

APPELLATE JURISDICTION (a)

Special Appeal No. 366 of 1865.

KUTTY SUBRAMANIYA TAMBIRÁN..... *Appellant.*
 CHINNA MUTTU PILLAI and others..... *Respondents.*

The plaintiffs, the cultivators of certain lands yielding rent to a pagoda of which 1st defendant is the recently appointed dharmakarta, claimed to be declared proprietors of the said lands, to be exempted from the payment of rent at the rate of $\frac{2}{3}$ of the gross produce, to be declared liable to pay a certain lower rent set forth in the plaint and to obtain a refund of the amount, paid under an order of the Sub-Collector in 1863 passed without jurisdiction, in excess of the rent justly payable.

The issue given by the Principal Sadr Amin was "whether the 1st defendant is entitled to rent at the rate specified in document A."

Held, that this issue was in too general terms and only embraced a part of the matter in dispute; and the issue "what is a fair and reasonable rate of rent" directed to be sent down to the Lower Court.

THIS was a special appeal from the decision of J. H. Goldie, the Civil Judge of Tinnevely, in Regular Appeal No. 69 of 1864, modifying the Decree of the Court of the Principal Sadr Amin of Tinnevely, in Original Suit No. 57 of 1863.

1866.
 January 8.
 S. A. No. 366
 of 1865.

Busteed, for the appellant, the first defendant.

Rajagopalacharlu, for the respondents, the plaintiffs.

The Court made the following

ORDER :—This suit involves a claim on the part of the plaintiffs, the cultivators of certain lands yielding rent to a Pagoda of which 1st defendant is the recently appointed Dharmakarta, to be declared proprietors of the said lands, to be exempted from payment of rent at the rate of $\frac{2}{3}$ of the gross produce, to be declared liable to pay a certain lower rent set forth in the plaint, and to obtain a refund of the amount, paid under an order of the Sub-Collector in 1863 passed without jurisdiction, in excess of the rent justly payable. The Civil Judge, in appeal from the decision of the Principal Sadr Amin, decreed, in modification of that decision, dismissing plaintiff's claim to be

(a) Present : Frere and Innes, JJ.

this issue be sent for trial ; that the parties be at liberty to adduce further evidence; and that the Court below, in determining this issue, do also take into consideration the evidence already given by 1st defendant of the rate at which rent is by custom generally paid in the village.

1866.
January 8.
S. A. No. 366
of 1865.

It is accordingly hereby ordered that the finding of the Civil Court upon the above issue be submitted within two months from the date of receipt of this order.

APPELLATE JURISDICTION (a)

Referred Case No. 28 of 1865.

RÁMACHANDRA SHÁSTRY *against* PÁPU AIYAN and another.

A Small Cause Court is not bound to allow a plaintiff to withdraw a suit on the ground that he had received payment from one of the defendants in the suit, that attempt to withdraw having been made after the plaintiff had succeeded in getting a judgment against two defendants which had been set aside by the Court on various grounds, and a new trial ordered.

In such a case the Court may permit the withdrawal of the suit upon the terms of plaintiff paying the 1st defendant's costs.

THIS was a case referred for the opinion of the High Court by M. Cross, the Judge of the Court of Small Causes at Negapatam.

1866.
January 22.
H. C. No. 28
of 1865.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—The questions are, (1) whether the Small Cause Court was bound to allow a plaintiff to withdraw a suit on the ground that he had received payment from one of the defendants in the suit, that attempt to withdraw having been made after the plaintiff had succeeded in getting a judgment against two defendants which had been set aside by the Court on various grounds and a new trial ordered ; (2) whether if bound to allow the withdrawal, the Court was entitled to give the 1st defendant his costs.

We are of opinion, that the “defendant” had not in this case satisfied the plaintiff's demand. That demand was

(a) Present : Frere and Holloway, JJ.