

clause 13 of the Act of 1859 is applicable to the case. But the judgment of the Privy Council in *Narayana Rao Ramchandra Pant v. Ramabai* (1) makes it clear that that sub-section does not apply unless the maintenance has been made a charge on specific property. That is not the case here, and, therefore, time began to run against the plaintiff only from the date of refusal on the defendants' part to maintain her, when the cause of action arose. With regard to the release, we are also of opinion that it has been misconstrued. The release was given at a time when no claim for maintenance was under discussion, and there is nothing to show that it related to maintenance. We must reverse the decree of the Lower Appellate Court and remand the appeal for disposal on the merits. Costs to be provided for in the revised decree.

RAMANAMMA
SAMBAYYA.

APPELLATE CIVIL.

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

SRINIVASA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

SIVAKOLUNDU (DEFENDANT), RESPONDENT.*

1889.
March 25.

Provincial Small Cause Court Act (Act IX of 1887), sched. II, art. 41—Civil Procedure Code, s. 586—Suit for contribution—Joint property.

Lands of which part belonged to the plaintiffs and part to the defendant were comprised in a patta which ran in the names of the plaintiffs and another. The defendant's share of the assessment fell into arrear and was collected from the plaintiffs who now sued to recover Rs. 200 being the amount so paid together with interest :

Held, the suit was of a nature cognizable by a Court of Small Causes, and so no second appeal lay. *Krishna Kamini Chowdhurani v. Gopi Mohun Ghose Hazra* (I.L.R., 15 Cal., 652) followed.

SECOND APPEAL against the decree of G. D. Irvine, District Judge of Coimbatore, in appeal suit No. 19 of 1888, reversing the decree of T. Dorasami Pillai, District Munsif of Erode, in original suit No. 739 of 1885.

Suit for Rs. 200. The plaint was summarized by the District Munsif as follows :—

(1) I.L.R., 3 Bom., 415.

* Second Appeal No, 1646 of 1888.

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“Plaint states that patta No. 1 comprising 60 fields in Pudu-
“pariyur Karai, Satyamangalam taluk, runs in the names of
“plaintiffs and Pattabiramien (deceased) the half-brother of second
“and third plaintiffs; that of those 60 fields, three, viz., 354, 355A
“and 356, appertain to defendant’s enjoyment, and the others to
“plaintiffs and the said Pattabiramien’s enjoyment; that assess-
“ment, road-cess, &c., due under the patta No. 1 for Fusli 1292
“amounted to Rs. 1,998-12-10, of which plaintiffs’ share was
“Rs. 1,323-8-11. Pattabiramien’s share was Rs. 468-10-5, and
“defendant’s share for the said three fields was Rs. 206-9-6; that
“Pattabiramien paid his, that defendant having left Rs. 155-9-4 in
“arrears, it was collected from plaintiffs, together with their own
“share from 18th November 1882 to 16th April 1883, on the ground
“that plaintiffs were pattadars. Hence the claim as under :—

	RS.	A.	P.
Amount paid for defendant	155	9	4
Compensation thereon at 1 per cent. per mensem from 17th April to 11th November 1885	48	12	0
Total ..	204	5	4
Amount relinquished	4	5	4
Balance ..	200	0	0”

The District Munsif passed a decree in favor of plaintiffs for Rs. 155, but this decree was reversed on appeal by the District Judge who dismissed the suit.

The plaintiffs preferred this second appeal.

Pattabhiramayyar for respondent objected under s. 586 of the Code of Civil Procedure that no second appeal lay. A suit for contribution is cognizable in a Small Cause Court—*Krishno Kamini Choudhrani v. Gopi Mohun Ghose Hazra*(1), *Nath Prasad v. Baij Nath*(2).

Bhashyam Ayyangar for appellants.

The case is governed by the Provincial Small Cause Court Act, Act IX of 1887, which was in force when the second appeal was filed. Sched. II, art. 41 of that Act exempts from the cognizance of a Court of Small Causes :—“a suit for contribution

(1) I.L.R., 15 Cal., 652.

(2) I.L.R., 3 All., 66.

“ by a sharer in joint property in respect of a payment made by
 “ him of money due from a co-sharer or by a manager of joint
 “ property, or a member of an undivided family, in respect of a
 “ payment made by him on account of the property or family.”

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The question is in what sense is the term “ joint property ”
 used : in the present case the assessment is joint.

The Court (Collins, C.J., and Wilkinson, J.) delivered the fol-
 lowing

JUDGMENT :—The pleader for the defendant (respondent) raises
 the preliminary objection that the suit being one of a Small Cause
 nature, and the value being only Rs. 200, no second appeal lies.
 It was held by a Full Bench of the Calcutta High Court in
Krishno Kamini Chowdhurani v. Gopi Mohun Ghose Hazra(1) that
 cases falling within the provisions of section 69 of the Contract
 Act are cognizable by a Court of Small Causes under s. 6, Act XI of
 1865. It is argued, on the other side, that the present suit, which
 is one for contribution, is expressly excluded by the present Small
 Cause Court Act IX of 1887, sched. II, art. 41. But we are
 unable to accede to this contention. That article refers to a suit
 for contribution by a sharer in joint property. We cannot hold
 that because the patta for the lands held by the appellants stands
 in the name of the plaintiffs and another, the property is joint
 property. The lands, the assessment of which has been paid by
 plaintiffs, are in the exclusive enjoyment of the defendant, and
 the plaintiffs have no right to them. This second appeal, there-
 fore fails, and is dismissed with costs.

(1) I.L.R., 15 Cal., 652.