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for the payment of interest and costs. The principal was not due when the suit was brought, and if there is to be a sale under the mortgage, it should be for the entire debt. Defendant No. 2 must bear the costs of this appeal as well as of his own appeal to the District Court.

APPELLATE CIVIL.

Before Mr. Justice Muttusāmi Ayyar and Mr. Justice Parker.

HARIHARA (DEFENDANT), PETITIONER,

and

SUBRAMANYA (PLAINTIFF), RESPONDENT.*

*Small Cause Court—Act XI of 1865—Jurisdiction—Civil Procedure Code, s. 295—
Suit for refund of assets paid in execution of decree.*

A suit under s. 295 of the Code of Civil Procedure to compel refund of assets paid in execution of a decree to a person not entitled thereto is cognizable by a Court of Small Causes constituted under Act XI of 1865.

Shahi Ram v. Shib Lal (I.L.R., 7 All., 378) dissented from.

THIS was an application, under s. 622 of the Code of Civil Procedure, to set aside the decree of V. P. deRozario, Subordinate Judge at Palgat, in a Small Cause suit on the ground that the Court had no jurisdiction to entertain the suit.

The facts appear sufficiently, for the purpose of this report, from the judgment of the Court (Muttusāmi Ayyar and Parker, JJ.).

Srinivāsa Rāu for petitioner.

Rāmachandra Ayyar for respondent.

JUDGMENT :—The question before us is whether a suit under the penultimate clause of s. 295 of the Code of Civil Procedure to compel the refund of assets paid to a person not entitled to receive the same is cognizable by a Court of Small Causes. It is pointed out to us that the Allahabad High Court has held that such a suit is not cognizable—*Shahi Ram v. Shib Lal*.(1)

Section 295 of the Civil Procedure Code has been made applicable to Courts of Small Causes so far as it relates to the distribution of assets in the execution of decrees, but the question here is whether a suit for the refund of such assets paid to a wrong

* Civil Revision Petition 290 of 1885.

(1) I.L.R., 7 All., 378.

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
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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.