LOGAN v. KUNJI.

"The question I respectfully beg to submit, for the decision of the Honorable the Judges of the High Court, is "whether a suit by the Municipal Commissioners for the recovery of municipal tax is one cognizable by Courts of Small Causes."

Counsel were not instructed.

The judgment of the Court (Hutchins and Parker, JJ.) was delivered by

HUTCHINS, J.—The question submitted is whether a suit by Municipal Commissioners for the recovery of municipal tax is one cognizable by a Court of Small Causes. The tax is not one due under a contract, either express or implied or constructive as supposed by the District Múnsif, but the obligation to pay is imposed on the rate-payer by law; nor is the suit one for damages. We are of opinion that the suit is not cognizable by a Court of Small Causes.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

1885. October 2, 3.

SÉTHU, APPELLANT,

and

VENKATRÁMÁ, RESPONDENT.*

Civil Procedure Code, ss. 5, 360, ch. XX—Small Cause Court, Mufassal—Insolvency jurisdiction.

Under s. 360 of the Code of Civil Procedure, the Local Government cannot invest a Mufassal Small Cause Court with the insolvency jurisdiction conferred on District Courts by ch. XX of the said Code, inasmuch as, by reason of s. 5, ch. XX does not extend to such Courts of Small Causes.

THIS was an appeal against an order of G. Rámasámi Ayyar, District Múnsif of Kumbakónam, passed in a small cause suit declaring one Venkatrámá Ayyan, a judgment-debtor, an insolvent, and appointing a receiver under ch. XX of the Code of Civil Procedure.

The appeal was made by Séthu Ammál, creditor No. 6, who opposed the application on the ground that the insolvent had been guilty of bad faith.

---

* Appeal against Order 94 of 1885.

This creditor also presented a petition under s. 622 of the Code against the same order on the ground that the Court had no jurisdiction to pass it.

Bháshyam Ayyangár for appellant.

Krishna Ráu for respondent.

The facts necessary for the purpose of this report appear from the judgment of the Court (Muttusámi Ayyar and Hutchins, JJ.).

JUDGMENT.—The Government notification of 17th October 1877 invested the Courts of all Subordinate Judges and District Múnsifs in this Presidency with the powers conferred on District Courts by chapter XX of the Code of Civil Procedure. In the Proceedings of Government which directed the publication of this notification (17th October 1877, No. 2473), there are some expressions tending to show that they may have had in view insolvent applications by parties arrested under any warrant of a District Múnsif, whether in a regular suit or under a decree passed on the small cause side of his court, but this is not very clear and the notification itself does not say so. We must assume that the Government only intended to exercise such powers as it possessed; and if the notification went beyond those powers, it would, to that extent, be *ultrâ vires* and of no legal effect whatever.

Section 360 of the Code then in force empowered the Local Government to invest any Court other than a District Court with the powers conferred on District Courts by the preceding sections of chapter XX, and provided that any Court so invested may entertain an application to be declared an insolvent by any person arrested under its decrees. But s. 5 of the same Code declares that no section or chapter of the Code, other than those mentioned in the second schedule, shall extend to Courts of Small Causes. Neither s. 360 nor any part of chapter XX of the Code was then to be found in schedule II, and it follows that on the date of the notification the Government had no authority to apply s. 360 to Courts of Small Causes or under that section to confer any powers on such Courts. Subordinate Judges and District Múnsifs are Courts of Small Causes constituted under Act XI of 1865 when exercising their small cause jurisdiction.

We hold therefore that the Government did not intend by their notification to give authority to a District Múnsif in the exercise of his small cause jurisdiction to entertain petitions of insolvency; and also that, if they did intend to confer such

SÉTHU v. VENKATRÁMÁ.

authority, their notification is to that extent invalid. The latter conclusion has been arrived at by the High Court of Bombay on the same ground. *Lallu Ganesh* v. *Ranchhod Kahandás.*(1)

The proceedings of the District Múnsif in this case must be quashed as without jurisdiction. The judgment-debtor must pay the costs of this appeal as well as the appellant's costs in the Múnsif's Court. *The revision petition No. 180 of 1885 will be simply dismissed. The order of the District Múnsif was one made under s. 351 and therefore an appeal lay to this Court under ss. 588, cl. (17) and 589. In such an appeal it is open to the appellant to take the preliminary objection that the Court had no jurisdiction to make such an order.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

1885. Sept. 14, 22.

CHENCHAMMA (DEFENDANT No. 4), APPELLANT,

and

SUBBAYA AND ANOTHER (PLAINTIFF AND DEFENDANT No. 3), RESPONDENTS.*

Hindú Law—Illatam custom—Status of son-in-law—Co-parcenary—Survivorship—Proof of special custom.

Although an illatam son-in-law and a son adopted into the same family may live in commensality, neither they nor their descendants can, in the absence of proof of custom, be treated as Hindú co-parceners having the right of survivorship.

THIS was an appeal from the decree of L. A. Campbell, District Judge of Nellore, confirming the decree of V. Rámá Ayyar, Acting District Múnsif of Ongole, in suit 571 of 1882.

The facts necessary for the purpose of this report appear from the judgments of the Court (Muttusámi Ayyar and Hutchins, JJ.).

Mr. *Wedderburn* for appellant.

Rámachandra Ráu Sahib for respondents.

MUTTUSÁMI AYYAR, J.—Both parties to this second appeal derive their claim from one Nalluri Ramanappa. He gave his daughter Mangamma in marriage to one Ala Ayanna and admitted

(1) I.L.R., 2 Bom., 641.

* Second Appeal 904 of 1884.