ancestor who acquired the property was one Tirumalai Mudali who died many years before, leaving two sons, the defendants Subramania and Veerasami. The defendant Subramania had two sons, one named Perumal, the plaintiff's father who died in 1850, the other was the defendant Dharmalinga. It was held by Sir Colley Scotland, C. J., and Bittleston, J., that a grandson may by Hindu Law maintain a suit against his grandfather for compulsory division of ancestral family property. The same view of the law under the Mitakshara was also taken by the Full Bench of the High Court at Allahabad in *Jogul Kishore* v. *Shib Sahai*(1), and Viramitrodaya, chapter II, part 1, verse 23, is also cited in support of the decision. A similar view was also expressed in *Laljeet Singh* v. *Rajcoomar Singh*(2). We should have considered ourselves concluded by authority had it not been for the decision of the majority of the High Court at Bombay in *Apaji Narhar Kulkarni* v. *Ramchandra Ravji Kulkarni*(3). After carefully reading the judgments in that case and comparing them with the Mitakshara and the decision in *Nagalinga Mudali* v. *Subbiramaniya Mudali*(1), we agree in the opinion of Mr. Justice Telang who has reviewed at length all the authorities on the subject and dissented from the conclusion arrived at by the majority of the Court. This appeal must therefore fail and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

RAMASAMI AYYAR (PLAINTIFF), PETITIONER,

v.

MUNICIPAL COUNCIL OF SALEM, (DEFENDANT), RESPONDENT.*

1894. August 1, 13.

District Municipalities Act (Madras)—Act IV of 1884, *s.* 53, *sched. A—Profession tax—District Court pleader—Court situated outside municipal limits.*

The plaintiff, who was a pleader, lived and had his office and occasionally practised in Courts within the limits of the municipality of Salem, but he claimed to be entitled to the refund of a sum levied on him for profe ion tax under the

(1) I.L.R., 5 All., 430. (2) 12 B.L.R., 373. (3) I.L.R., 16 Bom., 29,

* Civil Revision Petition No. 143 of 1893.

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District Municipalities Act for the reasons that he practised as a District Court pleader and that the District Court was situated outside the municipal limits

Held, that the plaintiff was liable to pay profession tax to the Municipality of Salem.

PETITION under Provincial Small Cause Courts Act, section 25, praying the High Court to revise the decree of S. Dorasami Ayyangar, District Munsif of Salem, in Small Cause Suit No. 1390 of 1892.

Suit to recover the sum of Rs. 25 which had been levied from the plaintiff as profession tax under the District Municipalities Act of 1884 (Madras).

The facts of this case are stated sufficiently for the purposes of this report in the judgment of the High Court.

Pattabhirama Ayyar for petitioner.

Parthasaradhi Ayyangar for respondent.

JUDGMENT.—The plaintiff is a first-grade pleader and defendant is the Municipal Council at Salem. On the 29th June 1892, the latter assessed the former at Rs. 25 for exercising his profession as a Pleader of the District Court under class III, schedule A, of Madras Act IV of 1884. Plaintiff paid the tax under protest and brought this small cause suit for its refund. Two questions were raised for decision before the District Munsif at Salem, viz., (1) whether the Small Cause Court had jurisdiction to entertain the suit, and (2) whether the plaintiff is entitled to the refund claimed by him? The District Munsif held that he had jurisdiction and that plaintiff was lawfully taxed. It is urged in revision on petitioner's behalf that he was not liable to pay profession tax and that if he was, he could only be taxed under class IV.

Schedule A, class III, specifies "a Pleader practising in any "Civil and Sessions Court, Subordinate Judge's Court or Court of "Small Causes" as liable to pay a profession tax of Rs. 25. Class IV specifies "every Pleader and practising Vakil not "included in class III" as liable to pay a tax of Rs. 12. It is an undisputed fact that the District Court of Salem and the Subordinate Courts of Salem and Bellary are situated outside the municipal limits. The District Munsif's Court, which is invested with the powers of a Small Cause Court up to a certain limit, is located within the municipal limits. There is, however, no separate

Court of Small Causes in the district constituted as was formerly the case under Act XI of 1865. Although the District and Subordinate Courts are outside the municipal limits, the plaintiff admitted before the District Munsif that he receives his clients, takes instructions from them, accepts vakalats, and draws up pleadings in his house which is situated within the municipal limits. He admitted also that he has his office within the municipality and that he practises in other Courts within the municipality. It is provided by section 53, Act IV of 1884, that if the municipal Council notify, under section 50, that a tax on arts, professions, trades and callings, and on offices or appointments shall be levied, every person who within the municipality exercises after the date specified in the said notification, any one or more of the arts, professions, trades or callings or holds any one or more of the offices or appointments specified in schedule A, shall, subject to the provisions of section 59, pay in respect thereof the sum specified in the said schedule as payable by persons of the class in which such person is placed. It is argued that petitioner can be said to practise only in the District Court outside the limits and that neither the other acts ancillary to such practice nor his practising as a Pleader in the Courts of District Munsifs by reason of his status as District Court Pleader constitute the basis of his liability to be taxed. I am of opinion that the District Munsif has arrived at a correct conclusion. It is section 53 that defines the cause of liability to pay a profession tax and that section describes the tax as a tax on professions and declares the cause of liability to be the exercise of one of the professions specified in schedule A, within the municipality. Schedule A, class IV, declares every Pleader and practising Vakil as liable, whilst class III refers to every Pleader practising in any Civil and Sessions Court, Subordinate Judge's Court or Court of Small Causes as liable to be placed in that class for purposes of taxation. The real question then is—Does the petitioner exercise his profession as Pleader within the municipality?

The term, profession, is not defined by the Act. In ordinary parlance any act done by a Pleader which is incidental to his profession is an exercise of his profession, and it is not necessary that all the acts incidental to that profession must be done by him before he can be said to exercise that profession. It often happens that a junior Vakil takes instructions, prepares the brief, draws up

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the memorandum of appeal, prepares a summary in his house of the arguments and of decided cases and handing them over to a senior, accompanies him to the Court where the senior addresses the Court. Do not both the senior and the junior alike exercise the profession of Pleaders?

In the case before us, all the acts ancillary to pleading in Court are done within the municipal limits as already mentioned. It appears further that by reason of petitioner's status as a District Court Pleader he practises in the Courts of District Munsifs which are within the municipal limits. I see no warrant either in the language of section 53 or of schedule A for eliminating from his profession all acts preparatory to pleading and acting in Court and saying that pleading and acting in Courts alone constitute the exercise of his profession. Even on the view that the location of the District and Subordinate Courts outside the municipality was not foreseen when the local area was defined, there remains the fact that all acts save pleading and acting in Court are done within the municipal limits, and the former constitutes as much as the latter the exercise of the profession of a District Court Pleader within the meaning of section 53 and schedule A. Nor do I see any sound reason for excluding from our consideration petitioner's practising in other Courts within the municipal limits. The case of *Kali Kumar Roy* v. *Nobin Chunder Chuckerbutty* (1) is not in point. The point decided there is that a person, who looks after a regular appeal and gives instructions to Pleaders in connection with it, is not practising as a Muktyar within the meaning of section 13 of Act XX of 1865. The words in that section are "who shall practise as a Muktyar in any Civil or Criminal "Court without having previously obtained a certificate." The words in schedule A "practising in any Civil and Sessions Court," are intended to be descriptive of his rank as a Pleader and practising Vakil and not to be words which limit his liability or constitute pleading and acting alone as the exercise of a Pleader's profession.

I dismiss this petition with costs.

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(1) I.L.R., 6 Calc., 585.