislature that the powers given by Clause 1 of Section 297 should be exercised only in the particular instances of error and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course which may be taken in those particular instances of error :

3rdly, that it is not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Session Judge has not been brought before him.

4thly, that the words 'material error' in that section cannot be held to include error in the appreciation of evidence :

* Criminal Petition No. 463 of 1878 presented under Section 297 of the Criminal Procedure Code against the finding and sentences of the Session Court of South Tanjore in Case No. 91 of the Calendar for 1878.