APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

SRI SRI SRI VARADARAJA SOORU HARISCHENDRA DEO BAHADUR, ZAMINDAR OF TARLA (PLAINTIFF), APPELLANT,

1920, January 27.

v.

KANDA BARIKIVADU (DEFENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), sec. 102—Second Appeal—Suit of a nature cognizable by a Small Cause Court, meaning of—Suit by a landholder for rent under the Madras Estates Land Act (I of 1908), ss. 77 and 189—Second Appeal in such suits, whether competent—Provincial Small Cause Courts Act (IX of 1887), sec. 15.

A suit by a landholder for rent under the Madras Estates Land Act is cognizable only by a Revenue, and not by a Civil, Court; and such a suit is therefore not of a *nature* cognizable by a Court of Small Causes within the terms of section 102, Civil Procedure Code, and consequently a Second Appeal in such a suit is not barred by that section.

Soundaram Ayyar v. *Sennia Naicken* (1900) I.L.R., 23 Mad., 547 (F.B.), applied.

SECOND APPEAL against the decree of A. J. CURGENVEN, the District Judge of Ganjām at Berhampur, in Appeal Suit No. 383 of 1918, preferred against the decree of N. RANGANADHA ACHARYA, the Suits Deputy Collector of Chicacole, in Suit No. 320 of 1916.

The material facts are set out in the judgment of SADASIVA AYYAR, J.

S. Varadachariyar and *K. Satyanarayanamurti* for appellant.

B. Jagannadha Doss for respondent.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—A preliminary objection has been raised in this case, namely, that no Second Appeal lies having regard to section 102 of the Code of Civil Procedure. To understand this objection I shall state the material facts. The plaintiff, who is the appellant before us, is the proprietor of Tarla estate and a landholder under the Madras Estates Land Act The defendant is the holder of about two acres of wet land called

* Second Appeal No. 550 of 1920.

ZAMINDAR OF TARLA v. KANDA BARIKIVADU.

SADASIVA AYYAR, J.

"Kheta Jiaryati Kotwal land" in some places in some of the muchilkas, Exhibits A and B series, but it is treated as jirayati or ordinary ryoti land in fixing and charging assessment thereon. That it has been treated as ordinary jirayati land from about 1906 by both the zamindar and by the defendant's father who was then a tenant cannot be denied. The proprietor seems to have made a reference to the land as "Kheta Kotwal," that is, as once having been held on service tenure with some object which it is not necessary to find out definitely for the purpose of this case. As I said, the fact that the land had been converted into ryoti land with the consent and knowledge of both the landlord and tenant cannot, in my opinion, be disputed on the evidence. The present suit was brought by the plaintiff for the recovery of arrears of rent for four faslis preceding the institution of the suit. The defence was that the land continued to be service inam and that no rent was payable. The preliminary objection is to the effect that as this suit for rent is, in the words of section 102, Civil Procedure Code, 'a suit of the nature cognizable by Courts of Small Causes' and as the amount or value of the subject matter is less than Rs. 500, no Second Appeal lies, though the suit was instituted in the Revenue Court and though by section 189 (Madras Estates Land Act) suits for rent brought by landholders under the Act against their tenants are expressly excluded from the jurisdiction of Civil Courts (which expression includes Small Cause Courts and Civil Courts exercising small cause jurisdiction). To find out whether a suit for rent between a landlord and a ryot falling under the Madras Estates Land Act is or is not of a nature cognizable by Small Cause Courts we have to consider the provisions of the Provincial Small Causes Courts Act (IX of 1887). Section 15 of that Act is as follows:

"(1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

"(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force all suits of a civil nature of which the value does not exceed Rs. 500 shall be cognizable by a Court of Small Causes.

"(3) Subject as aforesaid the Local Government may by order in writing direct that all suits of civil nature of which the value

does not exceed Rs. 1,000 shall be cognizable by a Court of Small Causes mentioned in the order."

Clause (2) of section 15 is the important clause in that section, and, in my opinion, it shows that where any of the exceptions specified in the schedule to the Act or any provision of any other enactment for the time being in force excludes the subject-matter of a suit from the cognizance of a Court of Small Causes, then a suit relating to that subject-matter is not one of a nature cognizable by the Small Cause Court within the meaning of section 102 of the Civil Procedure Code. Now, if we turn to schedule 2 of the Small Cause Courts Act, clauses 8 and 44 of that schedule clearly exclude a suit of which the subject-matter is rent due to a landlord under the Estates Land Act by his tenant from the category of " suits of the nature cognizable by the Small Cause Courts." The observations of the learned Chief Justice and of the majority of the other Judges of the Full Bench in *Soundaram Ayyar* v. *Semmia Naicken*(1), in my opinion, support the above interpretation of section 102, Civil Procedure Code. I might add that this preliminary objection, which might have been similarly taken in the very numerous cases which have come before this Court on Second Appeal under the Estates Land Act passed 12 years ago, seems either not to have been so taken at all or not seriously pressed even if taken in any of those numerous cases. I would therefore overrule the preliminary objection.

