

MUNRO AND
 ABDUR
 RAHIM, JJ.
 ———
 RAMFAY
 & CO.
 v.
 THE
 OFFICIAL
 ASSIGNEE
 OF
 MADRAS.

authority for the proposition that when there has been a demand or a special agreement of the nature proved in this case it should be immediately carried out or otherwise any payment though made in pursuance of it must be deemed to be "voluntary." The proposition seems to me untenable. The cases, where a creditor gives time to the debtor to pay, have, in my opinion, no application to the facts of this case. *Arbuthnot & Co.* in view of the resolution of the 31st July might well have regarded themselves as legally bound, and in fact they were so bound, to make the payment which they did actually make. That would be sufficient to take the case out of the rule relating to voluntary payments. (See *In re Crawford* (1).)

I am therefore of opinion that looking at the case from any point of view, the claim of the plaintiffs must be allowed.

As regards the technical objection regarding the form of the suit, it is enough for me to say that I agree with my learned brother that there is no substance in those objections and such objections should not have been raised at the last stage of the suit.

The appeal will therefore be allowed and the plaintiffs will have a decree as prayed for with costs of this appeal and before the learned Judge of the court below.

Messrs. David and Brightwell, Solicitors for appellants.

Messrs. Short and Bewes, Solicitors for respondent.

APPELLATE CIVIL.

Before Mr. Justice Ayling.

RAMAIYAR AND ANOTHER (PLAINTIFFS), PETITIONERS,

v.

P. S. SAMINATHA AYYAR AND THREE OTHERS (DEFENDANTS),
 RESPONDENTS.*

*Trespass, suit for damages for—Provincial Small Cause Courts Act
 (IX of 1887), art. 31, sch. II—Jurisdiction unier.*

Where the plaintiff alleged that the defendants had trespassed upon plaintiff's land and removed his crop and assessed damages at the profit thus wrongfully obtained by defendants: *Held*, that the suit was one for damages for a single act of trespass and not exempted from the jurisdiction of the Provincial Small Cause

(1) (1874), 9 Ch. App., 752.

* Civil Revision Petition No. 483 of 1910.

Courts by article 31, schedule II of the Provincial Small Cause Courts Act (IX of 1887).

Annamalai v. Subramanyan [(1892) I.L.R., 15 Mad., 298], followed.

Venkoba Rao v. Muthu Aiyar [(1908) 18 M.L.J., 88] dissented from.

AYLING, J.

RAMAIYAR

v.

SAMINATHA
AYYAR.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887) praying the High Court to revise the order of the Subordinate Judge of Mayavaram, dated 16th February, 1910, in Small Cause Suit No. 2070 of 1909.

An act of trespass was committed upon certain lands belonging to the plaintiff and the crops were taken away. Plaintiff sued for the profits realised from the sale of the crops. The Munsif held that the suit was one for the profits of immoveable property belonging to the plaintiff which had been wrongfully received by the defendant within the meaning of article 31 of schedule II of the Provincial Small Cause Courts Act (IX of 1887) and was as such exempted from the jurisdiction of a Small Cause Court.

Savarimuthu Aithurusu Rowthar (1) referred to.

T. R. Venkata Rama Sastri for petitioner.

T. V. Muthukrishna Ayyar for the Hon. Mr *T. V. Seshagiri Ayyar* for respondents.

JUDGMENT.—The only point for decision is whether the suit is exempted from the jurisdiction of a Small Cause Court by reason of article 31 of schedule II of Act IX of 1887.

From the plaint it seems to me that the suit must be regarded as one for damages for a single act of trespass, the said damages, being measured by the landholder's share of the standing crop to which the plaintiffs were entitled and which the defendants carried away. It is not denied that the plaintiffs were in possession (under a *razinama* decree) prior to the trespass and there is no allegation that the defendants remained in possession at the time of suit.

On this view I consider the case to be similar to that dealt with in *Annamalai v. Subramanyan* (2) and the suit to be cognisable by a Small Cause Court. I do not find anything in *Savarimuthu v. Aithurusu Rowthar* (1) incompatible with this. The first respondent's *vakil* refers me to the case of *Venkoba Rao v. Muthu Aiyar* (3). I do not see how that case can be

(1) (1902) I.L.R., 25 Mad., 108.

(2) (1892) I.L.R., 15 Mad., 298.

(3) (1908) 18 M.L.J., 88.

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distinguished from the present one; but with great respect to the learned Judge who decided it, I think the decision of a divisional Bench in *Annamalai v. Subramanyan* (1) must be followed in preference. The latter is moreover in accordance with my own view of the true meaning of article 31. (*Damodar Gopal Dikshi v. Chintaman Balkrishna Karve* (2) has no bearing on the present question.

The Subordinate Judge will be directed to receive the plaint on the Small Cause side and dispose of it according to law. The costs' will abide the result.

ORIGINAL CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1911.
 April
 11, 12 and 19.

A. RANGANAIKI AMMA (PLAINTIFF),

v.

A. RAMANUJA AIYANGAR AND FIVE OTHERS
 (DEFENDANTS).³

Hindu Law—Marriage of a daughter of deceased Hindu may be performed by his widow—Reasonable marriage expenses recoverable from joint-family property.

The widow of a deceased member of an undivided Hindu family is entitled to perform the marriage of a daughter of the deceased even when the father of the deceased and the other male members of the family have not wrongly or improperly refused to perform such marriage and she is entitled to recover the reasonable expenses of such marriage out of the joint-family property.

CASE stated under section 69 of the Presidency Small Cause Courts Act (XV of 1882), by J. H. BAKWELL, the Chief Judge of the Small Cause Court, Madras, in suit No. 401 of 1909.

The facts of this case, as set out in the letter of reference, appear in the judgment.

T. R. Venkatarama Sastriar and *T. S. Rajagopala Ayyar* for the plaintiff.

T. Ethiraja Mudaliyar for the first and third defendants.

JUDGMENT.—This is a reference by the Presidency Small Cause Court in a suit instituted by the mother of a minor

* Referred Case No. 4 of 1910.

(1) (1892) I.L.R., 15 Mad., 293.

(2) (1898) I.L.R., 17 Bom., 42.