

APPELLATE CIVIL.

*Before Mr. Justice Sundara Ayyar and Mr. Justice
Sadasiva Ayyar.*

SANKARARAMA IYER (DEFENDANT), PETITIONER,

v.

R. PADMANABHA IYER (PLAINTIFF), RESPONDENT.*

1912.
September
2 and 9.

Civil Procedure Code (Act V of 1908), sec. 24—Small cause suit instituted in a Subordinate Court—Transfer by the District Judge to a District Munsif's Court—Order directing trial as an original suit—Subsequent transfer by the District Judge to another District Munsif's Court—Decree by the latter—Appeal against such decree to the District Court—Transfer of appeal to the Subordinate Court—Decree on appeal by the Subordinate Court—Revision to the High Court—Appeal to the District Court incompetent—Decree of the Subordinate Court set aside as without jurisdiction—Provincial Small Causes Courts Act (IX of 1887), ss. 27, 32, 33 and 35—Small Cause Court—Court invested with powers of a Small Cause Court—Character of Court trying a small cause suit on transfer—Civil Procedure Code (Act V of 1908), ss. 7 and 24.

Where a suit, which was instituted as a small cause suit in a Subordinate Judge's Court, was transferred by the District Court to a District Munsif's Court for trial as an original suit, and was again transferred to another District Munsif's Court for trial and disposal;

Held, that the decree passed by the latter District Munsif's Court was the decree of a Court of Small Causes, and no appeal lay to the District Court against such decree.

A Court invested with the powers of a Court of Small Causes is a Court of Small Causes within the meaning of section 24 of the Code of Civil Procedure (Act V of 1908), though the suit was not transferred to such Court immediately from a Court of Small Causes.

PETITION under section 115, Civil Procedure Code (Act V of 1908), praying the High Court to revise the decree of A. S. BALASUBRAMANIAM, the acting Subordinate Judge of Tuticorin, in Appeal No. 156 of 1908, preferred against the decree of S. SUBBIAH SASTRIAR, the District Munsif of Tinnevely, in Original Suit No. 132 of 1907.

The plaintiff in this case originally instituted the present suit as a small cause suit on the file of the Subordinate Judge's

* Civil Revision Petition No. 686 of 1910.

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Court of Tuticorin. The District Court transferred the suit under section 24 of the Civil Procedure Code (Act V of 1908) to the District Munsif's Court of Srivaikuntam and directed by its order that the suit should be tried as an original suit. The said suit was again transferred by the District Court to the Court of the Additional District Munsif of Tinnevely for trial and disposal. The last-mentioned Court passed a decree dismissing the suit. The plaintiff preferred an appeal to the District Court against the said decree. The appeal was transferred to the Subordinate Judge's Court of Tinnevely for disposal. The respondent (defendant) took an objection that the appeal was not competent, as the decree was under section 24, clause (4) of the Civil Procedure Code (Act V of 1908), passed by a Court of Small Causes. The Subordinate Judge overruled the objection and reversed the decree of the District Munsif and passed a decree on the merits in favour of the plaintiff. The defendant preferred a Civil Revision Petition to the High Court under section 115 of the Code of Civil Procedure against the decree of the Subordinate Judge.

T. R. Ramachandra Ayyar for the petitioner.

S. Srinivasa Ayyar for the respondent.

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SUNDARA AYYAR, J.—The question for decision in this Civil Revision Petition is whether an appeal lay to the District Court of Tinnevely from the judgment of the Additional District Munsif of Tinnevely in Original Suit No. 132 of 1907. The Subordinate Judge to whom the appeal was transferred for disposal states that the suit was originally instituted in the Subordinate Judge's Court of Tuticorin as Small Cause Suit No. 1484 of 1906; from that Court it was transferred to the District Munsif's Court of Srivaikuntam. The order of transfer contained a direction that the suit should be tried as an original suit along with another suit. It was again transferred from the latter Court to the Additional District Munsif's Court of Tinnevely. The Additional District Munsif dismissed the suit and the plaintiff preferred an appeal to the District Court. A preliminary objection was taken before the Subordinate Judge that the appeal did not lie as the decision of the Additional District Munsif must be taken to have been that of a Small Cause Court. The Subordinate Judge overruled this objection. Now

