

unreasonable that the brother in whom it vests should contribute more than the excluded brothers. The old law was that all should contribute, so as to give each sister one-fourth part of her brother's share. Equality of contribution is in Section 10 clearly enjoined, and by analogy it seems clear that in the substituted right to maintenance rateable contribution should be enforced. It was not attempted to show that the Civil Judge has affixed too high a rate if the liability of the Zemindary is established, nor was there any attempt to show that the sum awarded was unreasonably large. This is a question upon which we should have great hesitation in differing with a Judge so well acquainted with the circumstances of the country as the Civil Judge, and literally nothing was said in argument to induce us to do so. We see no reason for dissenting from the judgment of the Civil Judge and confirm his decree with costs.

1870.
May 28.
 R. A. No. 90
 of 1869.

Appeal dismissed.

Appellate Jurisdiction. (a)

Referred Case No. 30 of 1870.

TOPYA PILLAY *against* PEDDOO PILLAY and another.

A Small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from Service Inam lands by reason of Section 3 of Regulation VI of 1831.

THIS was a case referred for the opinion of the High Court by F. H. Woodroffe, the Acting Judge of the Court of Small Causes at Cuddalore.

1870.
June 2.
 K. C. No. 30
 of 1870.

The case stated was as follows:—

Plaintiff in this case sued 1st defendant and another before the Deputy Collector under Regulation VI of 1831, that he might be allowed to enjoy certain Service Inam lands, and obtained a decree accordingly, and the present suit is to recover certain damages for the last six of the 18 years preceding that decree, during which period defendants hindered plaintiff's enjoyment of the land, so that he allowed them to lie waste.

Defendants pleaded *inter alia* that the suit is unsustainable, as it does not appear to proceed on either contract or delict.

(a) Present:—Scotland, C. J. and Kindersley, J.

1870.
June 2.
R. C. No. 30
of 1870.

I was of opinion the objection was good inasmuch as all that had been determined in plaintiff's favor was that his future possession should not be disturbed, and it was not at all ascertained by the Revenue Court that damage had accrued to plaintiff at a certain time before that suit; in point of fact therefore I was asked to decide not only the extent of damage, but also whether plaintiff is entitled to damages at all, and if so, from what time: the Court is of course competent to deal with the first question, but I think it would be exceeding its summary jurisdiction if it entered on the two others—the suit indeed seems to me to be analogous to one for maintenance where no sum has been fixed, and the Calcutta High Court appear to have ruled that such a claim is unsustainable in a Small Cause Court.

It also occurred to me as a further objection to the suit that, inasmuch as it sought to obtain an equivalent for emoluments appertaining to a village office, it could not be maintained except in a Revenue Court, as is laid down in Sections 3 and 4, Regulation VI of 1831.

Accordingly the questions for the Honorable Court's decision are; 1stly, supposing the suit otherwise sustainable, is the Court's jurisdiction ousted by the sections of the Regulation just quoted?

And 2ndly, if the first question be answered negatively, is the Court competent to determine whether plaintiff is entitled to damages and from what time?

The Court delivered the following

JUDGMENT:—We are of opinion that the suit is excluded from the jurisdiction of the Court by Section 3 of Regulation VI of 1831. The damages sued for are claimed in respect of the profits which the plaintiff would have derived from Service Inam lands. In effect the suit is for the mesne profits which the plaintiff should have been allowed to enjoy as the emoluments of the office to which the lands are annexed, and is, therefore, we think, a suit upon a claim which the Regulation was intended to render not cognizable by the Civil Courts.

It becomes unnecessary to give an opinion as to the second question referred.