

Appellate Jurisdiction. (a)*Referred Case No. 54 of 1870.*

PARASURAMA CHEDUMBRAIYAN

against

KRISTNAIYAN and another.

A suit to recover arrears of revenue which the plaintiff was compelled to pay by the Revenue authorities, but which the defendant was liable to pay, is cognizable by a Court of Small Causes.

1870.
November 14.
R. C. No. 54
of 1870.

THIS was a case referred for the opinion of the High Court by V. Ramasamy Iyer, the District Munsif of Trivady, in Suit No. 493 of 1870.

The case stated was as follows:—

This is a suit brought to recover Rupees 50 being the amount collected by the Revenue authorities from the plaintiff, on account of kist due in respect of certain lands held and enjoyed by the defendants, from October 1869 to June 1870.

The defendants plead, among other things, want of jurisdiction in the Court to entertain the suit on the Small Cause Side.

The case was heard before me on the 10th October 1870, and was adjourned for further consideration subject to the decision of the High Court upon the following case:

The facts of the case are as follows:—The defendants had, in October 1869, obtained possession of certain lands from the plaintiff in execution of a judgment in Appeal Suit No. 85 of 1868 of the file of the Tanjore Civil Court, and ever since continued to hold and enjoy the lands, but failed to get the miras thereof transferred to their names in the Revenue Accounts. The plaintiff likewise had neglected to take any steps to transfer the miras he held to the defendants. The kist falling in arrears, the plaintiff, as the registered Mirasidar according to the Revenue Accounts, was of course compelled to pay it to the Revenue authorities. Hence the plaintiff brings this suit on the Small Cause Side, for recovery of the money so paid by him, from the defendants.

(a) Present: Holloway and Innes, JJ.

The counsel for the defence contends, that the suit is not one befalling within the clauses specified in Section 6 of Act-XI of 1865. 1870.
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Upon the foregoing facts and arguments, I am of opinion that the suit is one for money due under an implied contract, and therefore maintainable on the Small Cause Side, as being within Section 6 of the Act.

Here the plaintiff, at the time of paying the kist was in a position which justified the Revenue Authorities in demanding payment from him; and doubtless the plaintiff himself had contributed in some degree to the position he then was in, for it was perfectly open to him to apply to the Revenue authorities to transfer the miras to the defendants, and thus avoid the payment he was compelled to make; but it would be unjust and unreasonable to suppose that the plaintiff could in any way be prejudiced by the defendants' failure to effect the transfer of miras, which they might have done just as easily as the plaintiff, by applying to the Collector with a copy of the judgment and of the process of execution. It seems to me, therefore, that the payment which the plaintiff was compelled to make was one made on account of and for the benefit of the defendants in discharge of a legal liability on their part. Such a payment, I conceive, creates an implied contract on the part of the defendants to make good to the plaintiff what he has so paid. On this point, *Chitty*, in his *Contracts*, lays down (8th ed., p. 549) that "where the plaintiff is compelled to pay the defendant's debts, in consequence of his neglect or omission so to do, the law infers that the defendant requested the plaintiff to make the payment for him and gives him the action for money paid;" and again (p. 550) it is laid down that "where a party is in that situation where he *may be* compelled by law to pay a sum of money, although he be not *actually* compelled to do so, and he pays it accordingly, the action will lie." Further, I find myself supported in this view by the ruling of the High Court in *Suppanáchári v. Chaklra Pattan* (reported in I. H. C. R., p. 411), as well as by the observations made by the Judges in the referred case of *Govinda Muneya v. Bapu* reported in the Madras Jurist, Vol. V, p. 222.

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.