section 24, clause (4) of the Civil Procedure Code, lays down : SANKARABAMA
 “The Court trying any suit transferred or withdrawn under this ^{v.} PADMANABHA.
 section from a Court of Small Causes shall, for the purposes of such
 suit, be deemed to be a Court of Small Causes.” The first clause
 of the section authorises the District Court to transfer the suit to
 any Court subordinate to it and competent to try or dispose of
 the same. That the District Munsif’s Court of Srivaikuntam and
 the Additional District Munsif’s Court of Tinnevely were both
 Courts competent to dispose of the suit cannot be doubted. The
 argument for the appellant is that by virtue of clause 4 of the
 section the decision of the Tinnevely Additional Munsif was the
 decision of a Court of Small Causes and consequently under
 section 27 of the Small Cause Courts Act no appeal lay from his
 decision. It is first argued for the respondent that the transfer
 to the Tinnevely Additional District Munsif’s Court was from
 the Srivaikuntam Court and that that Court was not a Court of
 Small Causes within the meaning of section 24 of the Civil
 Procedure Code and that the Tinnevely Munsif could not there-
 fore be said to have tried a suit transferred from a Court of
 Small Causes. It is no doubt the fact that the Srivaikuntam
 Munsif had not been invested with jurisdiction to try small cause
 suits of the value of this suit. But there are two answers to the
 respondent’s argument. One is that under clause 4 of section 24
 of the Civil Procedure Code the Srivaikuntam Court was a Small
 Cause Court with respect to this suit when it was transferred
 to it from the Subordinate Judge’s Court of Tuticorin. The
 argument that it would become a Small Cause Court only at and
 for the purpose of the trial cannot be upheld. If this contention
 be sound in what capacity could the Srivaikuntam Court pass
 orders in the suit before the trial? It cannot be said that it
 could do so except as the Court trying the suit. The other
 answer is that the clause does not say that the transfer should be
 immediately from a Court of Small Causes, and the suit while
 pending in the Additional District Munsif’s Court of Tinnevely
 may be said to have been one transferred from the Subordinate
 Judge’s Court of Tuticorin. The construction contended for by
 the respondent would be hardly in accordance with the object of
 clause 4 which is to provide for the trial as a Small Cause Court
 of suits which are transferred from Courts of Small Causes. All
 this is of course on the assumption that the Subordinate Court of

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Tinnevely which was invested with the powers of a Small Cause Court was a Court of Small Causes within the meaning of section 24 of the Civil Procedure Code. The most important contention of the respondent is that the Subordinate Judge's Court of Tinnevely cannot be regarded as a Court of Small Causes. It is of course not disputed that that Court was not a Small Cause Court constituted under the provisions of Act IX of 1887 by the authority competent to constitute Small Cause Courts under that Act. It was invested with small cause jurisdiction by the Government of Madras under section 28 of the Madras Civil Court's Act. The respondent argues that clause 4 directs to be deemed as Courts of Small Causes only Courts trying suits transferred from what are strictly Small Cause Courts and not from Courts invested with small cause jurisdiction. The point for decision is, can the Subordinate Judge's Court of Tuticorin be regarded as a Small Cause Court within the meaning of section 24 of the Civil Procedure Code. Mr. Srinivasa Ayyar who has argued the case ably and very fully for the respondent has drawn our attention to section 7 of the Civil Procedure Code and to Order L where the code speaks specifically of Courts invested with small cause jurisdiction along with Small Cause Courts and he argues that therefore section 24 when it speaks of Small Cause Courts cannot be taken to include Courts invested with small cause jurisdiction but not constituted as Small Cause Courts. Now there can be no doubt that one object of providing in section 24, clause 4, that a Court trying a suit transferred from a Small Cause Court shall be deemed a Small Cause Court is to make the decision of the Court final in the same manner as the decision of the Court from which the suit was transferred would be. The finality of the decisions of a Small Cause Court is enacted by section 27 of the Provincial Small Cause Court's Act. Section 24 of the Civil Procedure Code must clearly be read with the provisions of the Provincial Small Cause Court's Act. Now turning to the latter Act, section 32 extends to Courts invested with small cause jurisdiction various provisions applicable to Small Cause Courts, viz., the classes of suits over which jurisdiction is to be exercised, the exclusion of the jurisdiction of other Courts in those suits, the practice and procedure applicable to Small Cause Courts, and the finality of the decrees and orders passed by those Courts, etc. Section 35 of the Provincial Small Cause Courts

