

1870. As, however, the question raised in the cases cited
November 14. above was, whether, one of several judgment-debtors can
R. C. No. 54 sue the others for contribution on the Small Cause Side, I
of 1870. can see no analogy, as to the facts, between them and the
 present case; I have therefore thought it advisable to refer
 the following questions for the decision of the High Court:—

I.—Whether the payment by the plaintiff to the
 Revenue authorities of the amount of kist due by the defend-
 ants for the period during which the latter have held enjoy-
 ment of certain lands, the miras whereof stands registered
 in the name of the plaintiff, would create an implied contract
 on the part of the defendants to pay the plaintiff the amount
 collected from him, and

II.—If so, whether this suit is entertainable on the
 Small Cause Side.

No counsel were instructed.

The Court delivered the following

JUDGMENT:—On the principle laid down in the case of
Govinda Muneya Tiruyan versus Bapu and others, re-
 ported at V, High Court Reports 200, we are of opinion that
 the present suit was maintainable on the Small Cause Side.

Appellate Jurisdiction. (a)

*Civil Miscellaneous Petitions Nos. 87, 88, 89 and
 90 of 1870.*

JACKAMMAL and 3 others.....*Petitioners.*

PALNEAPPA CHETTY*Counter-Petitioner.*

An application for review of judgment passed on special appeal,
 upon the ground of the discovery of material evidence since the judg-
 ment was passed on special appeal, cannot be entertained, inasmuch
 as the ground relied upon in the application for review could not be
 successfully relied upon in the special appeal itself.

1870. APPLICATIONS under Section 376 of the Civil Procedure
November 15. Code of review of the Judgments of the High Court in
O. Mis. P. Special Appeals Nos. 256, 258, 259 and 260 of 1869, dated
Nos. 87, 88, the 10th December 1869, confirming the decrees of the
89 and 90 of Civil Court of Madura in Regular Appeals Nos. 259, 260 and
1870. 261 of 1868, and 21 of 1869, respectively.

Handley, for the petitioners.

Johnstone, for *Waddell,* for the counter-petitioner.

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

The facts appears from the following

JUDGMENT :—These are petitions praying for a review of the decrees of this Court dismissing four special appeals brought by the Petitioners, upon the ground that they had discovered, since the decrees, a document containing a material admission of the right which they had unsuccessfully claimed in the suits out of which the special appeals arose.

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The Petitioners have been met *in limine* by the objection that it is not within the power of the Court to entertain such a ground of review in a special appeal, and, after considering all the arguments urged on their behalf, we have a clear opinion that the objection is fatal to the application.

Section 372 of Act VIII of 1859, by which the right of special appeal was originated and is still governed, is clear and precise. It provides that a special appeal shall lie from decisions passed on regular appeal “on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in law in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground.” It is plain that the ground alleged in the present petitions cannot be brought within either of these alternative provisions. Upon the case presented in the regular appeal, the Lower Appellate Court, as shown by the dismissal of the special appeals, committed no error in law, nor was there any legal defect in its procedure or investigation of the case. This ground, therefore, would not have been admissible to impeach the decrees on the hearing of the special appeals, and it would be strange to find that, as Mr. Handley for the Petitioners attempted to argue, a ground not cognizable in deciding a special appeal was made a ground for reviewing in the special appeal the correctness of the decision specially appealed from.

But there is, we think, no foundation for such an inconsistency. The section (Section 376) which provides for the right of review applies only to the case of a decree which a party, thinking himself aggrieved, seeks to have reconsidered

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upon some ground of the kind mentioned in the section, which the Court passing the decree could have considered and given effect to before it passed the decree. The application, therefore, is not in any way aided by this section, and there is no other section having any material bearing on the present question.

This decision is quite in accordance with what was decided by this Court in the cases reported in 1, *Madras High Court Reports*, 131, 250, 154, and the judgment of the Calcutta High Court cited from 4, *Bengal High Court Reports, Appellate Jurisdiction*, 213, directly supports it.

In the present case then the Lower Appellate Court alone had vested in it the jurisdiction to review on the ground put forward by the Petitioners, and if they had not specially appealed, they would have been entitled to apply to that Court to review its decrees. But their special appeals having been admitted and those decrees affirmed by the decrees in the special appeals, the Lower Appellate Court's jurisdiction ceased to be exercisable. The clear rules on this point the High Court had occasion to lay down in a case from Salem in 1868:—*P. Mari Nanjappa Naikan (Petitioner) and Muniyappa Naikan and others (Counter-Petitioners)* decided 8th February 1868.

The Petitions must be dismissed but without costs.

Petitions dismissed.

Appellate Jurisdiction. (a)

Referred Case No. 53 of 1870.

GUNDAM VENKATASAMI *against* CHINNAM PURUSHOTTAMA.

The plaintiff, a Head Constable of Police, sued the defendant, an Inspector of Police, for money had and received to the plaintiff's use. The defendant had received the pay of the plaintiff but failed to give it to the plaintiff.

The defendant pleaded that the suit was barred by Section 53 of the Police Act (Act XXIV of 1859) and that plaintiff was estopped from denying that the section applied by reason of an admission made by him.

Held, that the plaintiff was entitled to recover the amount sued for.

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THE following case was referred for the opinion of the High Court, by G. Ramchendra Row, the District Munsif of Ellore, in Suit No. 227 of 1870.

(a) Present: Holloway and Innes, JJ.