

SANKARA-  
LINGAM  
v  
ARUMUGAM.  
VENKATASUBBA  
RAO J.

In the result, we must hold that the decree has become inexecutable to the extent of the one-fourth share of the plaintiff. Defendants 8 to 10 can be proceeded against for the three-fourths of the amount of the decree that has been passed. The execution petition will therefore be remitted to the lower Court for being dealt with in the light of our judgment.

We direct that each party shall bear his costs both here and in the Court below.

A.S.V.

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### APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao and Mr. Justice Abdur Rahman.*

VEDAKANNU NADAR (DEFENDANT), PETITIONER,

v.

GNANAYYA NADAR (FIRST PLAINTIFF), RESPONDENT.\*

*Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 28—Scope and applicability of.*

Article 28 of the Second Schedule to the Provincial Small Cause Courts Act contemplates a suit between rival claimants to the property of an intestate. There must be a claim made by an heir as such, which claim is resisted by another person advancing a similar claim; otherwise the article does not apply.

*Samu Asari v. Anachi Ammal(1) and Rethinasami v. Nataraja(2)* disapproved.

*Chhedi v. Gulabo(3) and Tika Sahu v. Chirkat Sahu(4)* followed.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of the Court

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\* Civil Revision Petition No. 1004 of 1934.

(1) (1925) 49 M.L.J. 554. (2) A.I.R. 1933 Mad. 346.

(3) (1905) I.L.R. 27 All. 622. (4) (1914) 19 C.W.N. 614.

of the Subordinate Judge of Tinnevely in Small Cause  
Suit No. 1185 of 1932.

VEDAKANNU  
v.  
GNANAYYA

*M. C. Sridharan* for petitioner.

*J. S. Vedamanikkam* for respondent.

The JUDGMENT of the Court was delivered by  
VENKATASUBBA RAO J.—This civil revision petition has  
been referred to a Bench on the ground that it raises  
an important question of law. The question turns  
upon the construction of article 28 of the Second Sched-  
ule to the Provincial Small Cause Courts Act. Under  
that article

VENKATASUBBA  
RAO J.

“ a suit for a legacy, or for the whole or a share of a  
residue bequeathed by a testator, or for the whole or a share  
of the property of an intestate ”

is excepted from the cognisance of a Provincial Small  
Cause Court. The plaintiff sues for the recovery of  
certain jewels as the heir of his deceased wife. He  
alleges that upon her death in the house of her brother,  
the defendant, the latter wrongfully took possession  
of her jewels. That the plaintiff has succeeded to his  
wife's property is not disputed by the defendant; in  
other words, the case raises no question of a disputed  
succession. In our opinion, on a proper construction  
of the relevant words, there must be a claim made by  
an heir as such, which claim is resisted by another  
person advancing a similar claim; otherwise the article  
does not apply. This follows, as the various decisions  
on the point have held, from the very use of the word  
“ intestate ” in the section. The matter has been put  
clearly by BANERJI and RICHARDS JJ. who observe that  
the article contemplates a suit between rival claimants  
to the property of an intestate; *Chhedi v. Gulabo*(1).  
The authorities on the point have been fully considered  
by a Bench of the Calcutta High Court which has

VEDAKANNU adopted the same view [*Tika Sahu v. Chirkat Sahu*  
 v. (1)] and it is unnecessary to refer to the same autho-  
 GNANAYYA. rities again. As pointed out in that decision, in no  
 VENKATASUBBA previous case has a different view prevailed. The lower  
 RAO J. Court in holding that the article in question does not  
 apply to the present suit, has thus come to a correct  
 conclusion.

But Mr. Sridharan, the learned Counsel for the defendant-petitioner, contends that the lower Court's view is wrong and relies in support of his contention upon two cases of our Court; *Samu Asari v. Anachi Ammal*(2) and *Rethinasami v. Nataraja*(3). The first of them was decided by RAMESAM J. and the second is also a decision of a single Judge (PAKENHAM WALSH J.) who follows the earlier decision. We are unable to follow these cases, for, as a question of construction, we are inclined to agree that the view taken by the Calcutta and the Allahabad High Courts is right. As to *Chinnayya v. Achammah*(4), the present question did not arise there and there is no more than a passing observation on which the petitioner can rely.

The object of the relevant part of the article seems to be to remove from the cognisance of a Small Cause Court matters involving disputed succession, for they may raise complicated questions. A reference to the earlier part of the section strengthens this view. A suit for a legacy or a residue, as is evident from the provisions of the Succession Act, may raise intricate questions of law and a Small Cause Court is not expected to deal with such questions.

In the result, the civil revision petition is dismissed, but we make no order as to costs.

A.S.V.

(1) (1914) 19 C.W.N. 614.  
 (3) A.I.R.1933 Mad. 346.

(2) (1925) 49 M.L.J. 554.  
 (4) (1912) I.L.R. 37 Mad. 538.