

FISHER
v.
RAMASWAMY
UDAYAN.

The Deputy Collector found that the patta was tendered to the first defendant alone and dismissed the suit. His decision was confirmed by the District Judge on appeal.

Plaintiff preferred this second appeal.

T. Rungachariar for appellants.

T. Subrahmania Ayyar for respondents.

JUDGMENT.—The Act makes no provision for the tender of patta to one only out of several joint pattadars, and no authority has been quoted to show that such tender is sufficient. It is not clear how each pattadar could properly be regarded as the agent of his co-pattadars for the purpose of receiving tender of patta.

It is obvious that to hold that a tender to one is sufficient to bind all the co-pattadars might open a wide door to fraud and irregularities.

We therefore agree with the Courts below and dismiss the second appeal.

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Sankaran Nair.

1904.
October 25.

KONDURU RUNGA REDDI (PLAINTIFF), APPELLANT
IN BOTH THE CASES,

v.

SUBBIAH SETTY (DEFENDANT),
RESPONDENT IN LETTERS PATENT APPEAL NO. 16 OF 1904.
KUMBAHALA SUBBAMMA (DEFENDANT), RESPONDENT
IN LETTERS PATENT APPEAL NO. 17 OF 1904.*

Provincial Small Cause Courts Act IX of 1887, art. 31 - Suits for account, what are.

A suit for an account within article 31 of the Provincial Small Cause Courts Act does not mean every case in which accounts have to be looked into to ascertain the amount due to the plaintiff. A suit for an account is a special form of suit in which a special process is required to take an account.

* Appeals Nos. 16 and 17 of 1904, presented under article 15 of the Letters Patent against the orders of Mr. Justice Russell in Civil Revision Petitions Nos. 406 and 407 of 1903 (Small Cause Suits Nos. 498 and 499 of 1903 on the file of the District Munsif's Court of Nellore).

THESE suits were brought by the plaintiff against the defendants, in the District Munsif's Court of Nellore on the small cause side, to recover sums alleged to be due from defendants on a settlement of accounts made with them. The District Munsif found that there was no settlement but gave the plaintiff decrees for amounts found due to him on examining the accounts. On revision under section 25 of the Provincial Small Cause Courts Act, Mr Justice Russell, holding that the suits were suits for account within article 31 of the Act and as such not cognisable by a Court of Small Causes, set aside the decrees and directed the plaints to be returned for presentation to the proper Court.

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The plaintiff filed this appeal under clause 15 of the Letters Patent.

Mr. M. A. Tirunarayanachariar for appellant.

S. Subrahmania Ayyar for respondent.

JUDGMENT.—The suit was brought in the Small Cause Court for a specified sum alleged to be due by the defendant on a settlement of account between the parties. Amongst the points stated by the Munsif for determination was, what amount is due to the plaintiff? At the hearing before the Munsif he found that the settlement relied on was not proved; but he found that a certain sum was due on examination of the accounts of the parties to the plaintiff, and gave a decree accordingly.

On revision the learned Judge held that the suit was practically a suit for an account within article 31 of the Provincial Small Cause Courts Act and was not cognisable by a Small Cause Court. He therefore set aside the decree of the Munsif directing that the plaint should be returned to the plaintiff to be presented to the proper Court. From that order this appeal is brought. The only question for determination by us is whether the suit is a suit for an account within article 31 and therefore not cognisable by a Small Cause Court.

We are clearly of opinion that the suit is not a suit for an account within the meaning of article 31.

A suit for an account is a special form of suit. It does not mean every case in which accounts have to be looked into in order to ascertain the correctness or otherwise of the amount claimed by the plaintiff. A special process is required to take an account and Small Cause Courts have no means of dealing with such an action, and therefore it is excluded from the jurisdiction of Small Cause

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Courts; but nearly every case brought in a Small Cause Court involves a certain amount of investigation of the accounts of the parties in order to arrive at the sum to be awarded. Such cases, and this is one of them, are not suits for an account within article 31 of the Provincial Small Cause Courts Act. No question of limitation arises. We are of opinion that the suit was cognisable by the Small Cause Court. We must therefore reverse the order of the learned Judge and restore the decree of the Munsif with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Davies.

1905.
February 7.

SARAMMA (DEFENDANT—COUNTER-PETITIONER), APPELLANT,

v.

SESHAYYA (PLAINTIFF—PETITIONER), RESPONDENT.*

Limitation Act XV of 1877, sch. II, art. 179—'Application in accordance with law'—Application by guardian on behalf of one found to be a major at the time—Jurisdiction of Court to review its own order when an appeal lay.

An application for execution made by A as guardian on behalf of B who was a major at the time the application was made is not an 'application in accordance with law' within the meaning of article 179, schedule II of the Limitation Act and will not operate as a bar to limitation, though it may perhaps be a good application for other purposes.

Taqi Jan v. Obaidulla, (I.L.R., 21 Calc., 866, distinguished).

Neither can such an application be considered an application by B under section 235 of the Code of Civil Procedure.

A Court can review its own order in execution although an appeal might have been but was not preferred.

THE decree in connection with the execution of which, this appeal arose, was passed in favour of the plaintiff by the District Court of Godavari in Appeal No. 287 of 1896, reversing the decree of the District Munsif of Tanuku in Original Suit No. 285 of 1895.

* Civil Miscellaneous Second Appeal No. 76 of 1904 presented against the order of F. H. Hamnett, Esq., District Judge of Godavari, in Appeal Suit No. 549 of 1903, presented against the order of M.R.Ry. P. V. Ramachandra Ayyar, District Munsif of Ellore, in E.P. No. 490 of 1903 (Original Suit No. 285 of 1895 on the file of the District Munsif's Court at Tanuku).