

This REFERENCE coming on for hearing the Court expressed the following

OPINION.—We think that this suit is not excluded from the jurisdiction of the Small Cause Court under section 19 (s) of the Presidency Small Cause Courts Act as a suit for a declaratory decree. Their Lordships of the Judicial Committee have recently pointed out in *Phul Kumari v. Ghanshyam Misra*(1) that the statutory suit to establish his right given to the unsuccessful party in claim proceedings under the Code involves in every case a prayer for the setting aside of a summary order of a Civil Court. This being so, such a suit cannot in our opinion be regarded as a suit for a mere declaration. The Small Cause Court Rules reproduce the provisions of the Code as to claim petitions, and cases under them must be governed by the same considerations. We may further observe that our decision is in accordance with the well established practice under which suits of this nature arising out of orders made by the Presidency Small Cause Court have always been brought in that Court and not in the High Court or the City Civil Court.

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RAMAMMAL  
v.  
NARAYANA  
SAMY  
NAICKER.  
—  
WALLIS, C.J.,  
AYLING, AND  
SADASIVA  
AYYAR, JJ.

## APPELLATE CIVIL—FULL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Seshagiri Ayyar and Mr. Justice Kumaraswami Sastriyar.*

R. SRINIVASA IYENGAR (PETITIONER), APPELLANT,

v.

S. K. M. R. M. RAMASWAMI CHETTIAR BY AGENT

SOMASUNDARAM CHETTIAR (RESPONDENT), RESPONDENT.\*

1913.  
October 23  
and 1915,  
March 3, 22  
and 26.

*Letters Patent (Madras), sec. 15—"Judgment"—Provincial Small Cause Courts Act (IX of 1887), sec. 25, order of a single Judge rejecting a revision petition under—Appealability.*

29 OCT 1913

The order of a single Judge of the High Court rejecting a petition to send for the records and to revise the judgment of the lower Court exercising Small Cause Court jurisdiction is a "judgment" within the meaning of section 15 of the Letters Patent and is therefore appealable; it is immaterial whether before such refusal, the records were called for or notice issued to the other side.

*Chappan v. Moidin Kutti* (1899) I.L.R., 22 Mad., 88 (F.B.) and *Tuljaram Row v. Alagappa Chettiar* (1912) I.L.R., 35 Mad., 1 (F.B.), followed.

*Venkatarama Ayyar v. Madalai Ammal* (1900) I.L.R., 23 Mad., 169 and *Puthukudi Abin v. Puvakka Kunhikutti* (1904) I.L.R., 27 Mad., 340, overruled.

(1) (1908) I.L.R., 35 Calc., 202 at p. 205 (P.C.).

\* Letters Patent Appeal No. 152 of 1913.

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\*  
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In matters of discretion such as this, the Court will not ordinarily interfere on appeal though it has jurisdiction to do so.

*Golding v. Wharton Sait Works Company* (1876) 1 Q.B.D. 374, followed.

APPEAL under clause 15 of the Letters Patent against the judgment of MILLER, J., who dismissed on 23rd October 1913 under Order XLI, rule 11, Civil Procedure Code, Civil Revision Petition No. 110 of 1913 (*Srinivasa Iyengar v. Ramaswami Chettiar*).\*

The facts of this case are clearly set out in the Order of Reference to the Full Bench.

*S. T. Srinivasagopalachariar* for the appellaut.

*G. S. Ramachandra Ayyar* for the respondent.

SESHAGIRI  
AYYAR AND  
NAPIER, JJ.

This Letters Patent Appeal came on for hearing before SESHAGIRI AYYAR and NAPIER, JJ., who made the following ORDER OF REFERENCE TO THE FULL BENCH. This ORDER was delivered by

SESHAGIRI AYYAR, J.—In this case Mr. Justice MILLER sitting in the Admission Court rejected the petition filed by the petitioner to revise the order of the Subordinate Judge exercising Small Cause Court jurisdiction. The question for consideration is whether the said order of the learned Judge is a *judgment* within the meaning of section 15 of the Letters Patent. On the principle of *stare decisis*, I am inclined to the view that it is a judgment: but as my learned brother takes the contrary view, it is desirable that the question should be referred for the decision of a Full Bench. The point on which the opinion is requested is “whether the order of a single Judge of the High Court rejecting a petition to send for the records and to revise the judgment of the lower Court exercising Small Cause Court jurisdiction is a judgment within the meaning of section 15 of the Letters Patent.”

*S. T. Srinivasagopalachariar* for the appellant.

The question is whether a judgment of a single Judge dismissing a Civil Revision Petition is a “judgment” within the meaning of section 15 of the Letters Patent.

[WALLIS, C.J.—Is not that question settled?]

I submit that it is settled by the decision in *Tuljaram Row v. Alagappa Chettiar* (1).

\* Civil Revision Petition under section 25 of Provincial Small Cause Courts Act (IX of 1887) praying the High Court to revise the decree of A. S. BALASUBRAMANIAM AYYAR, the Subordinate Judge of Kumbakonam, in Small Cause Suit No. 1922 of 1912. This Civil Revision Petition was dismissed by MILLER, J.

(1) (1912) I.L.R., 35 Mad., 1 (F.B.).

[WALLIS, C.J.—What is the nature of the order that is the subject matter of the Letters Patent Appeal?]

It is a “discretionary order” but that has nothing to do with the question which your Lordships are called upon to decide.

[WALLIS, C.J.—In *Tuljaram Row v. Alagappa Chettiar*(1) don't the learned Judges say that even interlocutory orders are “judgments”? Would an order refusing “Interrogatories” be a judgment? I want to know the principle.]

If the effect of the order is to shut out evidence, then the order would be a “Judgment.”

[WALLIS, C.J.—But refusal to order “Interrogatories” does not shut out evidence—On what principle do the learned Judges base their decision in *Tuljaram Row v. Alagappa Chettiar*(1)?]

Refers to page 13. KRISHNASWAMI AYYAR, J., agrees with the Chief Justice absolutely. There are some earlier cases such as 3 Madras referred to in the Full Bench judgment.

[WALLIS, C.J.—We had better hear the other side. Naturally we don't want to differ from what has been laid down in *Tuljaram Row v. Alagappa Chettiar*(1). Consistently with this judgment can we hold that in the present case there is no “judgment”?]

G. S. Ramachandra Ayyar for the respondent.

I submit your Lordships can. Under section 25 the High Court may call for the records and then revise them. In this case the Court refused to call for the records. There was no hearing on the merits. I submit this is not a judgment.

The latest cases are *Puthukudi Abdu v. Puvakka Kunhikutti*(2), *Chinnasami Mudali v. Arumuga Goundan*(3), and *Venkatarama Ayyar v. Madalai Ammal*(4). *Puthukudi Abdu v. Puvakka Kunhikutti*(2), was a case like the present one. The petition was dismissed when it came on for admission, in *Venkatarama Ayyar v. Madalai Ammal*(4). In *Chinnasami Mudali v. Arumuga Goundan*(3), the petition was dismissed after notice. The Full Bench Case *Tuljaram Row v. Alagappa Chettiar*(1) does not notice *Puthukudi Abdu v. Puvakka Kunhikutti*(2). Further that case does not hold that a refusal to call for the records is a

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(1) (1912) I.L.R., 35 Mad., 1 (F.B.).

(2) (1904) I.L.R., 27 Mad., 340.

(3) (1904) I.L.R., 27 Mad., 432.

(4) (1900) I.L.R., 23 Mad., 169.

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judgment. It can refer only to a case where there is a dismissal after notice.

[KUMARASWAMI SASTRIYAR, J.—How does the discretion exercised in the two cases differ? In the one case the learned Judge wants some more information before dismissing the revision petition, that is all. Logically there is no difference.]

[WALLIS, C.J.—We are quite clear on the question that hearing the case in a “discretionary” way, has nothing to do with appealability.]

*S. T. Srinivasagopalachariar* in reply.—I submit that a mere refusal to call for the records is a judgment.

[WALLIS, C.J.—Is it by right or by sufferance that you appear in a Civil Revision?]

So long as there is section 25, it is by *right* that I appear.

[WALLIS, C.J.—I think you may take it that the party has a *right* to ask the Court to take the matter up in revision. You say it is settled that an order of dismissal *under section 622* (present section 115) is a judgment within section 13 which brings it within section 15 of the Letters Patent.]

