APPELLATE CIVIL.

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

1896. October 26.

SESHAMMAL (PLAINTIFF), PETITIONER,

v.

MUNUSAMI MUDALI (DEFENDANT), RESPONDENT.*

Presidency Small Cause Courts Act—Act XV of 1882, ss. 37, 38, 69—Stating case on application for a new trial.

When, upon an application to the Presidency Small Cause Court for a new trial, the Judges differ in their opinion as to any question of law and the majority without ordering a new trial reverse the decree of the Judge who tried the suit, the Court is bound to state a case for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act.

PETITION under section 622 of the Code of Civil Procedure praying the High Court to revise the decree of the Presidency Court of Small Causes, Madras, in suit No. 19335 of 1892.

The plaintiff, the wife of the defendant, sued in the Presidency Small Cause Court to recover Rs. 310 expended by her on the marriage of their daughter. The case was tried by the Chief Judge who gave the plaintiff a decree. The defendant on 30th November 1894 applied to the Full Court for a new trial. The Chief Judge adhered to his view that the plaintiff was entitled to sue for the money expended, but the other Judges of the Court held that the suit was not maintainable. In the result the Court reversed the decree of the Chief Judge.

The plaintiff preferred this petition.

Kothandaramayyar for petitioner.

Pattabhirama Ayyar for respondent.

JUDGMENT.—The plaintiff sued in the Presidency Small Cause Court, and her claim was decreed by the Chief Judge. Under section 37 of the Act the defendant made an application for a new trial, and the Small Cause Court, consisting of the Chief Judge and two other Judges, heard the application, and in doing so went into the merits of the case. The Chief Judge differed from his colleagues on a point of law, and still maintained that the claim should be decreed, but his colleagues taking a different view on

* Civil Revision Petition No. 784 of 1895.

the point of law, the Court reversed the decree passed by the Chief Judge and gave judgment for defendant with costs.

Plaintiff now puts in this revision petition under section 622, Civil Procedure Code, on the ground that, as the Judges differed on a point of law, they were bound, under section 69 of the Presidency Small Cause Courts Act, to refer the case for the opinion of the High Court and either to reserve judgment or deliver a judgment contingent upon such opinion.

We think the petition must be allowed. The provision of section 69 is imperative, it says "If two or more Judges sit "together in any suit . . . and differ in their opinion as to "any question of law . . . the Small Cause Court shall "draw up a statement of the facts of the case, and refer such "statement . . . for the opinion of the High Court, and "shall either reserve judgment or give judgment contingent upon "such opinion."

It is contended for the counter-petitioner that the difference of opinion now in question did not arise "in any suit," so as to come within the purview of section 69, but only on an application under section 37, and it is pointed out that it has been held in the cases of *Oakshott* v. *The British India Steam Navigation Company*(1), *Nusserwanjee* v. *Pursutum Doss*(2), and *Heil* v. *Joachim*(3), that the Small Cause Court cannot state a case for the opinion of the High Court on an application for a new trial under section 37 of the Act. The fallacy in this argument lies in not observing that in the present case the full Small Cause Court did more than consider the application for a new trial. No doubt the cases quoted are an authority for holding that, while the Court is considering whether a new trial shall be granted or not, section 69 has no application, but, in our opinion, when the Court goes further and proceeds to deal afresh with the merits of the case, it must be held that the new trial has been granted, and that the Court is thenceforward engaged in trying the suit. In all the above-quoted cases the application was rejected, so that section 69 could not, in any way, apply; but in the present case though no separate order formally granting a new trial was made, yet such new, trial was, by necessary implication, granted before the Court proceeded to re-hear the suit. The cases quoted are,

(1) I.L.R., 15 Mad., 179. (2) I.L.R., 11 Calc., 298. (3) 12 B.L.R., 34.

SESHAMMAL v. MUNUSAMI MUDALI.

therefore, no authority for the counter-petitioner's contention. Indeed in every one of them it is assumed that, of a new trial had been granted, the reference to the High Court could properly have been raised, and we have no doubt, but that that assumption is correct.

We must, therefore, set aside the revised decree of the Small Cause Court with costs, and direct that the suit be restored to its file, and be dealt with in accordance with law as laid down in section 69 of the Presidency Small Cause Courts Act. As the Chief Judge who was a party to the decree now set aside is absent on leave, but will shortly return, it is desirable that the case should not be taken up for reference until his return.

APPELLATE CIVIL.

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

1896. October 9.

SINGA REDDI OBALA REDDI (PLAINTIFF), APPELLANT,

v.

MADAVA RAU (DEFENDANT No. 1), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 32, 45, 46—Dismissal of suit against one defendant without trial after first hearing.

The plaintiff sued for damages for the infringement of certain hereditary rights claimed by him in connection with a temple. The first defendant was a magistrate and it was alleged as the cause of action against him that he had disobeyed the instructions of his superiors and played into the hands of the other defendants by passing an illegal order. After issues had been framed the Judge without trial dismissed the suit with costs against the first defendant:

Held, that the order was illegal.

APPEAL against the order of W. G. Underwood, District Judge of Cuddapah, in Original Suit No. 4 of 1895.

The plaintiff claimed that he had hereditary rights connected with the festivals of a certain temple, and he sued for damages for the infringement of those rights.

Paragraphs 2, 3, 4 and 5 of the plaint were as follows:—

"The second and third defendants who are Komatis induced "the fourth defendant to acquiesce in their attempts to break the "abovementioned time-honoured custom and invented, after their

* Appeal against Order No. 34 of 1896.