Coming to the merits, the learned District Judge has reversed the Deputy Collector's decision on very unsatisfactory grounds. The only plausible reason for arriving at the conclusion that the land continued to be service inam, notwithstanding that both parties have treated it as having been resumed by the landholder and granted back as jirayati land, is that although the service may have ceased no formal steps had been taken for its conversion into jirayati land. I think that if both the grantor and grantee agreed that the service should cease from a certain date and that the land should thereby cease to be held for the performance of such service no " formal " steps (whatever that may mean) are necessary to convert it into ordinary jirayati land.

(1) (1900) I.L.R., 23 Mad., 547.

ZAMINDAR OF TARLA v. KANDA BARIKIVADU.

SADASIVA AYYAR, J.

Under the Estates Land Act the presumption is that all land is jirayati land and once the land ceases to be service inam land, it resumes its character of ordinary jirayati land without any "formal" ceremonies being gone through.

Reliance was placed upon *Musa Miya Saheb* v. *Sayad Gulam Hussein Mahamad*(1) in support of the argument that a suit for rent is a suit of a nature cognizable by the Small Cause Court. It must be remembered however that that decision is a decision of 1882, when Act XI of 1865 was the Small Cause Court Act in force. As pointed out by Sir ARNOLD WHITE, C.J., in his opinion in the Full Bench case, *Soundaram Ayyar* v. *Sinnia Naicken*(2), the schedule of the later Act of 1887 is the converse of that of Act XI of 1865. Under the Act of 1865 the Court of Small Causes is given jurisdiction over certain specified claims, whereas under the Act of 1887 the Court has jurisdiction over every suit falling within certain descriptions and within a certain pecuniary limit, unless that suit is expressly excluded from the cognizance of the Small Cause Court by the schedule or by any other enactment. Hence, there might be one answer to the question, whether a particular suit is cognizable by a Small Cause Court, when that question is considered with reference to the provisions of Act XI of 1865. The very same question, whether that suit is cognizable by the Court of Small Causes, might permit of quite a different answer when it is considered with reference to the provisions of Act IX of 1887. Under section 6 of Act XI of 1865 all claims for money due on a bond or other contract or for rent, or for personal property, are cognizable by Courts of Small Causes except claims which may be brought before a Revenue officer and so on. Thus, the subject-matter of suits for rent had been treated as a class as falling within the category of the subject-matter of suits cognizable by a Court of Small Causes and hence so long as that Act of 1865 was in force the expression "suits of the nature cognizable by a Small Cause Court" would include suits for rent; but as I said, the scheme of the Act of 1887 is quite different and the schedule 2 to that Act clearly excludes the subject-matter of a suit for rent due by a tenant to a landlord

(1) (1883) I.L.R., 7 Bom., 100. (2) (1900) I.L.R., 23 Mad., 554 (F.B.).

under the Estates Land Act from the subject-matter of suits which are of a nature cognizable by Small Cause Courts.

I would, therefore, allow the Appeal and restore the decree of first Court with costs of the plaintiff here and in the lower Appellate Court.

SADASIVA AYYAR, J.

NAPIER, J.—I agree and only wish to add a few words on the preliminary point taken as we are informed that there is no reported case in which this point has been decided. That this objection has at all events rarely been taken is obvious from the fact that this Court has for the last ten years been occupied in giving decisions on the construction and meaning of the word "rent" in cases which if this objection prevailed could not have come to this Court. It is therefore necessary that there should be a definite ruling on the point so that the question may be set at rest. In my opinion, the ruling of the Full Bench in *Soundaram Ayyar* v. *Sennia Naicken*(1) disposes of the matter. There, the Court had to consider the meaning of section 586 of the Old Code (Act XIV of 1882) corresponding to section 102 of the present Code. The Chief Justice stated as follows on the meaning of these words :

NAPIER, J.

"The object of this section as it seems to me is to take away the right of Second Appeal or Special Appeal where the value of the subject-matter of the original suit does not exceed Rs. 500 in the case of all suits which as regards their subject-matter would be within the jurisdiction of Courts of Small Causes but which are outside that jurisdiction by reason of the amount claimed being beyond the pecuniary limit of the Small Cause jurisdiction."

In another part of his judgment the learned Chief Justice said :

"It seems to me that section 586 of the Code applies to cases which as regards subject-matter would be within, but by reason of the amount claimed are without, the jurisdiction of a Court of Small Causes."

The words "any suit of the nature cognizable" as used in section 586 of the Code may be paraphrased thus: any suit relating to a subject-matter over which a Court of Small Causes would have jurisdiction if the claim were within the pecuniary limits of its jurisdiction.

(1) (1900) I.L.R., 23 Mad., 547, 554.

ZAMINDAR OF TARLA v. KANDA BARIKIVADU.

NAPIER, J.

SHEPHARD, J., said:

"If it is found that a suit for rent could legally be tried by a Small Cause Court, that suit is a Small Cause and, therefore, a Second Appeal is precluded."

