

## APPELLATE CIVIL.

*Before Mr. Justice Best and Mr. Justice Subramania Ayyar.*

ORR AND ANOTHER (PLAINTIFFS),

1895.  
Feb. 25.

*v.*

NEELAMEGAM PILLAI AND OTHERS (DEFENDANTS).\*

*Provincial Small Cause Courts' Act—Act IX of 1887, sched. II, art. 3—  
Karnam in a zamindari—Officer of Government.*

The plaintiffs being the lessees of a settled zamindari brought a suit in a Small Cause Court against a karnam in the zamindari to recover damages sustained by reason of the defendant's default in keeping certain accounts, &c. :

*Held*, that the karnam was not an officer of Government, and that the suit was maintainable under the Provincial Small Cause Courts' Act.

CASE referred for the orders of the High Court by J. W. F. Dumergue, District Judge of Madura, under Civil Procedure Code, section 646B.

The case was stated as follows :—

“The suit was first filed in No. 364 of 1892 on the small cause side of the Subordinate Judge's Court of Madura (East) by the lessees of the Sivaganga Zamindari against the karnam of a village appertaining to the zamindari for recovery of Rs. 405 odd alleged to be damages, &c., sustained by the plaintiffs in consequence of the defendant's failure to keep and give plaintiffs inavali, jama, and vasul bakki accounts for the said village as required by law and custom.

The Subordinate Judge, holding that a karnam was a public servant and that article 3 of schedule II of the Provincial Small Cause Courts' Act applied to the case, returned the plaint for presentation to the proper Court.

The plaintiffs then filed the plaint on the original side of the District Munsif's Court of Mana Madura in No. 175 of 1893. The District Munsif has, by his order, dated 22nd August 1893, returned the plaint for presentation to the proper Court, holding that the suit is one triable only by a Small Cause Court, and that he has no jurisdiction.

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\* Referred Cases Nos. 6 and 7 of 1894.

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An appeal was preferred to this Court against the order of the District Munsif, and the appellant at the same time applied under section 646B for the submission of the records to the High Court, but subsequently withdrew the application. A similar application has, however, been made by the respondent, and therefore in accordance with the ruling contained in *Simson v. McMaster*(1) and *Suresh Chunder Maitra v. Kristo Rangini Dasi*(2), I have the honour to submit the records for the decision of the High Court.

I may add that in my opinion the order of the District Munsif is erroneous, because it seems to me that a zamindari karnam is an officer of Government within the meaning of the article 3 of the schedule II of the Small Cause Court's Act. He is certainly an officer whose duty it is to make, authenticate and keep documents relating to the pecuniary interests of Government (*vide* preamble and section 11, clauses 6, 10 and 13 and article 13 of Regulation XXIX of 1802), and therefore a public officer within the definition in section 2 of the Code of Civil Procedure and in these respects I would say he is an officer of Government."

Mr. E. Norton for plaintiffs.

Mr. R. F. Grant for defendants.

JUDGMENT.—The question is whether a karnam in a settled zamindari is an "officer of Government" within the meaning of article 3 of schedule II of the Small Cause Court's Act IX of 1887. The Subordinate Judge appears to have considered that the phrase "officer of Government" is synonymous with "public servant". Officers of Government are, no doubt, public servants, but every public servant is not an officer of Government. This is clear from the article itself in which the Court of Wards is expressly mentioned, indicating that otherwise it would not come within the article.

We are clearly of opinion that the karnam in question is not an officer of Government, and that article 3 is no bar to the suit in the Small Cause Court.

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(1) I.L.R., 13 Mad., 344.

(2) I.L.R., 21 Cal., 249.