

APPELLATE CIVIL.

Before Sir S. Subrahmaniam Ayyar, Officiating Chief Justice, and
Mr. Justice Benson.

PARAMESHIWARAN NAMBUJIRI (FIRST DEFENDANT),
PETITIONER,

v.

VISHNU EMBRANDRI AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

1904.
February 25.

Provincial Small Cause Courts Act—IX of 1887, s. 16—Small Cause suit wrongly tried on regular side—Regular appeal preferred, against decree—No question of jurisdiction raised—Civil Revision Petition raising question of jurisdiction—Discretion of High Court to interfere or not, according to the merits.

Petitioner presented this Civil Revision Petition to set aside a decree which had been passed against him by a District Munsif and upheld in the District Court, on the ground that the suit was one of a nature cognizable by a Small Cause Court, whereas it had been tried as a regular suit. Petitioner (who was defendant in the suit), had raised no objection before the Munsif to the mode of trial; nor had he done so in his grounds of appeal to the District Court:

Held, with reference to section 16 of the Provincial Small Cause Courts Act, that, even assuming that the case was one of a nature cognizable by a Small Cause Court, the High Court was not bound to set aside the decrees of the lower Courts, but had a discretion to interfere or not, according to the merits of the case.

Suresh Chunder Maitra v. Kristo Rangini Dasi, (I.L.R., 21 Calc., 249), approved and followed. *Ramasamy Chettiar v. Orr*, (I.L.R., 26 Mad., 176), not followed.

Suit for Rs. 130 for wages due to plaintiffs for services in connection with a temple. The District Munsif tried the case as a regular suit and decreed in plaintiffs' favour as against first defendant alone. Defendant, who had raised no objection to the mode of trial by the District Munsif, preferred a regular appeal to the District Court, making no reference to the question of jurisdiction in his grounds of appeal. The Acting District Judge dismissed the appeal.

* Civil Revision Petition No. 391 of 1903, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the decree of A. Venkataramana Pai, District Judge of North Malabar, in Appeal Suit No. 196 of 1902, presented against the decree of K. Imbichunni Nair, District Munsif of Cannanore, in Original Suit No. 424 of 1901.

Defendant now preferred this Civil Revision Petition, in which he raised the question of jurisdiction for the first time.

Mr. C. Krishnan for appellant.

J. L. Rosario for respondent.

JUDGMENT.—Assuming that the suit was one of a nature cognizable by a Small Cause Court, the first question for our decision is whether we are bound, with reference to section 16 of the Provincial Small Cause Courts Act, IX of 1887, to set aside the decrees of the Courts, original and appellate, which tried the suit as a regular suit, or whether we have a discretion to interfere or not according to the merits of the case. The former view was taken by the learned Chief Justice in *Ramasamy Chettiar v. Orr* (1), but apparently the decision to the contrary by the High Court of Calcutta in *Suresh Chunder Maitra v. Kristo Rangini Dasi* (2) was not brought to his notice. In referred case No. 2 of 1903 the present Divisional Bench followed the decision in *Suresh Chunder Maitra v. Kristo Rangini Dasi* (2) and we have no doubt that that decision is as consonant with law as it is with convenience.

Section 16 of the Provincial Small Cause Courts Act must be read along with section 646-B of the Civil Procedure Code. The latter section gives the High Court a discretion to pass such orders as it thinks proper in cases referred for its orders under that section and such cases include a case like the present where the small cause suit has been irregularly tried by an ordinary Civil Court. The obvious object of the section is to enable the High Court to pass such order as the justice of the case requires without being compelled to decide the case solely with reference to jurisdiction, and thus perhaps put the parties to the expense and trouble of fruitlessly litigating the same question again before the very Judge, sitting as a Small Cause Court, who had already tried the case on the ordinary civil side, and with the greater formality thereby required and with the safeguard of an appeal.

Though the present case comes before us under section 622, Civil Procedure Code, it seems but reasonable that the principle of the express provision in section 646-B should be followed in the exercise of the discretion allowed by section 622, at least in cases like the present where the petitioner made no objection to the

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(1) I.L.R., 26 Mad., 176.

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trial in the Court of First Instance and raises the objection for the first time in this Court.

We therefore hold that we have a discretion to be exercised with reference to the merits of the case. On the merits we are unable to say that any ground for our interference has been made out.

We therefore dismiss the petition with costs.

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Bhashyam Ayyangar.

CHINNAMMAL (PLAINTIFF), APPELLANT,

v.

MADARSA ROWTHER (DEFENDANT), RESPONDENT.*

1903.
September
14.

Court Fees Act—Act VII of 1870, s. 7, IV (c)—Suit for cancellation and delivery of mortgage bond for Rs. 4,000—Valuation of relief by plaintiff at Rs. 50—Duty of Court to accept plaintiff's valuation in suits of this class.

Where cases fall under section 7, paragraph IV, clause (c) of the Court Fees Act, the plaintiff should make a verified statement in his plaint of the amount at which he values the relief sought. Where this has been done, the Court has no jurisdiction to decline to accept the valuation thus given or to revise it. Such a power of revision is limited to cases provided for by section 9, which relates to an estimate given by the plaintiff of the annual net profits of the land or the market value of the land, house or garden as mentioned in section 7, paragraphs V and VI.

Plaintiff sued for the cancellation and delivery up of a mortgage bond for Rs. 4,000, executed in defendant's favour, for which, it was alleged, no consideration had been paid by defendant. The relief claimed was valued in the verified plaint at Rs. 50:

Held, that the Court could not revise the valuation or decline to accept the plaint.

Suit for the cancellation and delivery up of a mortgage bond for Rs. 4,000 executed by plaintiff to defendant. The relief sought was valued in the verified plaint at Rs. 50. Plaintiff's case was

* Civil Miscellaneous Appeal No. 77 of 1903, presented against the decree of Vernor A. Brodie, District Judge of Coimbatore, in Appeal Suit No. 157 of 1901, presented against the decree of T. T. Rangachariar, District Munsif of Erode, in Original Suit No. 542 of 1900.