

Mr. C. Krishnan for petitioner.

Ryru Nambiar for respondents.

UNICHAMAN  
v.  
AHMED  
KUTTI KAYI.

JUDGMENT.—We think that the Subordinate Judge was wrong in holding that the suit was barred under article 97, schedule II, of the Limitation Act. The claim is for money lent on a usufructuary mortgage, the cause of action being the failure of the mortgagor to secure the mortgagee in possession. The liability to secure the mortgagee in possession, or, in default to repay the mortgage money, is not a liability arising under the common law on the ground of failure of consideration, but is a liability imposed by section 68 of the Transfer of Property Act. If this liability be taken to be one arising under a covenant implied by law as incidental to the mortgage contract (which was in writing and registered) then article 116 of the Limitation Act would apply. Otherwise the appropriate article is 120, the case not being otherwise provided for. In either view the suit is not barred, since it was brought within six years from the time when the cause of action accrued. The case *Savaba Khandapa v. Abaji Jotirar*(1) is distinguishable from the present by the fact that when it was decided the Transfer of Property Act was not in force in Bombay. We, therefore, reverse the decree of the Lower Court, and remand the suit for disposal on the merits. Costs will abide and follow the result.

## APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

VENKATAGIRI RAJAH (PLAINTIFF), PETITIONER,

v.

VENKAT RAU (DEFENDANT), RESPONDENT.\*

1897.  
December 8.

*Provincial Small Cause Courts' Act—Act IX of 1887, sched. II, arts. 11 and 13—  
Suit for jodi.*

A suit for arrears of jodi is maintainable as a small cause suit under Provincial Small Cause Courts' Act, 1887.

PETITION under Provincial Small Cause Courts' Act, section 25, praying the High Court to revise the order of T. M. Rangachari,

(1) I.L.R., 11 Bom., 475.

\* Civil Revision Petition No. 74 of 1897,

VENKATA-  
GIRI RAJAH  
v.  
VENKAT  
RAU.

District Munsif of Nellore, in Small Cause Suit No. 679 of 1896.

The plaintiff was a zamindar and the defendant was entitled to three-fourths share in a certain agrapharam on his estate. The plaint set out that customary jodi payable by the defendant to the plaintiff had fallen into arrears and the suit was filed on the small cause side of the Court to recover the arrears. It was objected on the part of the defendant that the suit was not maintainable as a small cause suit and reference was made to the Provincial Small Cause Courts' Act, 1887, schedule II, articles 11 and 13, and *Kumara Venkatachala Reddiar v. Narayana Reddy*(1) and *Subramanian Chetti v. The Prince of Arcot*(2).

The District Munsif upheld this objection and returned the plaint.

The plaintiff preferred this petition.

*Desikachariar* for petitioner.

Respondent was not represented.

JUDGMENT.—We do not agree with the District Munsif in holding that “jodi” is a cess or due of the kind referred to in schedule II, article 13 of the Provincial Small Cause Courts' Act. The general word “dues” in that article must be taken to be dues similar in kind to the special dues mentioned in the article. In the present case the claim is for “jodi” which is rent on favourable terms. Article 11 of schedule II has no application whatever.

The claim was, therefore, cognizable by the Small Cause Court.

We set aside the order and direct the District Munsif to receive the plaint and dispose of it according to law. Costs will abide and follow the result.

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(1) 4 M.H.C.R., 393.

(2) I.L.R., 2 Mad., 146: