

also have let in evidence as to how they arrived at the figure Rs. 2-9-3 and what the real price was of molasses at Java and what, with the freight and reasonable commission to importers the cost per cwt. would have come to when delivered at Madras. I therefore agree with my Lord that under the circumstances Rs. 5,000 must be taken as a reasonable amount to be awarded to the plaintiff as damages in this case.

I would in the result allow the appeal to the extent of this amount of Rs. 5,000 minus Rs. 100, nominal damages allowed under this head by the learned trial Judge with the costs of the appeal. The memorandum of objections is dismissed with costs

Short and Bewes & Co., Solicitors for Appellants.

King and Partridge, Solicitors for Respondents.

K.R.

HAJEE
ISMAIL AND
SONS

v
WILSON &
Co.

SADASIVA
AYYAR, J.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Sadasiva Ayyar.

1918,
February, 1.

P. NARAYANAN NAIR AND FIVE OTHERS (DEFENDANTS, NOS. 1, 2
AND 4 TO 7), PETITIONERS,

v.

A. P. M. CHERIA KATHIRI KUTTY (PLAINTIFF),
RESPONDENT.*

Madras Civil Courts Act (III of 1873), sec. 14—Court Fees Act (VII of 1887), sec. 7 (v) and (vi)—Suit for pre-emption—Valuation of suit for purposes of jurisdiction—Suit originally filed in District Munsif's Court—Return of plaint as beyond its jurisdiction—Presentation of plaint in a Subordinate Judge's Court—Plaint again returned by latter Court—Appeal to District Court against order of District Munsif, whether competent—Election of remedies—Civil Procedure Code, O. 43, r. 1.

The plaintiff instituted the suit in a District Munsif's Court to enforce his right of pre-emption in respect of the suit lands which had been mortgaged to him on otti for Rs. 3,190, and were sold to some of the defendants for Rs. 4,500. The District Munsif returned the plaint for presentation to the proper Court, holding that the suit was beyond his pecuniary jurisdiction. On the plaint being presented in a Subordinate Judge's Court, it was returned again by that Court which held that the former Court had jurisdiction. The plaintiff, thereupon,

* Civil Revision Petition No. 519 of 1917.

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preferred an appeal to the District Court against the order of the District Munsif. The defendants raised a preliminary objection that the appeal was incompetent and also contended that the District Munsif had no jurisdiction to entertain the suit.

Held, that the appeal to the District Court was maintainable, although the plaintiff had filed the plaint in the Subordinate Judge's Court in pursuance of the order of the District Munsif ;

Held also, that the proper valuation of a suit for pre-emption is, for purposes of jurisdiction, in accordance with section 14 of the Madras Civil Courts Act that fixed in the manner provided by the Court Fees Act, section 7 (v) ; and that, so valued, the present suit was within the jurisdiction of the District Munsif's Court.

PETITION under section 115 of the Code of Civil Procedure (Act V of 1908) praying the High Court to revise the order of H. D. C. REILLY, the District Judge of North Malabar in Civil Miscellaneous Appeal No. 4 of 1917, preferred against the order of R. RARU NAYAR, the additional District Munsif of Tellicherry in Original Suit No. 36 of 1916.

The plaintiff, an ottidar, sued in the District Munsif's Court of Tellicherry to enforce his right of pre-emption to the suit lands, alleging in the plaint that the jenmis, defendants Nos. 3 to 7, had sold their jenmam right in the lands to the second defendant on behalf of the first defendant without giving him an opportunity of exercising his right of pre-emption. The jenmam right was said to have been sold for Rs. 4,500, and the otti in favour of the plaintiff was for Rs. 3,190. The plaintiff contended that the sale to the first and second defendants in derogation of his right of pre-emption on account of his otti right was invalid as against him and prayed in the plaint that the first and second defendants should surrender to the plaintiff the jenm right and that the plaintiff should be allowed to pay either to the first or second defendant the balance after deducting the *otti amount* from the price of the jenm right aforesaid. The assessment of the lands was given in the plaint as Rs. 8-4-0 per annum. The defendant pleaded, *inter alia*, that the suit was beyond the pecuniary limits of the jurisdiction of the District Munsif's Court. The District Munsif accepted the plea and returned the plaint for presentation to the proper Court. The plaintiff accordingly presented the plaint in the Temporary Subordinate Judge's Court of North Malabar. But the Subordinate Judge returned the plaint on the ground that it should have been filed in the

