

## APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Krishnan.

W. KRISHNAMACHARI (DEFENDANT), PETITIONER,

1920,  
July 21.

v.

W. KOMALAMMAL (PLAINTIFF), RESPONDENT.\*

*Presidency Small Cause Courts Act (XV of 1882), sec. 19 (g)—Suit for stones of a well or their value—Title to the well questioned—Jurisdiction of the Small Cause Court.*

A suit to recover stones forming part of a well and said to have been wrongfully removed by the defendant, or their value is cognisable by the Presidency Small Causes Court, in spite of the fact that it is necessary to determine the question of title to the well.

*Puitangowda v. Nilkanth Kalo Deshpande* (1913) I.L.R., 37 Bom., 675 (F.B.), followed. *Tirupati Raju v. Fissam Raju* (1897) I.L.R., 20 Mad., 155, considered and distinguished.

PETITION under section 115 of Act V of 1908 and section 107 of the Government of India Act for revising the order of the Full Bench of the Presidency Small Cause Court at Madras in Full Bench Application 156 of 1919 in Small Cause Suit No. 7801 of 1919.

The necessary facts are given in the Judgment.

The defendant preferred this Revision Petition to the High Court.

*P. Duraiswami Ayyangar* and *S. Rangaswami Ayyangar* for petitioner.

*K. Raja Ayyar* for respondent.

The JUDGMENT of the Court was delivered by

AYLING, J.—The question for our decision is whether the AYLING, J. Small Cause Court had jurisdiction to dispose of this case or whether it falls under clause (g) of section 19, Presidency Small Cause Courts Act (XV of 1882).

We agree with the learned Judges of the Small Cause Court that it does not. The suit as framed is certainly not one for the determination of a right or interest in immoveable property, but simply to recover certain stones forming part of a well and

\* Civil Revision Petition No. 1094 of 1919.

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said to have been wrongfully removed, or to recover their value. Defendant claimed title in the well and the land in which it was situate, and it was doubtless necessary to determine this question of title in order to dispose of the suit. But we do not think this affects the character of the suit or brings it within the scope of section 19 (g)—vide the decision of a Full Bench of the Bombay High Court, *Puttangowda v. Nilkanth Kalo Deshpande*(1).

We have been referred to a case of this Court: *Tirupati Raju v. Vissam Raju*(2). The suit was of a totally different nature and appellant relies simply on a single phrase of the Judgment, in which the learned Judges speak of the suit as involving 'not incidentally but necessarily' the determination of a title to land and as consequently falling under article 11 of Schedule II of the Provincial Small Cause Courts Act, which corresponds to section 19 (g). With all respect we have great difficulty in understanding the distinction suggested: unless the disposal of a suit necessarily involves the determination of a title, it is difficult to see why the title should be determined at all. But whatever may have been the meaning of the learned Judges, the practice and the current of decisions in Madras have been consistent with *Puttangowda v. Nilkanth Kalo Deshpande*(1), and we need only refer to three decisions of this Court: *Chintala Ragava Reddi v. Chintala Krishna Reddi*(3), *Vema Rangiah Chetty v. Vajravelu Mudaliar*(4) and *In re Venkatarama Chetty*(5).

We consider that the Small Cause Court had jurisdiction and we dismiss this petition with costs.

N. R.

(1) (1913) I.L.R., 37 Bom., 675 (F.B.). (2) (1897) I.L.R., 20 Mad., 155.

(3) (1912) 16 I.C., 201.

(4) (1917) 40 I.C., 655.

(5) (1918) 7 L.W., 610.