

person will fall under any of the classes of suits made cognizable by a Small Cause Court under s. 6, Act XI of 1865. HARIHARA
T.
SUBRAMANYA.

The obligation to repay such money is declared by s. 72 of the Indian Contract Act, and a suit to enforce such obligation will be one of those which the law regards as *quasi ex contractu*.

It has already been held by a Full Bench of this Court that the words "claim for money due on contract" in s. 6, Act XI of 1865, were intended by the Legislature to include claims to enforce obligations *quasi ex contractu*—*Govindu Muneya Tiruyan v. Bapu.*(1)

That suit was a suit for contribution by a debtor against his co-debtors and was held cognizable by a Court of Small Causes. The present suit is one of a very similar character.

That the word "contract" in s. 6 also includes an implied contract to discharge an obligation was held by this Court in *Gopal Kistna Sástri v. Rámayyangár.*(2)

Notwithstanding the authority of the Allahabad case, we are concluded by the previous rulings of this Court upon the same point of law, and from these we do not differ.

The petition must be dismissed with costs.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Brandt.*

KANDUNNI (PLAINTIFF), APPELLANT,

and

KATIAMMA (DEPENDANT), RESPONDENT.*

1885.
December 10.

Res judicata.

In 1883, plaintiff sued to recover certain land from the defendant on a demise of 1856, which he alleged was a renewal of a prior demise of 1835. The suit was dismissed on the ground that the demise of 1856 was not proved. Plaintiff then sued to recover the same land on the demise of 1835 and on title:

Held, that the decree in the former suit was no bar to this suit.

(1) 5 M.H.C.R., 200.

(2) I.L.R., 4 Mad., 236.

* Second Appeal 579 of 1885.

KANDUNNI
v.
KATIAMMA. THIS was an appeal from the decree of V. P. deRozario, Subordinate Judge of South Malabar at Palgat, reversing the decree of S. Subramanya Ayyar, District Múnsif of Chowgat.

The plaintiff, Padipurakel Kandunni Taragan, sued the defendant, Rayamarakkar Vittil Katiamma, to recover certain land, portion of which he claimed as his jenm, and the rest as kánamdár (mortgagee) from a devasam. He alleged that in 1835 the land was demised to the defendant's ancestor on kánam, and that this demise was renewed in 1856. In suit 215 of 1883, he sued defendant to recover the land under the demise of 1856. The defendant then denied its genuineness and the plaintiff's title and claimed to be owner. In that suit plaintiff obtained a decree, but on appeal, the decree was reversed on the ground that the demise of 1856 was not proved. The defendant pleaded that this suit was barred as being *res judicata*. The Múnsif held that as the present suit was based on title and not on contract, the plea was bad.

On appeal, the Subordinate Judge held that the claim to recover on the demise of 1835 alleged to have been renewed in 1856 was *res judicata*, and that plaintiff could not recover on title as defendant had been in possession for 50 years apparently without title.

Plaintiff appealed on the ground that his claim to recover on the demise of 1835 was not *res judicata*.

Sankaran Náyar for appellant.

Atkinson for respondent.

The Court (Collins, C.J., and Brandt, J.) delivered the following

JUDGMENT:—It is contended in appeal that all that was decided in the suit of 1883 was that the respondent at that date did not hold under the demise of 1856 then set up.

The appellant now sues on a demise of 1835, and we must hold that the question whether the defendant holds under that demise or in some other right has not been decided in the suit of 1883.

The second appeal 426 of 1881, to which we have been referred by Mr. Sankaran Náyar, appears to have been decided on the same principle.

We must set aside the decree of the Subordinate Judge and restore the decree of the Court of First Instance and desire the Subordinate Judge to pass a fresh decree. Costs to abide the result.