Yes. See *Chappan v. Moidin Kutti*(1).

[SESHAGIRI AYYAR, J.—What do you say to *Venkatarama Ayyar v. Madalai Annal*(2).

I submit it cannot prevail in the face of the latest Full Bench Ruling in *Tuljaram Row v. Alagappa Chettiar*(3).

This Letters Patent Appeal coming on for hearing the Court expressed the following OPINION. This opinion was delivered by

WALLIS, C.J.,  
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SWAMI  
SASTRIYAR,  
JJ

SESHAGIRI AYYAR, J.—We are bound by the decision of the majority of the Full Bench of five Judges in *Chappan v. Moidin Kutti*(1) to hold that in disposing of an application to exercise the High Court’s revisional jurisdiction over a Court subordinate to it a single Judge acts in the exercise of the appellate jurisdiction of the Court within the meaning of section 13 of the High Courts Act, and consequently that, if his order of disposal amounts to a judgment, an appeal lies from it under clause 15 of the Letters Patent.

We also think that we are bound by the decision of the Full Bench in *Tuljaram Row v. Alagappa Chettiar*(3), to hold that such order is a judgment even when the Judge merely declines

(1) (1899) I.L.R., 22 Mad., 68 (F.B.). (2) (1900) I.L.R., 23 Mad., 169.

(3) (1912) I.L.R., 35 Mad., 1 (F.B.).

to interfere in revision, and that it is immaterial whether before such refusal the records were called for or notice issued to the other side. The decisions in *Venkatarama Ayyar v. Madalai Ammal*(1) and *Puthukudi Abdu v. Puvakka Kunhikutti*(2) must therefore in our opinion be treated as overruled.

At the same time we think it right to say that in matters of discretion such as this, the Court will not ordinarily interfere on appeal though it has jurisdiction to do so. This is the practice of the Court of Appeal in England, (see Annual Practice, 1915, page 1911, citing *Golding v. Wharton Salt Works Company*(3), and other cases) and should, we think, be followed here.

C.M.N.

SRINIVASA  
IYENGAR  
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WALLIS, C.J.,  
SESHAGIRI  
AIYAR AND  
KUMARA  
SWAMI  
SANTRIVAR,  
J.J.

## APPELLATE CIVIL—FULL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Sadasiva Ayyar and Mr. Justice Srinivasa Ayyangar.*

NARAYANASWAMY AIYAR (PLAINTIFF) APPELLANT,

v.

D. VENKATARAMANA AIYAR AND ANOTHER (DEFENDANTS),  
RESPONDENTS.\*

1915.  
March 25,  
April 9,  
August 2, 3  
and 4.

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*Madras Estates Land Act (I of 1908), ss. 189, 213, 134, 91 and 77—Ryotwari land-owner—Illegal distraint—Suit for damages—Jurisdiction Revenue Court—(Madras) Rent Recovery Act (VIII of 1865), ss. 49 and 78.*

A suit by the tenant of a ryotwari land-owner or of any sub-tenant of such for damages for illegal distraint of moveable property, growing crops of the produce of land or trees in a defaulter's holding is solely cognizable by the Revenue Court.

*Per* WALLIS, C.J.—Sub-sections 2 and 3 of section 213 of the Madras Estates Land Act are in the nature of provisos and it would not be legitimate to cut down the operative portion of section 189 to which these provisos do not in terms apply merely because otherwise, the provisos would be “meaningless and even senseless.”

*West Derby Union v. Metropolitan Life Assurance Society* (1897) A.C. 647, referred to.

Sub-sections 2 and 3 which were drafted in place of sections 49 and 78 of the Rent Recovery Act were probably retained by inadvertence after the jurisdiction of the Civil Court had been taken away by section 189 in its present form.

*Obiter.*—Suits under section 91 of the Madras Estates Land Act are exclusively within the jurisdiction of the Civil Court.

(1) (1900) I.L.R., 23 Mad., 169.

(2) (1904) I.L.R., 27 Mad., 340.

(3) (1876) 1 Q.B.D., 374.

\* Second Appeal No. 1098 of 1914.