

## APPELLATE CIVIL.

*Before Mr. Justice Jackson.*

1926,  
August 16.

SUNDARA NAICKER (PETITIONER—DEFENDANT),  
PETITIONER,

v.

POTTI NAICKER (COUNTER-PETITIONER—PLAINTIFF),  
RESPONDENT.\*

*Ss. 13 and 73 of the Madras Village Courts Act (Act I of 1889) as amended by Madras Act II of 1920—Wide discretion of Munsif under sec. 73—No interference by High Court on revision—Suit for damage to growing crops—Growing crops, personal property within sec. 13 of the Act.*

Section 73 of the Madras Village Courts Act (Act I of 1889) gives a District Munsif the widest discretion to interfere or not with the decision of a Village Court. He may refuse to interfere even if the conditions imposed by the section are complied with and the High Court will not ordinarily interfere in revision with the exercise of such discretion.

A suit for the value of growing crops destroyed by the defendant is a suit for the value of 'personal property' within the meaning of section 13 of the Act.

PETITION under sections 115 of Act V of 1908 and 107 of the Government of India Act, praying the High Court to revise the order of K. BALAJI RAO, District Munsif of Sattur, in Original Petition No. 24 of 1924 (Suit No. 4 of 1924, Panchayat Court of Sippiparai).

The plaintiff sued the defendant in the Village Court for Rs. 29, being the value of some cotton crop raised by the plaintiff in his field and alleged to have been damaged by the defendant's driving through the same carts loaded with seedlings. The defendant sent by post a written statement to the effect (a) that the

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\* Civil Revision Petition No. 140 of 1925.

Court had no jurisdiction, (b) that the track used by his carts was the usual track and (c) that the plaintiff had not sustained any damage. The Court gave a decree for the plaintiff for Rs. 29, after declaring the defendant *ex parte*. Thereupon the defendant filed a petition before the District Munsif of Sattur under section 73 of the Madras Village Courts Act, for setting aside the decree, stating:—(a) that he was present on the day of hearing, (b) that some of the members of the Village Court were his enemies and were partial to the plaintiff, being his relations and (c) that the Court had no jurisdiction. All these were denied by the plaintiff. The District Munsif dismissed the petition stating that he saw no sufficient cause to disturb the decree. The defendant filed this Revision Petition.

Section 13 (1) of the Madras Village Courts Act, is as follows:—

“The following are the suits which shall be cognizable by Village Courts (namely)—claims for money due on contract, or for personal property, or for the value of such property, when the debt or demand does not exceed in amount or value the sum of [rupees fifty] whether on balance of account or otherwise.”

Section 73 of the Act is as follows:—

“The District Munsif may, on a petition being presented within sixty days from the date of any decree or order of a Village Court by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village Court, or of its having exercised a jurisdiction not vested in it by law, or otherwise acted illegally or with material irregularity; or that the decree or order is clearly unjust [ \* \* \* ] and may pass such other decree or order as he thinks fit; provided that no decree or order of a Village Court shall be set aside without notice to the opposite party. Pending disposal of any such petition the District Mansif may stay execution of the decree or order.

Â petition under this section may be entertained after sixty days by the District Munsif if he is satisfied with the cause

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shown for the delay. Except as provided in this section, every decree and order of a village Court shall be final."

*T. M. Ramaswami Ayyar* for petitioner.

*K. S. Ramabhadra Ayyar* for respondent.

### JUDGMENT.

Petitioner seeks to revise the order of the District Munsif, Sattur, in O.P. No. 24 of 1924, declining to act under section 73, Madras Act I, 1889. A District Munsif has the widest discretion under this section and even if facts are established bringing the case within one of the three categories which may warrant revision as set forth in the section, he may still exercise his discretion, whether he will interfere. Therefore, it can only be in very rare and exceptional cases that the revisional powers of this Court will be attracted by any proceedings of a District Munsif under section 73. The petitioner would have been on stronger ground if he had moved this Court to revise the judgment of the Panchayat Court itself; but in a petition confined to the decision of the Munsif, it cannot be said that he failed to exercise jurisdiction; for he heard arguments from both sides and it cannot be said, that he ought of necessity to have set aside the decree because he has full discretion in the matter. Nor in a revisional proceeding of this sort, can it be said, that to state that he sees no sufficient cause to disturb the decree of the lower Court, is to write an inadequate order.

Two grounds are urged which would be more germane to a petition against the original decree. Firstly that the Panchayat Court heard no evidence. This is inferred from the record. "Witnesses examined for the plaintiff, nil"; but it seems probable that the plaintiff himself was examined and there is no suggestion to the contrary in the present petition.

Secondly that a party cannot sue under Madras Act I, 1889, for the value of damaged crops, inasmuch as it is not a claim for the value of personal property as contemplated by section 13. Personal property is not defined in the Act and presumably, it means movable property and movable property as defined by the Transfer of Property Act includes growing crops. If the cause of action is the destruction of a growing crop, a party may sue for its value in the village court.

The petition is dismissed with costs.

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PRIVY COUNCIL.\*

VIBHUDAPRIYA THIRTHA SWAMIYAR (PLAINTIFF),  
APPELLANT,

1927,  
March 21.

v.

LAKSHMINDRA THIRTHA SWAMIYAR (DEFENDANT),  
RESPONDENT.

[On Appeal from the High Court at Madras.]

*Hindu Law—Religious endowment—Math—Loan contracted by Mahant for purpose of math—Liability of succeeding Mahant—Receiver of math income.*

Where the deceased head of a math has borrowed money for the purpose of discharging duties for which he is responsible as head, and the money has been legitimately applied to that purpose, it can be recovered from the succeeding head of the math. The decree should provide, as in *Niladri Sahu v. Mahant Chaturbhuj Das*, (1927) I.L.R., 6 Pat., 139; 53 I.A., 253, that on default in payment by the successor a receiver be appointed of the income of the math so that his beneficial interest therein may be applied to discharge the decree.

Cases as to the validity of permanent alienations of math property, such as *Palaniappa Chetty v. Sreemath Devasikamony*

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\* Present: LORD PHILLIMORE, LORD CARSON, LORD DARLING, and, Mr. AMEEB ALI.