

## APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim.

RANGIAH NAIDU (PLAINTIFF), PETITIONER,

v.

RUNGIAH AND OTHERS (LEGAL REPRESENTATIVES OF THE  
FIRST RESPONDENT), RESPONDENTS.\*

1908  
August 13,  
14.  
September 4.

*Civil Procedure Code, Act XIV of 1882, s. 622—Revisional power of High Courts over Presidency Courts of Small Causes—Presidency Small Cause Courts' Act, s. 69—Where the Judges differ matter must be referred to High Court.*

There is nothing in the Code of Civil Procedure or in the Presidency Small Cause Courts' Act to exempt Presidency Courts of Small Causes from the revisional powers of the High Court under section 622 of the Civil Procedure Code.

Where the Judges of such Court sitting together in Full Bench to dispose of a suit take different views on a point affecting the merits of the case, they are bound under section 69 of the Act to refer the matter for the opinion of the High Court and ought not to deal with the matter finally.

Where the order of the Full Bench, on the application of the party for a retrial, fully deals with all the points arising for decision in the suit itself without granting a formal order for retrial, the absence of such formal order is immaterial, and the Judges must be considered to have sat together in the suit within the meaning of section 69. The substantial effect of the order and not its mere form must be considered.

*Seshammal v. Munusamy Mudali* (J. L. R., 20 Mad., 358), referred to.

THE facts so far as they are necessary for the purposes of the report are fully stated in the judgment.

The order of the Full Bench was as follows :—

“For the reasons given in my original judgment, I concur in the conclusions arrived at by my learned brother the 3rd Judge. This application is therefore dismissed with costs.”

The plaintiff applied to the High Court under section 622, Civil Procedure Code, to have this order set aside.

*T. Narasimha Ayyangar* for petitioner.

*V. V. Srinivasa Ayyangar* for respondent.

JUDGMENT.—The petitioner P. Rungiah Naidu sued one C. Rungiah in the Presidency Court of Small Causes for the

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\* Civil Revision Petition No. 456 of 1907, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the decision of the Full Bench of the Madras Court of Small Causes in Suit No. 15090 of 1904.

recovery of damages for non-acceptance of certain glassware indented for by the latter. The defendant refused to accept the goods on the ground that they were not packed in square and wide cases as required by the indents, contending that, the provision as to the mode of packing was an essential term of the contract between him and the plaintiff. The learned Chief Judge, who originally tried the suit, gave effect to this plea and dismissed the action. The plaintiff thereupon made an application to the Full Bench which was heard by the Chief Judge and the second and the third Judges sitting together. The question arising in the suit were then fully discussed before them, but they eventually differed among themselves and delivered separate judgments, one Judge holding that the plaintiff's claim should be decreed, the other two being of opinion that the suit should be dismissed. In the result 'the application' was dismissed in accordance with the opinion of the majority.

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The petitioner urged that the learned Judges of the Madras Court of Small Causes having differed as to the proper construction of the indent, were bound to refer the matter to the High Court under section 69, Presidency Small Cause Courts Act, and that they acted without jurisdiction in disposing of the case, finally, without first obtaining the opinion of the High Court upon the point.

The learned pleader for the defendant has taken a preliminary objection to our entertaining this petition under section 622, Civil Procedure Code, and argues that that section does not apply to a Presidency Court of Small Causes. We think that there is no force in this objection. The Presidency Courts of Small Causes are undoubtedly subordinate Courts and we can find nothing in the language of section 622, Civil Procedure Code, or in any other provision in the Civil Procedure Code or the Presidency Small Cause Court Act which may be said to indicate an intention on the part of the Legislature to exclude such Courts from the application of section 622. Further a series of decision giving rise to a long course of practice leaves no room for any doubt upon the question (see *Peary Mohun Ghosaul v. Harran Chunder Gangooly*(1), *Sassoon v. Hurry Das Bhukut*(2); *Sadasook Gambir*

(1) I. L. R., 11 Calc., 261.

(2) I. L. R., 24 Calc., 455.

RANGIAH *Chund v. Kannayya*(1), *Seshammal v. Munusami Mudali*(2),  
 NAIDU *Srinivasa Charlu v. Balaji Rau*(3), and *Chinnathambi Mudaliar v.*  
 v.  
 RUNGIAH. *Veerabadriah Naidoo*(4).

The next question we have to consider is, whether the learned Judges of the Madras Court of Small Causes can be said in this case to have sat together in the suit within the meaning of section 69 of the Presidency Small Cause Courts' Act. We find that the Judges sitting in the Full Bench fully dealt with all the points arising for decision in the suit itself and there can be no doubt that they intended to dispose of the suit finally. If no formal order was made granting a new trial we agree with the learned Judges who decided the case of *Seshammal v. Munusami Mudali*(2) that that could make no difference.

We think we must have regard to the substantial effect of the order and not to its mere form. It virtually amounted to a revival or re-hearing of the suit. That being so, and the learned Judges having taken different views as to the right construction of the indent on the question as to whether the condition regarding the manner of packing was an integral part of the contract or not, and as such construction undoubtedly affects the merits of the case we are of opinion that they were bound to refer the question to the High Court and could not deal with the case in the way they have done. The order of the Madras Small Cause Court, dated the 18th March 1907, on the Full Bench Application No. 46 of 1906 is therefore set aside, and we direct that the suit be disposed of according to law. The costs of this petition will abide the result.

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(1) I. L. R., 19 Mad., 196.

(3) I. L. R., 21 Mad., 232.

(2) I. L. R., 20 Mad., 358.

(4) I. L. R., 26 Mad., 163.

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