

APPELLATE CIVIL.

Before Mr. Justice *Muttusami Ayyar*.

1894.
July 18.

PERIAKARUPPAN (DEFENDANT), PETITIONER,

v.

PALANIYANDI (PLAINTIFF), RESPONDENT.*

Provincial Small Cause Courts Act—Act IX of 1887, sch. II, cl. 35 (i)—Jurisdiction—Whether obstruction of a water course amounts to ‘diversion’ within the meaning of cl. 35 (i).

If by obstruction the flow of water is diverted from a plaintiff's lands, such obstruction amounts to diversion within the meaning of cl. 35 (i) of sch. II of Act IX of 1887.

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the decree of Venkata Rengaiyar, Subordinate Judge of Madura (East), in suit No. 213 of 1892.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court.

Narayana Rao for appellant.

Desikachariar for respondent.

JUDGMENT.—This was a suit for compensation due for defendant having wrongfully obstructed the flow of water to plaintiff's cowle land, and the question raised for determination on revision is whether sub-clause i, clause 35 of the second schedule of the Provincial Small Causes Courts Act does not bar the jurisdiction of the Court of Small Causes from entertaining such suit. The contest is as to whether obstruction to the flow of water which is referred to by the Subordinate Judge in his judgment must be taken to imply necessarily a ‘diversion’ of the water within the meaning of the provision of law cited above. It is contended on behalf of the petitioner that mere obstruction does not amount to diversion, and that the use by the Subordinate Judge of the words ‘obstructed the flow of water’ was not felicitous. It appears from the record that plaintiff has certain cowle lands in Sivaganga, that a channel led off from the Puthur tank to those lands, and that petitioner's obstructions prevented the plaintiff

* Civil Revision Petition No. 101 of 1893.

from taking water along it, that loss of crop was the damage which resulted, and that the water obstructed flowed into Ayan channels. This appears to me to be clearly a case falling under the clause of the Small Causes Act already cited. The contention that obstruction is not diversion seems to be absurd, since when the flow of water to the cowle lands along the channel was obstructed, it must be diverted in whole or part from the cowle lands, and since it is immaterial whether the diversion was into the tank itself or into Ayan or zamin channels or elsewhere. It is enough that if by the obstruction the flow of water to plaintiff's cowle lands is diverted from them so as to diminish the water-supply and to cause damage.

PERIA-
KARUPPAN
v.
PALANIYANDI.

I set aside the decree of the Subordinate Judge as one passed without jurisdiction, and direct that the plaint be returned to plaintiff for presentation to a Court of competent jurisdiction.

Plaintiff will pay petitioner's costs throughout.

APPELLATE CIVIL.

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

MADRAS DEPOSIT AND BENEFIT SOCIETY, LIMITED
(PLAINTIFF), APPELLANT,

1894.
July 13, 18.

v.

OONNAMALAI AMMAL AND ANOTHER (DEFENDANTS),
RESPONDENTS. *

*Transfer of Property Act—Act IV of 1882, s. 59—Instrument unsigned by any witness
—Evidence Act—Act I of 1872, s. 68—Inadmissibility of the instrument in evidence
to prove the debt.*

A mortgage for more than Rs. 100 which has been prepared and accepted, but which is not attested, is invalid, and it cannot be used in proof of a personal covenant to pay.

APPEAL from the decree of Davies, J., sitting on the original side of the High Court in original suit No. 280 of 1892.