

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1893.
August 21.

VENKATA REDDI (PETITIONER), APPELLANT,

v.

W. TAYLOR (COUNTER-PETITIONER), RESPONDENT.*

Letters Patent of the High Court, s. 15—Appeal—District Municipalities Act (Madras) —Act IV of 1884, ss. 53, 59, 60—Profession tax—Trader—Provincial Small Cause Courts Act—Act IX of 1887, ss. 25, 27.

A petition for revision preferred under Provincial Small Cause Courts Act, s. 25, was heard and dismissed by one of the Judges of the High Court acting under the rules of Court framed under s. 13 of the Charter Act. The petitioner preferred an appeal under Letters Patent, s. 15 :

Held, that the appeal was not barred under Provincial Small Cause Courts Act, s. 27, and was maintainable.

One who makes it his business to sell the produce of his own land for profit is a trader within the meaning of Madras Act IV of 1884, provided the sales are conducted in a shop or place of business.

Held by Parker, J., that one who has paid profession tax as a Sheristadar in one municipality is not on that account exempted from paying a further tax in respect of a trade carried on by him in another municipality under Act IV of 1884, Madras.

APPEAL under Letters Patent, s. 15, against the judgment of Mr. Justice Parker on civil revision petition No. 27 of 1892.

That was a petition under Provincial Small Cause Courts Act IX of 1887, s. 25, praying the High Court to revise the proceedings of K. Somayajulu Pantulu, District Munsif of Sompeta, in small cause suit No. 133 of 1891.

The plaintiff was the Taluk Sheristadar, and as such had paid profession tax under Act IV of 1884 (Madras) to the Municipality of Chittoor. Subsequently he was assessed to pay a further tax as a trader in Parlakimedi. He paid the amount demanded under protest and brought the present suit against the Chairman of the Municipal Council of Parlakimedi to recover the amount so paid. The suit was dismissed by the District Munsif and the plaintiff preferred the petition above referred to. The

* Letters Patent Appeal No. 8 of 1893.

petition was dismissed by Mr. JUSTICE PARKER, who delivered judgment as follows :—

PARKER, J.—The petitioner is a Taluk Sheristadar at Chicacole and has paid one rupee profession tax in that municipality. He has now been assessed as a grain merchant at Parlakimedi and sues to recover from the Chairman of that municipal council the amount which has been levied from him.

It is first urged that petitioner does not carry on trade in grain since the paddy which he sold was grown on his own lands. I am unable to accede to this contention. The petitioner contends that he cannot be said to trade in grain unless he bought the grain before he sold it. If this be so, no owner of a tea or coffee estate could be said to trade. The term 'trade' is not defined in the Act, but the meaning of the term as given in Wharton's Law Lexicon includes the exchange of goods for other goods or for money. I am of opinion that the petitioner does trade in grain.

The next contention is that as petitioner has paid profession tax at Chicacole, he cannot be taxed at Parlakimedi for the same year under section 60, Madras Act IV of 1884. In support of this contention I am referred to decisions in *Tuticorin Municipality v. South Indian Railway*(1) and *Municipal Council of Tellicherry v. Bank of Madras*(2). In the first of these cases it was held that a railway company having paid profession tax at Negapatam was not liable to be assessed for the same half year at Tuticorin. In the second case it was held that the Bank of Madras having paid profession tax at Negapatam was not liable for the same tax at Tellicherry. But in both these cases it was the same business that was carried on, though in two different places. In the present case the petitioner carries on one business at Chicacole and another at Parlakimedi. He does not carry on grain trade at Chicacole or his work as Sheristadar at Parlakimedi. He cannot, therefore, be taxed in either municipality* under section 59 upon his aggregate income from both sources, nor can he be assessed under section 53 upon more than one source of income in each municipality. Section 60 exempts a person from paying in a second municipality the tax which has been assessed under section 53 in another municipality. But petitioner has not been assessed, nor could he be assessed as a

(1) I.L.R., 13 Mad., 78.

(2) I.L.R., 15 Mad., 153.

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trader in grain at Chicacole under section 53, and therefore he is not exempted by section 60 from paying at Parlakimedi.

The petition is dismissed with costs.

The petitioner preferred the present appeal under Letters Patent, s. 15.

Mr. *Anderson* and *Sriranga Chariar* for appellants.

The *Advocate-General* (Hon. Mr. *Spring Branson*) for respondent.

JUDGMENT.—The preliminary objection is taken that the petitioner's remedy is exhausted by the order passed by Mr. Justice Parker under section 25 of the Small Cause Court's Act, from which it is contended no appeal is allowable by reason of section 27, which declares the decrees or orders of the Small Cause Court to be final, subject to the provisions of that Act. We observe that the revision contemplated in section 25 is by the 'High Court.' Mr. Justice Parker exercised such revisional jurisdiction under the rules of this Court framed under section 13 of the Charter Act. The judgment is, therefore, subject to the appeal provided by section 15 of the Letters Patent.

The preliminary objection must consequently be disallowed.

Passing on to the merits, we see no reason to differ from the learned Judge in holding that any person who makes it his business to sell for profit is a 'trader' within the meaning of the Municipal Act IV of 1884. We do not think the fact of what he sells being the produce of his own land makes him the less a trader, provided the sales are conducted in a shop or place of business as in this case. The other point is not pressed. The appeal fails and is dismissed with costs.
