

[I. Mad. 399]

APPELLATE CIVIL.

The 21st December, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE
MUTTUSAMI AYYAR.

Krishnama Chariar.....(Defendant), Appellant
and

Srinivasa Ayyangar and others.....(Plaintiffs), Respondents.*

Valuation for jurisdiction—Subject-matter of suit to establish charge upon property.

For the purpose of jurisdiction (Madras Civil Courts Act, 1873), the subject-matter of a suit to establish the validity of a charge upon property is, when the property [340] is in excess of the charge, the amount of the charge; when the charge is in excess of the property, the value of the property.

THE plaintiff having attached in execution of a decree in Suit 57 of 1877 against one Ragavayyengar certain land hypothecated by a deed dated October 31st, 1877, to secure repayment of the debt sued for, the defendant, who was in possession of portion of the land as purchaser at a Court sale in execution of a decree in Suit 30 of 1877 brought by Aravamuthayyengar against Ragavayyengar upon a deed hypothecating the same land dated November 13th, 1872, intervened.

The attachment was raised under Section 280 of the Code of Civil Procedure.

The plaintiff now sued to establish his title to the property released from attachment under Section 283 of the Code of Civil Procedure.

The plaintiff's decree was for over Rs. 3,500. For the purpose of Court fees the claim was valued at five times the annual assessment (Rs. 387-10-6).

It was objected by the defendant that the District Munsif had no jurisdiction, as by the Madras Civil Courts Act, 1873, Rs. 2,500 is the limit of the jurisdiction of Munsifs' Court.

The Munsif held that the subject-matter of the suit was not the decree amount, but the land attached and released, and that therefore five times the assessment of the plaint land was the amount at which the suit must be valued for the purpose of jurisdiction.

On appeal, the Subordinate Judge confirmed the Munsif's decree.

The defendant appealed to the High Court.

Gopalachariar for Appellant.

Mr. Normandy for Respondents.

The following cases were referred to by the Vakil for the Appellant:—*Gulzari Lal v. Jadaun Rai* (I. L. R., 2 All., 799); *Motichand Jaichand v. Dadabhai Pestanji* (11 Bo. H. C. R., 186); *Dayachand Nemchand v. Hemchand Dharamchand* (I. L. R., 4 Bom., 526, 527).

* Second Appeal No. 615 of 1881 against the decree of R. Vasudva Rau, Subordinate Judge Negapatnam, confirming the decree of H. Srinivasa Rau, District Munsif of Mayavaram, dated 29th March 1881.

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

[341] Judgment:—The value of the subject-matter in suits such as that before us must depend on two considerations—the amount of the charge, and the value of the property it is sought to make available for the satisfaction of the charge. If the value of the property is in excess of the charge, the value is the amount of the charge, for the subject of the suit is the right to make the property available for the satisfaction of the whole charge; but where the value of the property is less than the amount of the charge, the subject-matter is the right to make the property available for the satisfaction of the charge so far as the property will suffice, and it cannot suffice to satisfy more than a sum proportionate to its value, and consequently in such cases the value of the subject-matter is the value of the property.

We remit an issue to the Lower Appellate Court to determine what is the value of the land.

The Subordinate Judge is directed to try the foregoing issue upon the evidence already recorded and upon such further evidence as the parties may adduce, and to return his finding, together with the evidence, to this Court, within three weeks from the date of receiving this order, when twelve days will be allowed for filing objections.

[4 Mad. 341]

ORIGINAL CIVIL.

The 26th January, 1882.

PRESENT :

MR. JUSTICE KERNAN.

Syed Mahommed Isaack Mushyack.....Plaintiff

and

A zeezoon Nissa Begam.....Defendant.*

The Pensions Act, 1871, Sections 34, 56.

A jaghire having been granted by the Nawab of the Carnatic for the support of the grantee and his relatives, was resumed by Government, and a money payment, equivalent to the rent, substituted :

Held that a suit by a relative of the original grantee to recover, as arrears of his share, money received by the representative of the grantee was barred by Section 4 of the Pensions Act, 1871.

THE jaghire of Shankarapuram, it was alleged by the plaintiff in this case, was bestowed by Nawab Wallajah on his Dewan, [342] Syed Ausim Khan, for the support of the relatives of the latter and their descendants in perpetuity. The grantee died in 1799, having distributed the

* Civil Suit No. 256 of 1881 on the Original Side of the High Court.