District Munsif's Court. Plaintiff then appealed to the District Court against the order of the District Munsif. On appeal to the District Court, the defendants raised a preliminary objection that the appeal was incompetent as the plaintiff had elected to obey the order of the District Munsif and chosen one of the alternative remedies by filing the plaint in the Subordinate Judge's Court. They also contended that the suit was beyond the jurisdiction of the District Munsif. The District Judge overruled the preliminary objection and also held that the District Munsif had jurisdiction on the ground that the value of the suit was the net value of the property, viz., the balance of the jenm price after deducting the otti amount. The defendants preferred this Civil Revision Petition to the High Court.

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K. P. M. Menon for the appellants.

P. Appu Nair for *C. Madhavan Nair* for the respondent.

The following JUDGMENT of the Court was delivered by

OLDFIELD, J.—The plaintiff, respondent, first filed his plaint in the District Munsif's Court. When it was returned he filed it in the Subordinate Court and it was returned again. He appealed to the lower Appellate Court against the order of return by the District Munsif and the first question is whether by electing to file his plaint in the Subordinate Court he forfeited his right of appeal. It has been held that he could do so in *Bend Madhub Das v. Jotendra Mohan Tagore* (1). But that decision was doubted in *Backunta Nath Dey v. Nawab Salimulla Bahadur* (2) and was dissented from by one of us and another learned Judge of this Court in *Chidambaram Chetty v. Karuppan Chetty* (3). We do not find in Order XII or XIII of the Civil Procedure Code any recognition of the principle that any such election as may have taken place in the case before us affects the right of appeal. We therefore hold that an appeal lay to the lower Appellate Court. On the merits the question is whether a suit to enforce a right of pre-emption should be valued for the purpose of jurisdiction with reference to the gross value of the property or otherwise, the lower Appellate Court having held that it should be valued with reference to the net value after the amount of encumbrances on it has been deducted. Under section 3 (1), Suits

(1) (1907) 5 C.L.J., 580.

(2) (1907) 6 C.L.J. 547 ; at p. 556.

(3) Appeal against Order No. 403 of 1914.

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—
OLDFIELD, J.

Valuation Act (VII of 1887), Local Governments are empowered to make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court Fees Act, section 7 (vi) and suits such as that before us are so mentioned. Under section 6 when such rules are made section 14 in Madras Civil Courts (Act III of 1873) is to be deemed repealed. Section 14, no doubt refers to the subject matter of suits for land, etc., but it is not in our opinion possible to accept the argument that subject-matter includes only immediate rights to possession and not such rights relating to land as pre-emption when the contrary is indicated clearly by the last mentioned provision of the Suits Valuation Act. We therefore hold that the proper valuation is in accordance with section 14 of the Madras Civil Courts Act that fixed in the manner provided by the Court Fees Act, section 7 (v). It is not disputed that so valued the suit will be within the District Munsif's jurisdiction. We therefore agree with the District Judge's decision and dismiss the petition with costs.

K. R.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Sadasiva Ayyar.

B. RAJACHARI (DEFENDANT-PETITIONER), APPELLANT,

v.

TIRUMUGOOR DEVASTANAM, REPRESENTED BY ITS MANAGER
VENGU NAYUDU (PLAINTIFF-RESPONDENT), RESPONDENT.*

Estates Land Act (Madras Act I of 1908), ss. 3 (2) (d) and 8—One of several inamdars, acquiring the entire kudivaram right in an inam village—Lease of lands by such inamdar—Suit for rent in Civil Court—Jurisdiction of Civil or Revenue Court—Exception to section 8, applicability of, to clause 1 or 2 of section 8—Strict construction, necessity for.

Where one of several *inamdars* in an *inam* village, having acquired by gift the *kudivaram* right in the whole village and leased 50 cents of land out of the whole village, sued to recover rent in a Civil Court on the basis of the lease.

Held, that the Civil Court had no jurisdiction to entertain the suit, and that the plaint should be returned for presentation to a Revenue Court having jurisdiction.

* Letters Patent Appeal No. 156 of 1917.