

MOIDIN
2.
AVARAN.

The question is whether the property passed to second defendant. It is found that part of the purchase money has not been paid, but on account of this it is not open to the vendor having given possession to rescind the contract and recover possession, though he may have a lien upon the property for the unpaid balance of the purchased money—see *Trimabdv Raghavendra v. The Municipal Commissioners of Hubli*(1). The appeal must be allowed and the decrees of the courts below reversed, the plaintiff's claim being dismissed with all costs throughout.

APPELLATE CIVIL.

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

DAVUD BEG (DEFENDANT), PETITIONER,

and

KULLAPPA (PLAINTIFF), RESPONDENT.*

*Small Cause Court Act (Mufassal), 1865—Rent Recovery Act, 1865—Suit to recover
movable property.*

A suit to recover movable property attached under colour of the Rent Recovery Act (Madras Act VIII of 1865) is cognizable by a Court of Small Causes constituted under Act XI of 1865.

APPLICATION, under s. 622 of the Code of Civil Procedure, to set aside the decree of P. V. Rangacharyar, District Munsif of Sholinghur, in Small Cause suit No. 34 of 1887.

On the 25th January 1887 defendant, purporting to act under the provisions of the Rent Recovery Act, 1865, and alleging himself to be plaintiff's landlord, seized a buffalo calf for arrears of rent.

Plaintiff sued defendant in a Small Cause Court to recover the calf, or its value Rs. 2, and Rs. 2-4-0 damages. Defendant, *inter alia*, objected to the court's jurisdiction. The objection was overruled and plaintiff obtained a decree for the calf and costs Rs. 5.

(1) I.L.R., 3 Bom., 172.

* Civil Revision Petition No. 100 of 1887.

Defendant now applied to set aside this decree on the ground that—

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- (1) the court had no jurisdiction ;
- (2) the attachment was legal.

Mr. *Michell* for petitioner.

Rangacharyar for respondent.

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

JUDGMENT:—The suit is to recover a buffalo or its value, and the plaintiff's success in the suit would necessarily involve the cancellation of the attachment without any decree for that relief. The buffalo had been attached by the defendant under colour of the Rent Recovery Act.

It is first urged that plaintiff could have had recourse to his remedy under the Rent Recovery Act, but, though plaintiff might have sought that remedy had he chosen, the jurisdiction of the ordinary courts is not ousted.

The decision in *Janakiammal v. Vithenadien*(1) is a similar case, in which it was held that such a claim as this being "one for personal property" is cognizable by a Small Cause Court. It is true that ruling is under Act VIII of 1859, but we do not see that the new Procedure Code affects the principle of the decision.

The Full Bench of the Allahabad High Court in *Godha v. Naih Ram*(2) have no doubt dissented from the Madras and Bombay decisions. The facts of that case were, however, not the same as in the present case, for there an objection had been made and disallowed under ss. 278—281 of the Code of Civil Procedure.

We are of opinion that the Small Cause Court had jurisdiction and dismiss this petition with costs.

(1) 5 M.H.C.R., 191.

(2) I.L.R., 7 All., 152.