

APPASÁMI
v.
MÁNIKAM.

And the Subordinate Judge is directed to submit his finding and the evidence thereon on the foregoing issue.

APPELLATE CIVIL.

Before Mr. Justice Hutchins and Mr. Justice Parker.

1885.
Oct. 30, 31.

LOGAN (PRESIDENT OF THE MUNICIPAL COMMISSION, TELlichERRY),
PLAINTIFF,

and

KUNJI (DEFENDANT).*

Small Cause Court Act XI of 1865—Jurisdiction—Suit to recover municipal tax.

A suit to recover a municipal tax is not cognizable by a Small Cause Court constituted under Act XI of 1865.

THIS was a case referred to the High Court under s. 617 of the Code of Civil Procedure by the Acting District Judge of Tellicherry (L. Moore) at the request of the District Múnsif of Tellicherry.

The case was stated by the District Múnsif as follows :—

“The Municipal Commissioners of Tellicherry, through their President, the Collector of Malabar, sued the defendant for the recovery of Rs. 14-1-4, being the municipal tax due by the defendant for the years 1882, 1883 and 1884. The amount was due by the defendant as the tax on houses and lands owned by the defendant within the municipality.

“The defendant admits the legality of the assessment and his liability to pay the rate, but only pleads payment of the same. The defendant further pleads that the suit by the municipality is not one cognizable by the Court of Small Causes.

“The Municipal Commissioners brought two other suits in the Subordinate Court of Tellicherry on its small cause side—suits 361 of 1885 and 357 of 1885. The Subordinate Judge, Mr. Kunjan Menon, held that the suits were not in the nature of those cognizable by Courts of Small Causes, and ordered the plaints to be returned. The plaint in 361 of 1885 was presented in my Court on the regular side on the 22nd June 1885. I was of opinion

* Referred Case 11 of 1885.

that the suit was one clearly falling under s. 6 of Act XI of 1865. I held that I had no jurisdiction under s. 12 of Act XI of 1865, and ordered the plaint to be returned. The plaintiff, the President of the Municipality, appealed against my order, and the District Judge, Mr. Moore, reversed my order, holding that the suit was not cognizable by a Small Cause Court. The other plaint 357 of 1885 returned by the Subordinate Judge is also re-presented in this Court. Though I am still of opinion that a suit by the municipality for the arrears of tax is one cognizable by the Small Cause Courts, I feel considerable doubt about the soundness of my view, as my appellate authority differed from me.

“ I think there is an implied contract between the citizens, the rate-payers, and the Municipal Commissioners. The latter contracted to see to the general conservancy and sanitation, &c., of the towns, and the former undertook to supply the latter with the necessary funds. The liability is cast on the rate-payers by legislative enactments. Section 161 of Act IV of 1884 recognized the privilege of the municipality to enforce the liabilities of the tax-payers by suits before competent civil courts. Suits to enforce the liability under implied or constructive contracts are cognizable by Courts of Small Causes—see cases reported in 5 M.H.C.R., 200; 12 W.R., 372; 10 Bom. H.C.R., 21; I.L.R., 4 Bom., 321; F.L.R., 3 A.M., 67; I.L.R., 4 All., 19; I.L.R., 4 All., 6; I.L.R., 2 All., 671; I.L.R., 8 Mad., 277.

“ Suits to recover tax illegally levied by the municipality, &c., are cognizable by Courts of Small Causes—I.L.R., 1 Mad., 159 and 14 W.R., 248.

“ The case in I.L.R., 2 Mad., 146, relied on by the Subordinate Judge and the District Judge, in my humble opinion, does not apply, for the right of the inámdár to collect the proprietary dues referred to therein was not admitted there, and consequently the liability of the defendants was not determined.

“ I had many suits by the municipality against the tax-payers on the small cause side of the Múnsif's jurisdiction. I disposed of them as small cause suits. The suit 396 of 1885 is still pending in my Court on the small cause side, and there will be many more cases of such nature. I, therefore, deem it necessary to refer the question for the decision of the Honorable the Judges of the High Court.

“ The question is one of general importance.

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“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 Munsif, 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.

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 Munsif of Kumbakónam, passed in a small cause suit declaring one Venkatráamá 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.