

RAJAJI BAHADUR GARU
v.
PARTHASARADHI
APPA RAO.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, and the decrees of the Court of the Subordinate Judge and the High Court reversed, and the plaintiff's suit dismissed with costs throughout. The respondents who were substituted for Papamma Row, the original respondent, must pay the costs of the appeal, including the costs of the revivor proceedings.

Appeal allowed.

Solicitors for the appellant: Messrs. *Frank Richardson and Sadler.*

Solicitor for the respondent: *Mr. R. T. Tasker.*

APPELLATE CIVIL—FULL BENCH.

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

HARI KAMAYYA (DEFENDANT), PETITIONER,

v.

HARI VENKAYYA (PLAINTIFF), RESPONDENT.*

1902.
December
22.

1903.
January 22.

Provincial Small Cause Court—Act IX of 1887, ss. 16, 32 (2)—Munsif invested with Small Cause jurisdiction—Extension of jurisdiction—Transfer of cases on file on regular side to small cause side—Cases disposed of as small cause suits—Legality.

A District Munsif, who had small cause jurisdiction up to Rs. 100, had, on his file on the regular side of his Court, suits of a small cause nature for amounts between Rs. 100 and 200, some of which were partly tried. His small cause jurisdiction was then extended to Rs. 200, whereupon he transferred the cases in question to his small cause file and tried and disposed of them as small causes.

Held, that the transfer and trial were not in accordance with law.

QUESTION referred to a Full Bench. The case came on in the first instance before Mr. Justice Bhashyam Ayyangar, who made the following Order of Reference to a Full Bench:—

When the District Munsif of Narasapur was invested with small causes jurisdiction up to Rs. 200, he having till then exercised

* Civil Revision Petition No. 32 of 1902 presented under section 25 of Act IX of 1887, praying the High Court to revise the decree of A. Raghunatha Rao, District Munsif of Narasapur, dated 4th November 1901, in Small Cause Suit No. 1101 of 1901.

such jurisdiction up to a limit of Rs. 100, there were on his regular file seventy-seven suits of a small cause nature between Rs. 100 and 200, some of which had been partly tried, including the present suit. He transferred all these seventy-seven suits to his small cause file and tried and disposed of them as small causes, advancing the dates of final hearing which had been originally fixed when they were on the regular file. The question for consideration is whether such transformation into small causes of suits which were legally commenced, instituted and in some cases partly tried as regular suits was legal—*vide* section 16 of Act IX of 1887 and sub-section (2) of section 32, Act IX of 1887.

As the question is of importance and as there does not seem to be any ruling on it, though the practice seems to be to transfer such suits from the regular side to the small causes side and dispose of them as small causes—a practice which does not seem to be in conformity with law—I direct that this be laid before the Chief Justice for being referred to a Full Bench.

The case in due course came on for hearing before the Full Bench constituted as above.

P. Nagabhushanam for petitioner.

K. Subrahmania Sastri for respondent.

The Court expressed the following

OPINION.—The effect of section 32 (2) of Act IX of 1887 is that none of the provisions of the Act apply to a suit which has been commenced in a Court which has been invested with small cause jurisdiction before the date when the Court was so invested. The object of the sub-section appears to have been to prevent doubts arising as to whether the investment of a Court with small cause jurisdiction acted retrospectively with reference to a suit which had been commenced in that Court before the Court was so invested. The effect of holding that, in a case like the present, it was competent for the Court to transform a regular suit into a small cause suit would be to deprive a party of a right of appeal which he had at the time he instituted his suit. It has been argued that section 32 (2) only applies where a Court is invested with small cause jurisdiction for the first time and not, as in the present case, where the pecuniary limit of a jurisdiction which has already been conferred is raised. We do not think the sub-section should be so construed. The fact that the Judge was invested with small cause jurisdiction up to Rs. 100 prior to his investment

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with such jurisdiction up to Rs. 200 does not prevent the latter investment, so far as it goes, from being an investment with the jurisdiction of a Court of Small Causes within the meaning of the sub-section (2). In this Presidency, at any rate, the investment of jurisdiction, in cases like the present, is the investment of an individual Judge with particular powers.

Our answer to the question referred to us is that the trial of the suits in question as small cause suits (or, as it is put in the Order of Reference, the transformation of the suits into small cause suits) was not in accordance with law.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

NUNNA BRAHMAYYA SETTI AND TWO OTHERS (PLAINTIFFS),
APPELLANTS,

v.

CHIDARABOYINA VENKITASWAMY (DECEASED), SANKA
DANAYYA AND TWO OTHERS (DEFENDANTS), RESPONDENTS.*

Insolvent Debtors Act—11 & 12 Vict., Cap. 21, ss. 7, 30—Ancestral trade carried on by brothers in undivided family—Insolvency and discharge of all the adult members—Minor son of one brother not a party to insolvency proceedings—Order vesting family property in Official Assignee—Sale by Official Assignee of land so vested—Subsequent suit against minor—Sale of his interest in the land—Validity.

Seven brothers who carried on a business (which had previously been conducted by their family for very many years) applied to be adjudged insolvents in the Court for the relief of insolvent debtors in Madras. They comprised all the adult members of the family at the time when the application was made, and the debts included in their schedule had been incurred in connection with the family business. A, being a son of one of them and a minor at the time, was not a party to the insolvency proceedings. The applicants in due course obtained their discharge and an order was passed vesting their property (which included land) in the Official Assignee in Madras. At a date subsequent to that of the vesting order, plaintiffs purchased from the Official Assignee part of the land so vested; and, later still, B brought a suit against A for money due on a

* Second Appeal No. 112 of 1901, presented against the decree of I. L. Narayana Rao, Subordinate Judge of Kistna, at Masulipatam, in Appeal Suit No. 119 of 1900, presented against the decree of K. Rangamanmar Ayyangar, District Munsif of Bapatla, in Original Suit No. 546 of 1898.

1902.
April 29.
June 19.