

FISCHER
v.
SECRETARY
OF STATE FOR
INDIA IN
COUNCIL.

The Collector, however, granted separate registration and assessment; but afterwards, under the orders of Government, cancelled the registration. This cancellation must be regarded as a final refusal by the Collector to grant the separate registration applied for by Mr. Fischer. If the latter was aggrieved by this refusal, his remedy was by a suit under section 6 of the Act against the Secretary of State as the authority in whose name the Collector acted, and against the Zamindar and lessees, as persons whose interests would be affected by the declaration to be asked for. He has not thought fit to adopt the remedy prescribed by the Act, and for the reasons already stated we are of opinion that he cannot be granted the relief for which he has asked in the present suit.

We, therefore, confirm the decree of the Subordinate Judge and dismiss this appeal with costs.

APPELLATE CIVIL.

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

VOLKART AND OTHERS (PLAINTIFFS),

v.

SABJU SAHEB AND OTHERS (DEFENDANTS).*

Presidency Small Cause Courts Act, s. 69—Jurisdiction—Divisible contract.

Where a contract provided for delivery of goods in two monthly shipments by the plaintiffs and the defendants refused to take delivery or pay for either of the shipments of the goods in accordance therewith; it appeared that the total amount of the damages sustained by reason of the two breaches, if added together, exceeded Rs. 2,000, whereas if taken separately they were respectively less than that amount. The contract provided that each shipment was to be treated as a separate contract:

Held, that the plaintiff was entitled to bring separate suits for the damages sustained in respect of each shipment and that therefore the Presidency Small Cause Court had jurisdiction.

CASE stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act and section 617 of the Code of Civil Procedure by R. B. Michell, Chief Judge of the Presidency Court of Small Causes, in Small Cause suit No. 11487 of 1895.

* Referred case No. 17 of 1895.

The case was stated as follows :—

“ This is a suit for damages for loss sustained by plaintiffs through defendants’ alleged breach of contract in not taking delivery and paying for 24 cases of mainsooks in accordance with the contract between the parties made on 25th October 1894. The contract referred to is the indent (exhibit A) bearing that date, and admittedly signed by first defendant in the name of the defendants’ firm and bearing the word ‘ accepted ’ written on it, which the plaintiffs’ second witness, their manager, Mr. Scholl, has sworn was written by him, and means that the indent is accepted by plaintiffs. By this indent the defendants agree to purchase 50 cases of white cambrics; shipment to be in two monthly lots. The 50 cases were brought out by plaintiffs from England by two shipments—one of 24 cases, the other of 26 cases. Exhibit A contains, amongst others; a stipulation that ‘ each shipment ^{or} _{and} item under this contract is to be treated as a separate contract.’ Acting upon this, the plaintiffs have instituted two suits—one in respect of the shipment of 24 cases, being the suit in which this reference is made, the other in respect of the shipment of 26 cases being suit No. 12179 of 1895. On the application of defendants’ attorney the two suits were heard together, the witnesses to be examined and most of the documentary evidence to be adduced in both suits being the same. The defendants’ attorney pleaded in both suits (i) that this court had no jurisdiction, as there was only one contract in respect of which the two suits were brought and the amount of the two claims together exceeded the pecuniary limits of the jurisdiction of this court; (ii) defendants put plaintiffs to proof of the contract; (iii) goods were not according to contract; (iv) no notice of re-sale was given to defendants; (v) damages claimed are excessive. After the evidence on both sides had been taken the defendants’ attorney applied under section 69 of the Presidency Small Cause Courts Act for a reference being made to the High Court for its opinion upon the question whether, with reference to the provision in the contract (exhibit A) ‘ that each shipment ^{or} _{and} item under this contract is to be treated as a ‘ separate contract,’ the plaintiffs are entitled to bring two separate suits, as they have done in respect of the subject matter of exhibit A or are bound to bring one single suit in respect thereof. This question, therefore, I refer, under section 617,

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“ Civil Procedure Code, and section 69, Presidency Small Cause Courts Act, for the opinion of the High Court, and reserve judgment until the disposal by the High Court of this reference.

“ Upon the question referred, I had, after the pleas were put in and before the examination of witnesses began, ruled in plaintiffs’ favour, being of opinion that the stipulation in question on which they relied in exhibit A entitled them, and indeed bound them, to treat each shipment as a separate contract, and that therefore they were entitled to institute separate suits in respect of such separate contracts.”

Mr. *K. Brown* for plaintiffs.

Mr. *R. F. Grant* for defendants.

JUDGMENT.—Our answer to the question referred to us is that the terms of the contract in exhibit A are clear, and under it the plaintiffs are, in our opinion, entitled to bring two separate suits as they have done one in respect of each shipment.

Attorneys for plaintiffs *Wilson & King*.

Attorney for defendants *James Short*.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar.

MUTHUNARAYANA REDDI (DEFENDANT No. 1),
APPELLANT,

v.

BALAKRISHNA REDDI AND OTHERS (PETITIONER AND
PLAINTIFFS NOS. 1 AND 2), RESPONDENTS.*

Assignment of decree by one of two decree-holders valid—Civil Procedure Code, s. 232.

There is no prohibition in law against one of several decree-holders assigning his interest under the decree :

Held, that the assignee is entitled to execute under section 232, unless the judgment-debtor can show that such a proceeding is prejudicial to his interest.

APPEAL against the order of H. H. O’Farrell, Acting District Judge of South Arcot, passed in civil miscellaneous petition No. 168 of 1895.

* Appeal against order No. 10 of 1896.