

MUNRO
AND
PINNEY, JJ.

KAJIKAR
LAKSHMI

v.
MABU DEVI.

family, the reason being that the infant's interest is not individual property—*vide Gharibullah v. Khalak Singh*(1), *Harihar Pershad Singh v. Mathura Lal*(2) and *Sham Kuar v. Mohanunda Sahoy*(3).

The same principle would apply *a fortiori* in the case of an Aliyasunthanum family like the present, where the only right of the infant is a right to be maintained in the family house. It is argued that there is no objection to the appointment of a guardian in the present case because the mother and adult brother of the minors are willing that a guardian of the minor's property should be appointed. This however cannot affect the question; seeing that the minors have no property in respect of which a guardian can properly be appointed. This appeal is therefore allowed and the order of the District Judge set aside with costs in both Courts.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Sankaran-Nair.

SUBBARAYA MUDALIAR AND OTHERS, PLAINTIFFS,

v.

RAKKI DEFENDANT.*

1908.
November
20.
December
3.

Estates Land Act (Madras) I of 1903, s. 189—Civil Courts have jurisdiction to hear and determine suits instituted before Act came into force.

Section 189 of the Madras Estates Land Act does not take away from Civil Courts the jurisdiction to hear and determine suits which were taken cognizance of by them before the Act came into operation. The section merely bars cognizance of suits and says nothing of pending suits.

Sadasiva Pillai v. Kalappa Mudaliar, [(1901), I.L.R., 24 Mad., 39], referred to.

Vedavalli Narasiah v. Mangamma, [(1904), I.L.R., 27 Mad., 538], referred to.

CASE stated under section 617 of Act XIV of 1882 by S. Rangamadha Mudaliar, District Munsif of Tiruvalur, in Small Causes Suit No. 130 of 1908.

The facts of the case are sufficiently stated in the judgment.

T. Rangaramanujachariar for appellant.

C. Aiyasami Sastri for respondent.

(1) (1903) I.L.R., 25 All., 407. (2) (1908) I.L.R., 35 Calc., 561.

(3) (1892) I.L.R., 19 Calc., 301. * Referred Case No. 13 of 1908.

JUDGMENT.—The question referred to us is whether suits for the recovery of rent, which, under the provisions of the Madras Estates Land Act I of 1908, are exclusively cognizable by the Revenue Court, are triable by the Civil Courts after that Act came into force if they were filed before the date when the Act came into force. We have no hesitation in answering the question in the affirmative. There is nothing in section 189 of the Madras Estates Land Act which takes away from the Civil Courts the jurisdiction to hear and determine suits which were taken cognizance of by them before the Act came into operation. Section 189 merely says that Civil Courts shall not take cognizance. It says nothing about pending suits. We are fortified in our opinion by the decision in *Sadusiva Pillai v. Kalappa Mudaliar* (1), *Vedavulü Narasiah v. Mangamma* (2) and *Nana bin Abu v. Sheku bin Andu* (3).

MUNRO
AND
SANKARAN-
NAIR, J.J.
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SUBBARAYA
MUDALIAR
v.
RAKKI.

APPELLATE CIVIL.

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

ROBERT FISCHER AND OTHERS (PLAINTIFFS NOS 1 to 4),
APPELLANTS,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL,
THROUGH THE COLLECTOR OF MADURA
(DEFENDANT), RESPONDENT.*

1908.
July 20 to
24, 27 to 31.
August
3 to 6.
November
23.

Water, right of Government to divert and distribute by irrigation works—No action against Government without proof of damage—Paramount right of Government higher than that of riparian owners—Easement Act, s. 7 (2) (a) and s. 7, ill. (h)—Right of diversion for riparian and non-riparian purposes—Right of riparian owner to take out water put in by himself.

The Government has power, by the customary law in India, to regulate in the public interests, in connection with the collection, retention and distribution of waters of rivers and streams flowing in natural channels, and of waters introduced into such rivers by means of works constructed at the public expense, and in the public interests, for purposes of irrigation, provided they do not thereby inflict sensible injury on other riparian owners and diminish the supply they have hitherto utilised.

(1) (1901) I.L.R., 24 Mad., 39. (2) (1904) I.L.R., 27 Mad., 538.
(3) (1908) I.L.R., 32 Bom., 337. * Appeal No. 60 of 1904.