

APPELLATE JURISDICTION (a)

*Referred Case No. 25 of 1863.*CHINNAM AYYAPPA *against* SHEKH PIR AHMAD.

A rāzināma stipulating for the payment of a debt into Court by periodical instalments prolonged beyond one week may be received and enforced in a Small Cause.

CASE referred for the opinion of the High Court by Parashottam, the District Munsif of Vizagapatam. 1863
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The plaintiff sued for rupees 32 due upon three bonds executed in his favour by the defendant. When the case came on for hearing the parties presented a rāzināma providing that rupees 23-8 with costs and further interest should be paid into Court by monthly instalments of two rupees each, and that in default the amount should be recovered from the defendant by a warrant of the Court. The Munsif upon the foregoing facts was of opinion that rāzināmas containing such stipulation should not be excepted and enforced in small causes "as," said he, "the terms of the adjustment seemed to me to be inconsistent with the object of the system and mode of their trial and disposal. According to the tenor of the rāzināma in the case under reference, the plaintiff may take out process of execution on it at any time within the period prescribed for the execution of decrees in regular suits, whereas by para. 14 of the Rules of Practice issued by the High Court under date the 22nd September last for the guidance of the District Munsif in trying small causes, the term for issuing warrant on any decree or order is limited to one week from the date of passing the same; and section 10 of Act XLII for 1860 seems to contemplate the same course. The pleader for the plaintiff, in the present case argued that the rāzināma could be received under Section 93 of the Code of Civil Procedure in the absence of any express provision to the contrary in the Acts and Rules now in force for the guidance of Courts in trying small causes."

The Munsif submitted the question hereinafter set forth.

No counsel were instructed.

The facts appear from the following.

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JUDGMENT :—The question submitted for our decision is, “ whether a rázináma containing stipulations for the payment of a debt into Court by periodical instalments prolonged beyond one week may be received and enforced in a Small Cause Court ? ”

We think it was open to the parties to enter into the rázináma, and to obtain as they have done a decree of the Court in accordance therewith. Section 13 of Act XXIII of 1861, which supersedes Section 10 of Act XLII of 1860, the section referred to by the District Munsif, is merely directory and provides in favour of plaintiffs for the granting of immediate execution at the discretion of the Court ; and rule 14 of the Practice Rules relating to the trial of Small Causes provides for the lapse of a week from the date of passing the decree *before* the issuing of execution, unless immediate execution shall have been granted, not that execution shall not issue *after* a week from such date.

We therefore answer the question submitted in the affirmative.

APPELLATE JURISDICTION (a)
Special Appeal No. 365 of 1863.

VENKATA REDDI.....*Appellant.*

PARVATI AMMÁL and others...*Respondents.*

A *drishtabandhaka*, or Hindu instrument by which visible property is mortgaged, which named a time for payment of the money borrowed and stipulates that on default the mortgage shall be put into exclusive possession and enjoyment of the property, will not be treated strictly a conditional sale, even though the instrument expressly provide that on default the transaction shall be deemed an outright sale ; and in a suit by the mortgagee for possession, the Court, in decreeing the right thereto, will give the mortgagor a day for redeeming.

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of 1863.

THIS was a Special Appeal against the decree of the Civil Judge of Nundial, in Regular Appeal No. 22 of 1862, modifying the decree of the District Munsif of Nundial in Original Suit No. 1272 of 1861. The plaintiff sued for possession of a house and granary situate in the village of Revanur in the ta'aluk of Kovilakuntla. The first defendant's husband, Virareddi, had borrowed money from the

(a) Present : Scotland, C. J. and Frere, J.