

such cases as set forth above, we must set aside the decrees of the Lower Courts dismissing the suit, and give judgment for plaintiff with costs throughout.

The defendant must execute and register a document in the terms of exhibit A within six weeks from this date.

CHINNA
KRISHNA
REDDI
v.
DORASAMI
REDDI.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

NARAYANAMMA, PETITIONER,

v.

KAMAKSHAMMA, COUNTER-PETITIONER.*

1896.
October 16,
22.

Civil Procedure Code, ss. 617, 647—Village Court's Act (Madras)—Act I of 1889, s. 13, proviso 3—'Land' includes house.'

In Act I of 1889, s. 13, proviso 3, the word land includes land covered by a house and consequently a suit for house-rent unless due under a written contract signed by the defendant is not cognizable in a Village Munsif's Court.

Case stated for the opinion of the High Court under sections 617 and 647, Civil Procedure Code, by Y. Janakiramayya, District Munsif of Tirupati, in suit No. 32 of 1895 on the file of the Village Munsif of Puthur.

The facts appear sufficiently from the letter of reference, which was as follows:—

“The counter-petitioner, Kamsala Kamakshamma, brought on 21st September 1895 a suit (suit No. 32 of 1895) against the petitioner Ghandhavady Narayanamma in the Village Court of Puthur for Rs. 19, arrears of rent for a house due on an oral lease. The Village Munsif passed a decree in plaintiff's favour on 18th November 1895, and the defendant preferred an application to this Court under section 73 of the Village Courts Act (Madras Act I of 1889) on the ground, *inter alia*, that the Village Court has no jurisdiction to try the suit. The petitioner's pleader contends that suits for house-rent on oral leases are excepted from the jurisdiction of the Village Courts by section 13, proviso (3), while the counter-petitioner's pleader contends that the expression 'land' in the said proviso does not include house and is meant to cover only agricultural lands, but neither houses

* Referred Case No. 6 of 1896.

NARAYAN-
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“nor dwelling sites; relying on this construction of the proviso,
“the learned vakil contends that the suit in question is cognizable
“by a Village Court under the main section (section 13).

“The points referred for the decision of Honourable the Judges
“of the High Court are whether the word ‘land’ in proviso (3),
“section 13, of the Village Courts Act includes houses and dwell-
“ing sites also, and a suit for rent for a house is cognizable by a
“Village Court when it is not due “*upon a written contract signed*
“*by the defendant.*” My answer to the first question is in the
“affirmative and to the second question is in the negative. I
“have no doubt that the word ‘land’ in section 13 is used in a
“very wide sense and includes houses and dwelling sites also. The
“policy of the Village Courts Act seems to me to exclude all rent
“suits from the jurisdiction of the Village Courts when the rent is
“not due on any written contract, and the reasons for adopting
“this policy are obvious. The legislature must have thought it
“dangerous to invest these illiterate and inferior tribunals, viz.,
“Village Courts, with power to try questions, relating though
“incidentally, to title to immovable property and to the abatement,
“increase, or decrease of rents which questions may not unfre-
“quently crop up in rent suits if the terms of the leases are not
“reduced to writing. A suit for rent for an agricultural land, on
“an oral lease, is admittedly not cognizable by Village Courts, and
“I cannot see why a similar suit for a house-rent should be made
“cognizable by such Courts; the same reasons and considerations
“are applicable alike to both classes of suits (suits for house-
“rent as well as rent on agricultural lands). Holding this opinion
“as I do, I have held that the Village Court of Puthur has no
“jurisdiction to try the suit in question and set aside with costs
“the decree passed by it. But, as the counter-petitioner’s pleader
“requests me to state the case for an opinion of the Honourable
“High Court, and as there are not any decisions on the point I
“am aware of, and as it is said that the practice in this matter is
“not uniform in several Courts, I venture to state this case for an
“authoritative ruling from Honourable the Judges and have made
“my order setting aside the Village Court’s decree, contingent on
“their opinion.”

The parties were not represented.

“JUDGMENT.—The house-rent in question was not alleged to be
“due upon a written contract signed by the defendant. The case

therefore, falls under proviso 3 to section 13 of Act I of 1889, which lays down that a Village Munsif cannot entertain a suit for rent of land, unless such rent is due upon a written contract signed by the defendant. In civil revision petition No. 48 of 1894, BEST, J., held the proviso to be inapplicable to a claim for house-rent. But we are unable to agree with the learned Judge, as we see nothing in the language of the proviso or in the reason for the enactment thereof to make us suppose that the term 'land' is used in a restricted sense excluding land built upon from the operation of the proviso. In the absence of any ground for putting such a limited construction on the term in question, it should, we think, be understood in its ordinary sense, which of course includes land not covered by buildings as well as that so covered. It follows that the Village Munsif had no jurisdiction to entertain the suit, and the conclusion of the District Munsif is right.

NARAYAN-
ANNA
v.
KAMAKSHI-
ANNA.

APPELLATE CIVIL.

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

PATTABHIRAMAYYA NAIDU AND OTHERS (DEFENDANTS NOS. 1,
2, 6, 20, 22, 23, 24, 27, 31, AND 33), APPELLANTS,

1896.
September
16.

v.

RAMAYYA NAIDU AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

Limitation Act XV of 1877, sched. II, arts. 61, 99, 120—Decree for rent against tenants jointly—Execution against one defendant—Suit by him for contribution.

The holder of a zamindari village obtained a decree jointly against sixty-eight persons, including the present plaintiff and defendants, for Rs. 4,100 being rent accrued due on lands in the village and in execution he brought to sale property of the plaintiff and on 28th October 1889 he received, out of the sale-proceeds, Rs. 2,650. The share payable by the plaintiff was Rs. 183-10-10 only, and he instituted the present suit against the defendants on 28th October 1892 to recover the amounts which they were liable to contribute:

Held, that Limitation Act, sched. II, art. 99, did not govern the case and that whether article 61 or article 120 was applicable, the suit was not barred by limitation.

SECOND APPEAL against the decree of J. P. Fiddian, District Judge of Ganjam, in appeal suit No. 48 of 1894, confirming the decree of

* Second Appeal No. 731 of 1895.