SUBRAHMANYA AYYAR, J., said:

"It is therefore as urged by Sir V. Bhashyam Ayyangar, on behalf of the appellants almost certain that the words 'any suit of a nature cognizable in Courts of Small Causes' in section 586 were intended to comprise suits which are cognizable by any Court of Small Causes by virtue of the provisions of the Small Cause Courts Act itself, but not suits which may become cognizable by Small Cause Courts under special circumstances only."

BENSON and DAVIES, JJ., agreed with the learned Chief Justice. Taking the language of the learned Chief Justice the important words are:

"Suits which as regards their subject-matter would be within the jurisdiction of Courts of Small Causes,"

and we have to ascertain whether a suit such as this would be within the jurisdiction of the Courts of Small Causes in any circumstance whatever. The Provincial Small Cause Courts Act of 1887 contains this provision:

"Section 15 (2). Subject to the exceptions specified in the second schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes."

Sub-section 3 says:

"Subject as aforesaid the Local Government may by order in writing direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes."

We have therefore to see, with regard to the first of these two sub-sections, whether there is any exception specified in the schedule and any provision of any enactment for the time being in force which prevents these suits which are otherwise of a civil nature from being cognizable by Courts of Small Causes; and with regard to the second sub-section, whether it would be possible for the Local Government by order in writing to direct that suits such as these, the value of which does not exceed Rs. 1,000, should be cognizable by Courts of Small Causes.

I will first deal with the exceptions based on the schedule of the Act. The schedule provides under article 8 that a suit

for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the local authority to exercise jurisdiction, is excepted. Therefore, unless there has been a special investment such a suit would not be cognizable. But with regard to sub-section 3 there is this provision, that the Local Government may by order in writing direct, and we have therefore to find if the Local Government did so direct and whether there is any other provision in the second schedule which would prevent such a direction having effect. This provision is to be found in article 44:

"a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force."

So that, even with regard to the exceptions specified in the schedule, there is this article 44 which is a complete bar to the jurisdiction either accruing by virtue of section 15 (2) or being made applicable by virtue of section 15 (3).

Then we have to turn to the language of the Madras Estates Land Act. The suit is one under section 77, of the Madras Estates Land Act, to recover arrears of rent and the language is:

"At any time after an arrear of rent has become due, the landholder may institute a suit before the Collector for the recovery of the arrear."

Then section 189 provides that

"A Collector or other Revenue officer specially authorized under this Act shall hear and determine as a Revenue Court all suits and applications of the nature specified in Parts A and B of the schedule and no Civil Court in the exercise of its original jurisdiction shall take cognizance of any dispute or matter in respect of which such suits or applications might be brought or made"

and the Schedule, Part A, serial No. 8, which has reference to section 77, says:—

"By landholder to recover arrears of rent."

Therefore, both under the specific language of the Madras Estates Land Act which is definite on the point as excluding the jurisdiction of all Civil Courts, and on the true construction of section 15 of the Provincial Small Cause Courts Act, it is clear that a Small Cause Court can have no jurisdiction over a

ZAMINDAR OF TARLA v. KANDA BARIKIVADU. — NAPIER, J.

suit for rent under the Madras Estates Land Act, and therefore it is not within the meaning of section 102, Civil Procedure Code, a suit "of the nature cognizable by a Court of Small Causes." It follows therefore that this suit is excepted from the language of the Chief Justice in the case above referred to, namely, in the case of all suits which as regards the subject-matter would be within the jurisdiction of Courts of Small Causes, and the contention for the respondent is negatived by that ruling.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Odgers.

1921, February 15.

SAMBASIVAM PILLAI AND ANOTHER (DEFENDANTS NOS. 1 AND 3), APPELLANTS,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL REPRESENTED BY THE COLLECTOR, SOUTH ARCOT, AND ANOTHER (PLAINTIFF AND SECOND DEFENDANT), RESPONDENTS.*

Hindu Law—Inheritance—Sudra ascetic—Right of sishya (disciple) to inherit—Texts of Hindu Law, whether obsolete—Yajnavalkya—Mitakshara—Escheat to Government—Religious instruction to Sudras—Disciple, meaning of—Spiritual relationship, proof of.

The disciple of a *Sudra* ascetic who dies without leaving any blood relations, is an heir of the latter under the Hindu Law and succeeds to his estate so as to prevent its escheat to the Government.

The texts relating to succession by preceptors, disciples and fellow-students enunciated, in Yajnavalkya Smriti, Chapter II, verse 137, and in the Mitakshara, section VII, are not obsolete.

In determining who is a preceptor, a pupil or a fellow-student under the above texts, the Court will only consider the imparting of purely religious instruction.

Religious instruction and training are not confined to Brahmans; *Giyana Sambanda Pandara Sannadhi* v. *Kandasami Tambiran* (1887) I.L.R., 10 Mad., 375.

Dharmapuram Pandara Sannadhi v. *Virapandiyam Pillai* (1899) I.L.R., 22 Mad., 302, distinguished.

Strict proof is required to be given by the claimant regarding his alleged spiritual relationship to the deceased.

---

* Second Appeal No. 257 of 1920.