

**Appellate Jurisdiction. (a)***Special Appeal No. 562 of 1869.*

RANGANASARY and others.....*Special Appellants.*  
 SHAPPANI ASARY.....*Special Respondent.*

The ancestors of the plaintiff brought a Suit in 1821 before the Registrar of the Adawlut Court to eject the defendant's grandfather from a piece of ground. The Registrar found that the defendant was a tenant under the plaintiff at a monthly rent, and the Court decreed that defendant should remain in possession so long as he should continue to pay the rent regularly, and that in default of payment the plaintiff should be placed in possession.

An attempt to obtain possession in execution of that decree in 1861 failed, and the plaintiff brought a suit to recover possession with arrears of rent.

*Held*, that Section 11 of Act XXIII of 1861 precluded the plaintiff from maintaining the suit.

**T**HIS was a Special Appeal against the decision of W. M. Cadell, the Acting Civil Judge of Trichinopoly, in Regular Appeal No. 43 of 1868, confirming the decree of the Court of the District Munsif of Trichinopoly, in Original Suit No. 659 of 1864.

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The plaintiffs sued for the recovery of a certain house-ground valued at Rupees 140, and of Rupees 25-12-0 as arrears of rent from 1855.

They stated that the said house-ground had been decreed to the 1st plaintiff's father and others whom the present plaintiffs represent from the defendant's grandfather under the decrees passed in Original Suit No. 212 of 1821 and in Appeal Suit No. 3 of 1822; that they applied to the Civil Court in Miscellaneous Petition No. 217 of 1862 for possession of the same and for collection of arrears of rent from 1855; and that the order of the Civil Court allowing execution was reversed in appeal by the High Court in January 1864.

The defendant pleaded that the suit was barred by Section 2 of the Civil Procedure Code; and that the house-ground claimed was not the indential one that was decreed in the former suit.

The District Munsif dismissed the suit upon the ground that a remedy by summary process alone is provided for the

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

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of 1869. enforcement of a judgment, and that no other mode of remedy is prescribed whether it remains in force or not.

Upon appeal the Civil Judge confirmed the decision of the Munsif, and the plaintiff presented a special appeal to the High Court.

*Mayne*, for the special appellants, the 1st, 3rd and 5th plaintiffs.

The Court delivered the following

JUDGMENT:—The question raised in this appeal is whether the Lower Courts have erred in deciding that the suit did not lie.

In the year 1821 the ancestors of the present plaintiffs brought a suit before the Registrar of the Adawlut Court at Trichinopoly to eject the present defendant's grandfather from a certain piece of ground at Trichinopoly. The Registrar appears to have found that the defendant in that suit was a tenant under the plaintiffs at a monthly rent. But as he had been in possession for 25 years, and had built a house on the ground in question with the plaintiffs' permission, the Court decreed that the defendant should remain in possession so long as he should continue to pay the rent regularly, and that in default of payment the plaintiffs should be placed in possession. That decree was appealed against and affirmed.

Afterwards in 1861 the plaintiffs endeavoured to obtain possession by execution of that decree, alleging that the defendant had made a default in the payment of rent. But in this they were unsuccessful on the ground (as appears from the judgment of the High Court of the 19th January 1864) of doubt as to the property decreed being in the party's possession, and the absence of proof of payment in the long interval since the date of the decree. The plaintiffs now seek by the present suit to recover possession with arrears of rent.

It has been decided by this Court in the case of *Sunjeevaiya v. Nanjaiya* (4, *Madras H. C. Rep.*, 453) that the effect of Section 11 of Act XXIII of 1861 is to take away from the parties to the suit the right to raise by a fresh suit any question as to their rights and liabilities under the decree. But it has been

contended that so much of the decree of 1821 as directed that on the defendant's failure to pay the rent regularly, the plaintiffs should be placed in possession was extra-judicial; being a remedy not sought for by the plaintiffs, and ultra vires of the Court and therefore a nullity. We are unable to say that the Court had no power to make such a decree at the time at which it was made. The old Regulation III of 1802, Section IX, only required the Judges to give judgment according to justice and right. And so far back as 1821 the Courts did not in their practice adhere to strict rules with respects to the decreeing of relief. Therefore as the adjudication of possession on failure to pay the rent must be taken to have been according to justice and right, and that relief may be considered as naturally arising out of the relief prayed for in the former suit, we must hold that it was of legal force and capable of being enforced by process of execution; consequently we are of opinion that the plaintiffs are precluded by the terms of Act XXIII of 1861, Section 11, from maintaining the present suit. This appeal is dismissed.

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*Special Appeal dismissed.*

**Appellate Jurisdiction (a)**

*Regular Appeal No. 90 of 1869.*

SIVANANANJA PERUMAL SETHUROYER,  
ZEMINDAR OF OORCAUD AND } *Appellants.*  
ANOTHER.....

MEENAKSHI AMMAL AND ANOTHER.... *Respondents.*

A suit was brought for maintenance by the step-mother and step-sister of a Zemindar to be paid out of the income of the Zemindary.

The defendant contended that a partition having taken place of all the partible property of the family, and shares having been allotted to the defendant's step-brothers, the sons and brothers of the plaintiffs, the plaintiffs' claim to maintenance was limited to the property of the defendants' brothers, and the plaintiffs had no claim to maintenance against the defendant.

*Held:—*That the defendant was liable to pay and contribute to the maintenance of the plaintiffs not only out of the partible property which he had obtained upon the partition, but also out of the income of the Zemindary.

**T**HIS was a regular Appeal against the decree of F. S. Child, the Civil Judge of Tinnevely, in Original Suit No. 46 of 1866.

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(a) Present:—Holloway and Innes, J. J.