

**Appellate Jurisdiction (a.)***Referred Case No. 19 of 1869.*

VADAMALAI THIRUVANA TEVAR, } *Plaintiff.*  
 ZEMINDAR OF SAITTUR..... }

CARUPPEN SERVAI and another... *Defendants.*

A suit to recover the value of goods distrained for rent under Madras Act VIII of 1865 and forcibly carried away from the person distraining may be maintained in a Court of Small Causes under Section 27 of the Act.

The suit may be brought either by the landlord or the person authorized to distrain.

A petition and summons and an order, after hearing the parties and their evidence, appear to be the fitting mode of exercising the jurisdiction.

**T**HIS was a case stated under Section 22, Act XI of 1865, by P. Cabalya Pillaj, the District Munsif of Strivilliputtur. 1869.  
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of 1868.

The following is the case stated:—

The plaintiff is a Zemindar and the defendants are the ryots in his zemindary. The object of the suit is to recover a lamp valued at Rupees five which the plaintiff had, through a duly appointed distrainer, distrained for arrears of rent due by the defendants, and which the 2nd defendant (the brother of the 1st) had forcibly carried away from the possession of the Cavalgar on the 14th January 1869, or to compel the defendants to pay the arrears due with interest amounting to Rupees 5-1-9. The plaintiff brings the suit under Section 27 of Madras Act VIII of 1865, alleging that the 2nd defendant has already been dealt with criminally and punished under the latter part of the Section. I have deferred bringing the plaint on the Small Cause Register of my Court pending the decision of the Honorable the Judges on the following questions, viz.—

*First.*—Is a Small Cause Court a Civil Court of competent jurisdiction within the meaning of Section 27 of the Rent Recovery Act abovementioned ?

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

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*Second.*—Who is the proper party to move the Civil Court under the above Section, the landholder or the distrainer?

*Third.*—How is he to move the Court? Is he to present a regular plaint drawn up on the prescribed stamp as is done in the present instance, or is he to present a mere petition?

*Fourth.*—If the plaintiff is competent to make the application under the above Section, is he right in asking for either of two things, viz., the distrained property or the arrears due, instead of confining his prayer for the recovery of the former only?

It appears to me that cases under Section 27 of the Rent Recovery Act should be brought before the ordinary Civil Court and not before a Small Cause Court, as they do not fall within the scope of Section 6 of the Small Cause Act No. XI of 1865.

Looking to the general provisions of the Act which hold the distrainer responsible for the safe keeping of distrained goods, and which give him abundant powers to deal with the said property, and looking also to the wording of Section 27 which provides for the restoration of distrained goods to the *distrainer*, I am inclined to think that the distrainer is the proper party to move the Court.

The Legislature having contemplated a summary proceeding, I think the application should be made by a petition drawn up on a stamp prescribed in that behalf.

With respect to the fourth question, I beg to remark that a party proceeding under the Section is bound to keep himself strictly to its provisions and cannot ask for anything beyond the restoration of the distrained goods.

No Counsel were instructed.

The Court delivered the following

JUDGMENT:—We are of opinion that it is competent to the Munsif's Court on its Small Cause side to exercise in this case the summary power given by Section 27 of the Madras Rent Recovery Act No. VIII of 1865. We read the words "any Civil Court of competent jurisdiction" as intended to import any Court which could take cognizance of a suit for the property taken away, and this the Munsif's Court on its Small Cause side would have had jurisdiction to do. The claim is "for personal property" and is not one in respect of which a suit can be brought before the Collector. It would therefore be cognizable in a suit under Section 6 of Act XI of 1865, and we infer from the statement of the case that no objection to the jurisdiction could be made to a suit under Section 8 of that Act.

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With respect to the second and fourth points submitted, the general words of the Section seem to us to admit of the institution of the proceeding under it by either the landlord or the person authorized to distrain; and clearly the only claim that can be made is the restoration of the property once distrained and afterwards taken away.

As respects the mode of instituting the proceeding, we think the District Munsif's view is right. Looking to its nature and purpose and the provision in Section 75 exempting summary suits before Collectors from Stamp duties, the filing of a regular plaint could not have been intended. A petition and summons and an order of the Court after duly hearing the parties and their evidence, appear to us to be the fitting mode of exercising the jurisdiction.