

APPELLATE CIVIL.

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

1892.
January 7.

ANNAMALAI (PLAINTIFF), APPELLANT,

v.

SUBRAMANYAN (DEFENDANT), RESPONDENT.*

Provincial Small Cause Courts Act—Act IX of 1887, sched. II, cl. 31—Suit for profits of land—Civil Procedure Code, s. 586.

The plaintiff sued on the Small Cause side of a Subordinate Court before the Small Cause Courts Act, 1887, came into operation, to recover with interest from the date of suit, Rs. 500 the value of crops alleged to have been illegally carried away by the defendant, while the plaintiff was in possession. The defendant raised a plea to the jurisdiction of the Court, and the Judge, without recording any decision on its validity, directed that the plaint be presented on the regular side of the Court for the reason that it raised questions of complexity. It was so presented after the above Act had come into operation. The plaintiff obtained a decree which was reversed on appeal. A petition of second appeal was presented by the plaintiff. The defendant objected that no second appeal lay under Civil Procedure Code, s. 586 :

Held, that the objection should prevail, since the suit was not excepted from the jurisdiction of the Small Cause Court under the Provincial Small Cause Courts Act of 1887.

SECOND APPEAL against the decree of H. T. Ross, Acting District Judge of Madura, in appeal suit No. 770 of 1889, reversing the decree of S. Gopalachari, Subordinate Judge of Madura (East), in original suit No. 63 of 1888.

The facts of the case were stated by the District Judge as follows:—

“ Plaintiff and defendant are uncle and nephew, and this suit
“ is to recover from defendant Rs. 500 (with interest and costs)
“ the estimated profits for faslis 1294 to 1296 on certain shares
“ in the Dharmasanam village of Kurukkattai, which plaintiff
“ claims under a division effected by an award of arbitrators, dated
“ the 17th October 1881, and which, he alleges, were wrongfully
“ taken by defendant and others in the 3 faslis aforesaid.

“ Plaintiff first filed this plaint on 29th June 1887 as small
“ cause No. 227 against the first defendant and others, of whom

* Second Appeal No. 107 of 1891.

“he subsequently exonerated two. On 30th September 1887, plaintiff obtained an *ex-parte* decree against first, fifth and sixth defendants. On 21st November 1888, the *ex-parte* decree against first defendant was set aside and the small cause suit re-opened as against him. Defendant thereupon raised his present defence questioning plaintiff's title to the property, and he also objected to the jurisdiction of the Court on the ground that the plaint had been presented on 29th June 1887, *i.e.*, two days before the new Small Cause Act (IX of 1887) came into force. The Subordinate Judge, without deciding the latter objection, considered that, in view of the complicated question of title raised by the defence, it was not a proper case for a Small Cause Court to decide, and he directed the plaint to be returned to plaintiff for presentation in the proper Court. The plaint was accordingly taken back by plaintiff and represented, with no alteration, on the ordinary side of the Sub-Court on 4th December 1888. For the purposes of jurisdiction the property, the title to which was in dispute, was valued at Rs. 2,550, being 15 times the estimated net profits of fasli 1296. Under the Court's orders, plaintiff was made to pay stamp-duty over again on the Rs. 500 sought to be recovered from defendant.”

The Subordinate Judge passed a decree for the plaintiff. This decree was reversed on appeal by the District Judge for reasons not material for the purposes of this report.

The plaintiff preferred this second appeal.

Kristnasami Ayyar for appellant.

Bhashyam Ayyangar and *Desikachariar* for respondent.

JUDGMENT.—The preliminary objection is taken on behalf of respondent that no second appeal lies under section 586 of the Code of Civil Procedure, as the value of the suit does not exceed Rs. 500, and it is of a nature cognizable by a Court of Small Causes, and, we think, the objection must prevail. It is argued for appellant that the case falls within clause 31 of schedule II of the Provincial Small Cause Courts Act IX of 1887, and that the suit was, therefore, not cognizable by a Court of Small Causes. The question is what was the nature of the suit as originally filed, and, in our opinion, this suit, in its inception, was not a suit for the profits of immoveable property within the meaning of clause 31 of schedule II of Act IX of 1887. This suit is in effect brought to recover the value of crops alleged to have been illegally carried

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away by defendant while plaintiff was in possession. This is not a suit, in our opinion, exempted from the jurisdiction of the Small Cause Court by clause 31, Act IX of 1887. The suit was therefore of a nature cognizable by a Court of Small Causes within the meaning of section 586 of the Civil Procedure Code, and no second appeal lies; and it makes no difference that, in the course of investigation of the suit, it appeared that defendant, in carrying off the crops, was acting under color of some claim of title to the land.

We agree generally with the principles laid down in *Krishna Prosad Nag v. Maizuddin Biswas*(1), the authority of which is not shaken by the decision in *Sriram Samanta v. Kalidas Dey*(2).

The second appeal must be dismissed with costs.

The memorandum of objections also must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

1891.
Dec. 11, 15.

SUBBARAYA (PLAINTIFF), APPELLANT,

v.

KYLASA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu law—Inheritance—Step-sister's son.

A step-sister's son is entitled to inherit under the Hindu law in force in the Madras Presidency.

APPEAL against the decree of G. D. Irvine, District Judge of Coimbatore, in original suit No. 2 of 1890.

The plaintiff sued for possession of certain property left by Ramasami Mudaliar, deceased, the brother of the plaintiff's mother. An issue was raised as follows:—"Was plaintiff's mother the "uterine sister or only the half-sister of Ramasami Mudaliar?" The finding on this issue was that Ramasami Mudaliar and the plaintiff's mother were children of the same father by different wives. The District Judge held that the plaintiff was not within

(1) I.L.R., 17 Cal., 707.

(2) I.L.R., 18 Cal., 316.

* Appeal No. 40 of 1891.