

## APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Jackson.

KUTB-UD-DEEN SAHIB (DEFENDANT), PETITIONER,

1928,  
January 5.

v.

PERIYANAYAGA PADAYACHI (PLAINTIFF), RESPONDENT.\*

*Civil Procedure Code (V of 1908), O, XXXVII, r. 1—  
Summary procedure on negotiable instruments—Ordinary  
Sub-Court, exercising small cause powers, whether competent  
to act under O. XXXVII, r. 1, Civil Procedure Code.  
Civil Procedure Code (Act XIV of 1882) ss. 532 to 538.*

A Subordinate Judge, who is the presiding officer of an Ordinary Sub-Court, has, when exercising small cause powers, no jurisdiction to act under Order XXXVII of the Civil Procedure Code, relating to summary procedure on negotiable instruments, as he is then not a "Court having Ordinary Original Civil Jurisdiction", to which the said procedure could have been extended under section 538 of the Code of Civil Procedure, 1882.

PETITION to revise the decree of the Court of the Subordinate Judge of Negapatam in Small Cause Suit No. 817 of 1926.

The material facts appear from the judgment.

*K. S. Desikan* for petitioner.

*N. Duraiswami Ayyar* for respondent.

## JUDGMENT.

The short question for decision in this Civil Revision Petition is whether a Sub-Judge who is a presiding officer of an ordinary Sub-Court and not of a Court of Small Causes has, when exercising small cause powers, authority to act under Order XXXVII, Civil Procedure Code. Order XXXVII, rule 1, declares that that order

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\* Civil Revision Petition No. 239 of 1927.

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shall apply, *inter alia*, to “any other Court to which sections 532 to 537 of the Code of Civil Procedure of 1882 have been already applied”. Under section 538 of the Code of 1882, sections 532 to 537 of that Code could be applied to “any other Court having Ordinary Original Civil Jurisdiction to which the Local Government may by notification in the official gazette, apply them”. As a matter of fact, however, no such notification appears to have been issued under this Act. Under the previous Code, Act X of 1877, sections 532 to 538 which correspond to sections 532 to 538 of the Code of 1882, a notification was issued and published in the *Port St. George Gazette* on 23rd October 1877 notifying that the sections applied to District Courts and Courts of Sub-Judges in the Presidency. Section 3 of the Code of 1882 lays down that any notification published in any enactment thereby repealed shall be deemed to have been published under that Code and that where in any notification passed prior to the date when that Code came into force reference is made to Act X of 1877 such reference “shall as far as is practicable be read as applying to this Code or the corresponding part thereof”. We think that it is sufficient to make Order XXXVII, rule 1 (d) apply to Courts notified under the notification of 23rd October 1877.

The question then is, does this notification apply to the Court of a Sub-Judge when that Sub-Judge is exercising Small Cause Court powers? The notification, by force of section 538 of the Code of 1877, only applies to “any other Court having Ordinary Original Civil Jurisdiction”. This in itself would seem to restrict the application of the notification to the Ordinary Original Civil Jurisdiction of the Court, as the petitioner contends. It is argued, however, for respondent, first, that the word “having” merely purports “possessing” and not “when

exercising", and secondly, that the words "Ordinary Original" describe the jurisdiction not as distinct from Small Cause Jurisdiction but as distinct from appellate, maritime or other jurisdiction which a Civil Court may possess. Neither of these contentions appears to us convincing. As to the first, there seems to us no point in describing a Court as a Court having Original Civil Jurisdiction, unless it was meant that it was such Court and no other to which the notification should apply. It does not follow automatically that every Court having Original Civil Jurisdiction has also Small Cause Jurisdiction. The phrase therefore could not have been intended automatically to include also Courts having Small Cause Jurisdiction. As to the second contention, there seems to us no point in using the words "Original Civil Jurisdiction" in order to distinguish Courts to which the notification should apply from appellate, maritime and other Courts, since the procedure prescribed by sections 532 to 537 could never be applied to such Courts at all. The procedure could only apply to Courts in which suits on bills of exchange, etc., could be brought. It therefore appears to us that the words "having Ordinary Original Civil Jurisdiction" were deliberately used to confine the application of the rules to notified Courts when exercising Ordinary Original Civil Jurisdiction.