Act like section 7 of the Civil Procedure Code refers to cases where a Court of Small Causes or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to a case, and it makes provision as to which Court is to have jurisdiction in such cases. If the matter has stood here, there would be very much force in the respondent's objection that the mere investiture of a Court with Small Cause powers would not make it a Small Cause Court. But section 33 provides that "a Court invested with the jurisdiction of a Court of Small Causes, with respect to the exercise of that jurisdiction, and the same Court, with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act, and the Code of Civil Procedure, be deemed to be different Courts." It is difficult to give a proper meaning to this section except by interpreting it as laying down that a Court, invested with small cause jurisdiction becomes for the purpose of its cognisance of suits which it is competent to try as small cause suits, a Small Cause Court. This is clear from the expression "for the purposes of this Act and the Code of Civil Procedure." What can be the meaning of saying that a Court invested with small cause jurisdiction is different from itself trying regular suits for the purposes of the Small Cause Courts Act except that it is to be regarded as a Small Cause Court? The Civil Procedure Code makes certain sections of the Code not applicable to Small Cause Courts. The reference to the Civil Procedure Code is evidently to make the excepted sections of the Civil Procedure Code inapplicable to Courts invested with small cause jurisdiction. The respondent's vakil was invited to mention any object that this section could have in view if it was not to make Courts invested with small cause jurisdiction Small Cause Courts. He was not able to make any suggestion that we could accept. It is true that section 32 would, strictly speaking, be unnecessary on this interpretation of section 33 and the reference to Courts invested with small cause jurisdiction in section 35 might also be said to be unnecessary. But apparently the Legislature considered it better to mention specifically Courts invested with small cause jurisdiction in section 35 and to provide expressly in section 32 for the rules of procedure and finality of decisions and the other provisions of that section.

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applying to Courts invested with small cause jurisdiction. At any rate it seems to me impossible to give due effect to section 33 unless it is regarded as making Courts invested with small cause jurisdiction Small Cause Courts. On this construction of section 33 there can be no doubt that the Subordinate Judge's Court of Tuticorin in exercising small cause jurisdiction must be regarded as a Small Cause Court. So far as the reason for the rule laid down in section 24 is concerned, there is no ground for distinction between a transfer from a Court of Small Causes and a Court invested with small cause jurisdiction. The decisions of both classes of Courts are final. The object of clause 4 of section 24 is to give finality also to the decision of the Court to which the suit is transferred. Section 24 admittedly has the effect of giving the finality of a Small Cause Court judgment to decisions of Courts not constituted Small Cause Courts. If this could be done with respect to suits transferred from Small Cause Courts it is difficult to see why it should not be done also with respect to those transferred from Courts invested with small cause powers. It may be as pointed out in *Dulal Chandra Deb v. Ram Narain Deb*(1), a grave thing to take away the right of appeal where the Legislature has not considered the desirability of investing any particular Court with small cause jurisdiction but the gravity applies equally to cases where the transfer is from Small Cause Courts. Rightly or wrongly the Legislature has thought it proper to give finality to the decisions not only of Small Cause Courts and Courts invested with small cause jurisdiction but to the decisions of a third class of Courts, viz., of Courts to which a suit of small cause nature is transferred in certain cases. The exact scope of such cases is immaterial in considering the gravity of what is done by the Legislature. *Dulal Chandra Deb v. Ram Narain Deb*(1) no doubt contains a strong dictum in respondent's favour. The exact point in the case was whether when a Munsif having small cause jurisdiction was succeeded by one having no jurisdiction an appeal would lie from the decision of the latter who tried the suit on the regular side. There can be no doubt that section 24 would have no application to such a case and an appeal would lie. *Ramchandra v. Ganesh* (2) is undoubtedly in respondent's favour. But although

(1) (1904) I.L.R., 31 Cal., 1057.

(2) (1899) I.L.R., 23 Bom., 382.

sections 32 and 35 are commented on in that judgment no reference is made to section 33. It may be observed that *Dulal Chandra Deb v. Ram Narain Deb*(1) also makes no reference to that section. *Mangal Sen v. Rup Chand*(2) which followed an earlier Allahabad decision is on the other hand in appellant's favour. These are really the only decisions in point. In *Bhagvan Dayalji v. Balu*(3), WEST, J., observed that a Court exercising small cause jurisdiction by special investiture of powers and the same Court exercising its ordinary original jurisdiction may be regarded as two different Courts. *Akshay Kumar Shaha v. Hira Ram Dosa*(4) cited for the appellant is not really in point as the learned Judges there decided the case on a consideration of section 32 of the Act only. The view adopted by the Allahabad Court appears to be the right one. Another question arises for decision in consequence of the order of the District Court transferring the suit from the Subordinate Judge's Court of Tuticorin to the Srivaikuntam Court directing the latter Court to try it as an original suit. Having regard to section 24 of the Civil Procedure Code it had apparently no power to do so. It was suggested during the arguments that the order of transfer should therefore be regarded as wholly void. But this does not appear to be the correct view to be taken. The District Judge in making the direction must be taken to have acted in excess of his jurisdiction. He had power to transfer the suit ; but he had no jurisdiction in doing so to order that the suit should be tried on the regular side contrary to the provision in section 24 of the Civil Procedure Code that the Court trying a suit transferred from the Small Cause Court shall be deemed to be a Small Cause Court. The direction to try it as a regular suit must be regarded as invalid but it does not affect the order of transfer itself. See Bailey on Jurisdiction, volume I, section 29. The decision of the Additional Munsif was therefore that of a Small Cause Court under section 24 of the Civil Procedure Code and no appeal lay to the Subordinate Judge's Court. The decree of the Subordinate Judge therefore must be reversed and that of the Additional District Munsif restored with costs here and in the Appellate Court.

