

## APPELLATE CIVIL.

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

RATNAGIRI PILLAI (DEFENDANT), PETITIONER,

v.

SYED VAVA RAVUTHAN (PLAINTIFF), RESPONDENT.\*

1896.  
September  
11, 15.

*Jurisdiction—Civil Procedure Code, s. 17—Provincial Small Cause Courts Act—  
Act IX of 1887, s. 16.*

Where a suit may be filed in more than one of several Courts, it is a general principle of law that the plaintiff may select the *forum* in which to bring the suit.

Where a plaintiff sued in a District Munsif's Court having jurisdiction, at the place where the money due under a contract was to be paid, there being no Small Cause Court having jurisdiction at such place:

*Held*, that the jurisdiction of the District Munsif was not ousted by the fact that there was in existence at the date of suit a Small Cause Court having jurisdiction at the place where the contract was made.

PETITION under section 622 of the Code of Civil Procedure praying the High Court to revise the decree of W. Dumergue, District Judge of Madura, in appeal suit No. 369 of 1895, confirming the decree of T. Sadasiva Ayyar, District Munsif of Dindigul, in original suit No. 23 of 1895.

The facts of this case are fully set forth in the judgment of the High Court.

*Krishnasami Ayyar* for petitioner.

*Mr. Subramaniam* for respondent.

JUDGMENT.—The plaintiff sued the defendant on a promissory note. The parties reside at Palni and the money was to be paid there; but the note was executed at Dindigul, where the parties were on a temporary visit. The Subordinate Judge of Madura (West) has small cause jurisdiction over Dindigul, but not over Palni. One and the same District Munsif has ordinary original jurisdiction over both Palni and Dindigul. The question for decision is whether the suit was triable by the District Munsif, or whether it was triable exclusively by the Small Cause Court.

\* Civil Revision Petition No. 123 of 1896.

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The District Munsif found that it was triable by the District Munsif, and this finding was upheld by the District Judge on appeal. The defendant asks us to revise the proceedings under section 622 of the Code of Civil Procedure on the ground that under section 16 of the Small Cause Court Act IX of 1887 the District Munsif had no jurisdiction to entertain the suit.

Section 17 of the Code of Civil Procedure, as amended by section 7 of Act VII of 1888, provides that, subject to the pecuniary or other limitations prescribed by law, suits such as the present shall be instituted in a Court within the local limits of whose jurisdiction (a) the defendant resides (*i.e.*, Palni), or (b) the cause of action arises, and in a suit like the present the cause of action, it is explained, arises at any of the following places, namely,—

- (i) The place where the contract was made (*i.e.*, Dindigul).
- (ii) The place where the money due under the contract was to be paid or the contract performed (*i.e.*, Palni).

Thus, so far as the Code goes, the suit may be instituted at Palni if regard is had to the residence of the defendants, and at either Palni or Dindigul if regard is had to the place of origin of the cause of action. When a suit may be instituted in more than one of several Courts, it is a general principle of law that the plaintiff may choose the *forum* in which to bring his suit. In the present case the plaintiff elected to sue on the cause of action as one that arose at Palni and brought his suit accordingly in the District Munsif's Court, which alone has jurisdiction at Palni. The question, then, is whether section 16 of the Small Cause Court Act IX of 1887 deprives him of the right given by the Code of selecting the place in which to lay the origin of the cause of action and renders it obligatory on him to file his suit in the Small Cause Court having jurisdiction at Dindigul. We are of opinion that it does not do so. The section runs as follows :—

“ Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.”

Now, if the Small Cause Court had jurisdiction at Palni, there could be no question but that the suit must be tried by the Small Cause Court, and by that Court alone. But, as a fact, the Small

Cause Court has no jurisdiction at Palni. In other words, it cannot try, or take cognizance of, any suit founded on a cause of action arising at Palni; but we have seen that, in the present case, the plaintiff founded his suit on a cause of action that arose at Palni. That suit, as founded by plaintiff, was not cognizable by the Small Cause Court, since it has no jurisdiction over Palni, and section 16 of the Act is, therefore, no bar to the suit.

This conclusion, founded on the construction of the Acts, is, we may observe, in accordance with the dictates of public convenience in the present case. The fact that the small cause jurisdiction of the Subordinate Judge's Court of Madura (West), though extended by Government to the Dindigul taluk, has not been extended to the Palni taluk, is, no doubt, due to the fact that the latter is much further than the former from the Court of the Subordinate Judge, and there would be undue hardship in compelling suitors with small claims to go a long journey to Madura instead of the Court close at hand to enforce them. To oblige the plaintiff in the present case to file his suit in Madura rather than in Palni, would be to inflict on him a hardship which the Government desired to guard against. With these remarks we dismiss this revision petition with costs.

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## APPELLATE CIVIL.

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

MALLIKARJUNA AND OTHERS (DEFENDANTS),  
APPELLANTS,

1896.  
August 28.

v.

PATHANENI (PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code, ss. 562, 569, 578—Order of Remand—Irregularity affecting  
the merits.*

Where a District Court reversed the District Munsif's decree and remanded the case for a revised finding on the merits:

*Held*, that this procedure was *ultra vires* and illegal:

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\* Second Appeal No. 646 of 1895.