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Now the Court against whose decision this Civil Revision Petition is preferred is not a Court of Small Cause but a Court invested with the jurisdiction of a Small Cause Court under a notification of this Court, dated 23rd July 1926. Section 33 of the Provincial Small Cause Courts Act directs that, when a Court is invested with the jurisdiction of a Small Cause Court, it is for the purposes of the Civil Procedure Code with respect to the exercise of that jurisdiction a different

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Court from the Court which it is in respect of the exercise of its jurisdiction in suits which are not cognizable by the Court of Small Causes. From this it is clear that for the purposes of the Civil Procedure Code the lower Court when exercising its Small Cause Jurisdiction is not exercising its Ordinary Original Civil Jurisdiction. It seems clear to us therefore that the notification under the Act of 1877 does not apply to the lower Court when exercising its Small Cause Jurisdiction. In the exercise of that jurisdiction the lower Court is invested with the jurisdiction of a Court of Small Causes and is so far divested of its Original Civil Jurisdiction. Indeed it is obvious from the very difference in powers which the Judge exercises in his Original Jurisdiction from those he exercises in Small Cause Jurisdiction that the jurisdictions are different and the Courts therefore different.

It is significant that in the original section 538 of Act X of 1877 the Courts of Small Causes in the Presidency towns were definitely named as Courts to which sections 532 to 537 applied. It is hardly likely that the legislature intended that the only Courts to which the section should not apply were Courts of Small Causes in the mufassal. It would be an unintelligible anomaly that the constituted Courts of Small Causes in the mufassal should not be able to employ these sections, while Courts along side them invested with the powers of Courts of Small Causes should be able to employ them.

The question raised is a matter of first impression and no direct authority has been cited to us. A ruling in *Sankarama v. Padmanabha*(1) that for purposes of section 24 of the Civil Procedure Code a Court invested with the powers of a Small Cause Court is a Court of

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(1) (1915) I.L.R., 38 Mad., 25.

Small Causes is along the same line of reasoning and dissents from the ruling in *Ramachandra v. Ganesh*(1), relied on by the respondent, which is also dissented from in a later decision of the same Court in *Narayan v. Bhagu*(2).

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We therefore hold that the lower Court exercised a jurisdiction not vested in it by law and its proceedings are therefore without jurisdiction and must be set aside. The decree of the lower Court is set aside and the lower Court is directed to rehear the suit in accordance with law.

The petitioner will get his costs in this Court and costs in the lower Court will abide the event.

K. R.

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## APPELLATE CIVIL.

*Before Mr. Justice Ramesam and Mr. Justice Devadoss.*

RAMATHAI ANNI (1ST RESPONDENT'S LEGAL REPRESENTATIVE), APPELLANT,

1928,  
January 20.

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v.

KANNIAPPA MUDALIAR AND ANOTHER (PETITIONER-CREDITOR), RESPONDENTS.\*

*Provincial Insolvency Act (V of 1920), ss. 7, 17, 21, 24 and 25—Act III of 1907, s. 10—Presidency Towns Insolvency Act (III of 1909), s. 93—Application by Creditor to adjudicate debtor insolvent—Death of debtor prior to adjudication—Adjudication after death of debtor, whether competent—Continuation of proceedings, in what respects.*

Section 17 of the Provincial Insolvency Act, 1920, applies to the case of a debtor dying before the order of adjudication

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(1) (1899) I.L.R., 23 Bom., 382. (2) (1907) I.L.R., 31 Bom., 314.

\* Appeal against appellate order No. 133 of 1927.