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(1) (1904) I.L.R., 31 Cal., 1057.

(2) (1891) I.L.R., 13 All., 324.

(3) (1884) I.L.R., 8 Bom., 230.

(4) (1903) I.L.R., 35 Cal., 677.

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SADASIVA AYYAR, J.—Mr. Srinivasa Ayyar who argued the respondent's case with great learning, acuteness and fairness has brought forward all the available arguments and the two propositions enunciated by him are (a) that a Court trying a suit transferred not from a Court of Small Causes in the technical sense but from a Subordinate Judge's Court merely invested with small cause powers is not itself a Small Cause Court whose decision is not subject to appeal, (b) that even if the District Munsif Court of Srivaikuntam to which the suit was transferred be a Small Cause Court, the Tinnevely Additional District Munsif's Court, to which there was a further transfer and which actually tried the suit was not a Court of Small Causes. I am clear after hearing the whole matter elaborately discussed that the Legislature intended to take care that a suit originally and properly instituted as a small cause suit should not lose that nature even if it be tried by another Court afterwards by reason of transfer proceedings. When section 33 of the Provincial Small Cause Courts Act says that a Court invested with small cause jurisdiction shall be a different Court from itself when it is exercising its ordinary civil jurisdiction it could only mean that such Court shall be deemed to be a Small Cause Court different from an ordinary Civil Court. The observations in *Dulal Chandra Deb v. Ram Narain Deb*(1) and *Ramchandra v. Ganesh*(2) ignore this section 33 and the effect of these decisions is rather to criticise the policy of the Legislature found in section 24, clause 4 of the Civil Procedure Code, than to follow its plain provisions as is done in *Mangal Sen v. Rup Chand*(3). As regards the argument that the trying Court did not get its jurisdiction by an immediate transfer from the Court in which the suit was originally instituted as a small cause suit, section 24, clause 4, does not say that the Court trying any suit transferred or withdrawn from a Court of Small Causes and which shall be deemed therefore to be a Small Cause Court should also be a Court to which the transfer had been made immediately from the Small Cause Court in which the suit was originally instituted. This contention therefore also fails. The appeal was therefore heard by the Subordinate Judge without

(1) (1904) I.L.R., 31 Cal., 1057.

(2) (1899) I.L.R., 23 Bom., 382.

(3) (1881) I.L.R., 13 All., 324.

jurisdiction and his decree must be reversed and that of the SANKARABAMA
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*Before Mr. Justice Sundara Ayyar and Mr. Justice
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APPELLANTS,

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v.

M. SANYASI AND THREE OTHERS (DEFENDANTS),
RESPONDENTS.*

*Madras Estates Land Act (I of 1908)—Inamdar and ryot—Suit for rent in a
Revenue Court—Revenue Court, jurisdiction of—Landholder under section 3,
clause (5)—Estate—Section 3, clauses (2) (d) and (e)—Section 189 and
schedule A, No. 8—"Landholders" wider than "owner of an estate."*

An inamdar of a portion of a village, where the inam consists only of some of the lands in a village granted by a Zamindar after the permanent settlement, is a landholder under section 3, clause (5) of the Madras Estates Land Act, though the inam may not be an estate under section 3, clauses (2) (d) and (e) of the said Act.

A suit brought by such an inamdar for arrears of rent against a ryot is cognisable by a Revenue Court under the said Act.

The test which is decisive on the question of jurisdiction is whether the plaintiffs are landholders under the Act.

The term "landholder" is wider than the expression "the owner of an estate," and includes every person entitled to collect the rents of any portion of an estate by virtue of any transfer.

SECOND APPEAL against the decree and judgment of A. L. HANNAY, the District Judge of Vizagapatam, in Appeal No. 272 of 1910, presented against the order of P. C. DUTT, the Sub-Collector of Parvatipuram in J. Dis. No. 679 of 1910.

The plaintiffs brought this suit in the Court of the Sub-Collector of Parvatipuram for arrears of rent against the defendants who were the ryots of the suit lands. The plaintiffs claimed to be the inamdars of the suit lands which were admitted to be a *darimilla* inam, *i.e.*, an inam subsequent to the permanent

* Second Appeal No. 1218 of 1911