

APPELLATE CIVIL.

*Before Mr. Justice Sundara Ayyar.*1911.
August 18.B. PERRAJU GARU (PLAINTIFF), PETITIONER, IN ALL THE
CIVIL REVISION PETITIONS,

v.

B. SUBBARAYUDU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Madras Estates Land Act (I of 1908), ss. 3, 53, 189 and sched. A, art. 8—Suit for cist, local cess, village cess by an ijaradar—Maintainability only in Revenue Court—Exchange of patta and muchilikka not necessary for recovery of rent by suit under Estates Land Act—'Ijaradar' and 'Rent,' definitions of—Art. 13. of sched. of Act IX of 1887 (Provincial Small Cause Courts Act).

A suit by an ijaradar of a share of a village governed by the Estates Land Act (Madras Act I of 1908), for recovery of cist, local cess and village cess due by a ryot is cognizable by virtue of section 189 and Schedule A, article 8 of the Act only by a Revenue Court and not by a Small Cause Court, as all the above items sought to be recovered are by section 3 of the Act included in the term 'rent' and as an 'ijaradar' is according to section 3 (5) of the Act a 'landholder' being entitled to collect rent by virtue of a transfer from the owners.

No exchange of patta and muchilikka is necessary under the Estates Land Act for recovery of rent by suit; the same being necessary according to section 53 only in cases where the landholder wishes to distrain or sell the ryot's movables or his holding.

It is wrong to hold that article 13 of the schedule to the Provincial Small Cause Courts Act (IX of 1887) applies to a suit for land cess or village cess under the above circumstances.

PETITIONS, under section 25 of Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the decree of V. C. MASCARENHAS, the District Munsif of Cocanada, in Small Cause Suits Nos. 865 to 872 and 874 to 885 of 1909.

The facts of this case appear fully from the judgment.

T. Prakasam for the petitioner.

The respondents were not represented.

JUDGMENT.—This is a suit by the ijaradar of a share of the village of Karapa situated within the limits of the Pittapur estate for the recovery of cist, local cess and village cess due by the defendant who is one of the ryots cultivating land in the village. The suit was dismissed by the lower Court on the ground that

* Civil Revision Petitions Nos. 442 and 443 to 461 of 1910.

there was no agreement to dispense with pattas and muchilikas, it being admitted that there was no exchange of pattas and muchilikas so far as the cist was concerned. With respect to the cesses alleged to be due from the defendant the lower Court dismissed the suit on the ground that the suit was not cognizable by a Court of Small Causes, its jurisdiction being excluded by article 13 of the schedule to the Provincial Small Cause Courts Act. The finding against the agreement to dispense with pattas and muchilikas being one of fact, could not be, and has not been contested before me. But the District Munsif appears to be wrong in supposing that a suit in a Small Cause Court for rent would be unsustainable under the present law on the ground that there was no exchange of pattas and muchilikas. This was no doubt the rule under section 7 of Act VIII of 1865. But the Estates Land Act has altered the law on the subject. Section 53 of that Act lays down that "a landholder shall have no power to proceed against a ryot for the recovery of the rent by distraint and sale of his movable property or by sale of his holding . . . unless he shall have exchanged a patta and muchilika with such ryot," etc. But no such rule is enacted with respect to the recovery of the rent by a suit.

The District Munsif has overlooked another matter of importance in this case. The plaintiff as ijaradar comes within the definition of 'landholder' in section 3 (5) of the Estates Land Act, as the definition includes, "every person entitled to collect the rents of the whole or any portion of the estate by virtue of any transfer from the owner or his predecessor in title," and the word 'rent' is defined so as to include "any local tax, cess, fee or sum payable by a ryot as such in addition to the rent due in respect of land according to law or usage having the force of law, and also money recoverable under any enactment for the time being in force as if it was rent." Section 189 of the Act read with schedule A, article 8, puts the plaintiff out of a Small Cause Court with respect to the whole of his claim which is composed partly of cist and partly of cesses—all of which are comprehended within the definition of rent.

The plaint must therefore be returned for presentation to the proper Court.

I may observe that the District Munsif is also wrong in his view that article 13 of the schedule to the Provincial Small Cause

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Courts Act applies to a suit for land cess or village cess. This question has been fully dealt with recently by a Bench of this Court of which I was a member. See Second Appeal No. 680 of 1910.

In the result I set aside the decision of the lower Court and direct that the plaint be returned for presentation to the proper Court.

In C.R.P. Nos. 443 to 461 of 1910.

JUDGMENT.—For the reasons given in Civil Revision Petition No. 442 of 1910, the District Munsif had no jurisdiction to try these suits. The judgments of the Munsif are reversed and the plaints returned for presentation to the proper Court.

APPELLATE CIVIL.

Before Mr. Justice Abdur Rahim and Mr. Justice Sundara Ayyar.

SRI SRI SRI VIKRAMA DEO (MAHARAJAH OF
 JEYPORE), (PLAINTIFF), PETITIONER,

v.

RAGHUNATHA PATRO AND TWO OTHERS (DEFENDANTS),
 RESPONDENTS.*

Ganjam and Vizagapatam Agency Rules—Agent's order under sec. XVIII—Maintainability of petition to High Court under Rule XX—Interference of High Court in proper cases—Section 244, bar by, who can set up.

A petition lies to the High Court under Rule XX of the Ganjam and Vizagapatam Agency Rules, even though the Agent acted under Rule XVIII in dismissing an appeal.

Jagannadha v. Gopanna, [(1883) I.L.R., 16 Mad., 229], dissented from.

An order of the Agent summarily dismissing an appeal is a decree as it disposes of the rights of the parties, and under Rule XX the High Court may in a proper case (as here, where the Agent gives no reasons for dismissal) direct the Agent to review his judgment.

A person who was not a party to a previous suit cannot set up the effect of an order in execution in that suit as a bar to a suit against him.

Quære, whether, when Section 244, Civil Procedure Code, does not apply to Agency Tracts, the principle of that section applies.

* Civil Miscellaneous Petition No. 2479 of 1909.