

VENKATA-
VARAGAPPA
2.
THIRUMALAI.

The Transfer of Property Act does not affect this case, the facts of which took place in 1877.

In the absence of contract or of custom, the tenants had no right to be paid for their expenditure in sinking the wells, though the landlord assented to such sinking.

The appeals in these several cases must, therefore, be allowed.

In each case the following decree will be made: the decree of the Lower Appellate Court, so far as it awards compensation to the respondent (or respondents) for sinking the well, as claimed in this suit, and costs in relation thereto, will be reversed with costs throughout including the costs of this appeal; the decrees of the Lower Appellate Court in other respects are confirmed.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Brandt, and Mr. Justice Parker.

1886.
October 26.

POKALA (PLAINTIFF),

and

MURUGAPPA (DEFENDANT).*

Presidency Small Cause Courts' Act, 1882, s. 18—Suits for maintenance cognizable.

Presidency Small Cause Courts, constituted under Act XV of 1882, are not debarred from entertaining suits for maintenance not based on contract or declaratory decree.

CASE referred by the Judges of the Small Cause Court of Madras.

The question referred was whether a suit for maintenance, where the amount had not been fixed by contract or declaratory decree, is cognizable by Presidency Small Cause Courts.

Ambrose for plaintiff.

Defendant did not appear.

The Full Bench (Collins, C.J., Kernan, Muttusámi Ayyar, Brandt and Parker, JJ.) delivered the following

JUDGMENT:—It was by oversight, no doubt, that the Court, in their letter of November 1882, stated that in Presidency Small Cause Court suits for maintenance could not be maintained. It

* Special Case 81 of 1885.

was so under the old Presidency Small Cause Court Act IX of 1850.

POKALA
v.
MURUGAPPA.

The Presidency Small Cause Court Act XV of 1882, section 18, authorizes the Court to entertain all suits of a civil nature, except those specially set out, and a suit for maintenance is not one of the latter.

The practice of the Small Cause Court before the Act of 1882 to entertain such suits was justified by the jurisdiction given by the words of the Act 26 of 1864, viz., "debt, damage or demand." The words used in Act IX of 1850 were "debt or damage."

We answer the question referred in the affirmative.

APPELLATE CIVIL.

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

ALUBI (PLAINTIFF), APPELLANT,

and

KUNHI BI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886.
Sept. 14.
Oct. 21.

Limitation Act, Sch. II, arts. 131, 132, 140, 144—Claim for arrears of revenue by grantee from Government.

The right to the revenue on certain land having been granted to the trustees of a mosque, the said grant was confirmed by Government in 1866.

In 1883, a suit was brought to recover arrears of revenue from the owners of the land. It was found that no payment of revenue had ever been made by the defendants to the trustees, and the suit was dismissed as barred by limitation under art. 144, sch. II of the Limitation Act:

Held, that the suit was not barred and that the plaintiff was entitled to recover 12 years' arrears of revenue.

APPEAL from the decree of L. Moore, Acting District Judge of North Malabar, confirming the decree of B. D'Rozario, District Munsif of Pynád, in suit 19 of 1883.

The facts necessary for the purpose of this report are set out in the judgment.

Bhášhyam Ayyangár and Anantan Náyar for appellant.

Jaga Ráu Pillai for respondents.

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