

## APPELLATE CIVIL.

*Before Sir Owen Beasley, Kt., Chief Justice, and  
Mr. Justice King.*

KHUMCHAND DHULAJI PALADUVALA  
(FIRST DEFENDANT), PETITIONER,

1934,  
October 19.

v.

GOMRAJ FATECHAND (PLAINTIFF), RESPONDENT.\*

*City Civil Court (Madras)—Leave to sue—Application for, if  
may be made after filing of plaint—Madras City Civil  
Court Act (VII of 1892), sec. 8—"Law" in—Meaning of.*

In the Madras City Civil Court leave to sue can be applied for even after the plaint is filed.

Section 8 of the Madras City Civil Court Act does not include the procedure in force in the High Court. The word "law" in that section was chosen with reference to the provisions of the Letters Patent.

PETITION under sections 115 of Act V of 1908 and 107 and 108 of the Government of India Act praying the High Court to revise the order of the Court of the City Civil Judge, Madras, dated 9th October 1933 and made in Civil Miscellaneous Petition No. 1883 of 1933 in Original Suit No. 530 of 1933.

*S. Panchapagesa Sastri and T. K. Rangaswami*  
for petitioner.

*C. Sreeraman* for respondent.

*Cur. adv. vult.*

The JUDGMENT of the Court was delivered by  
KING J.—Six plaintiffs filed a suit in the Court

KING J

\* Civil Revision Petition No. 1541 of 1933.

PALADUVALA  
<sup>v.</sup>  
 FATECHAND,  
 KING J.

of the City Civil Judge, Madras, against two defendants for dissolution of partnership. As one of these defendants was admittedly not living in Madras leave to sue in the City Civil Court had to be obtained. Leave was granted by the City Civil Judge although it was applied for only after the plaint had been filed, and the question at issue in this revision petition is whether it is not obligatory in the City Civil Court for such leave to be applied for *before* the suit is filed.

In support of this position reliance is placed upon section 8 of the Madras City Civil Court Act which runs as follows :—

“ All questions which arise in suits or other proceedings under this Act in the City Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.” ;

and it is admittedly one of the rules of practice in the High Court that leave to sue in circumstances such as this must be asked for in the plaint itself.

The question then is whether section 8 of the Madras City Civil Court Act is wide enough to include the *procedure* in force in the High Court. We do not think it is, and we think the word “ law ” in section 8 was advisedly chosen with reference to the provisions of the Letters Patent. The “ law to be administered by the High Court ” is to be found in Clauses 19 to 21 of the Letters Patent where reference is made to law, equity and rule of good conscience, but nothing is said about the details of procedure. We see no intrinsic reason why the City Civil Court should be placed in the same position as the High Court in the matter of procedure—or why it should not be governed by

the Civil Procedure Code in which case admittedly leave to sue can be given after the plaint is filed.

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There are thus no sufficient reasons for holding that the order of the City Civil Judge is wrong, and this petition must be dismissed with costs.

A.S.V.

## APPELLATE CRIMINAL.

*Before Mr. Justice Pandrang Row.*

A. M. RANGACHARIAR (COMPLAINANT), PETITIONER,

v.

VENKATASAMI CHETTI (ACCUSED), RESPONDENT.\*

1934,  
September 10.

*Madras Local Boards Act (XIV of 1920), sec. 207 (i)—Offence complete under, on failure to remove or alter encroachment after service of notice to do so—Another distinct offence not brought into being by subsequent notice on same facts—Fresh trial barred under sec. 403, Criminal Procedure Code (Act V of 1898).*

The offence under section 207 (i) of the Madras Local Boards Act (XIV of 1920) consists in the failure to obey the notice issued under section 159 of that Act to remove or alter an encroachment. Once there is such failure, the offence is complete; and another separate or distinct offence is not brought into being by the issue of a subsequent notice when that notice is by the same authority, to the same person, and relates to the same encroachment or contains the same direction.

Where an accused had once been tried for an offence under section 207 (i) of the Madras Local Boards Act (XIV of 1920) and acquitted on the ground that there had been no failure to remove an encroachment,

*held*, that section 403, Criminal Procedure Code Act (V of 1898), was a bar to his being tried again for failure to

\* Criminal Revision Case No. 99 of 1934.