

Appellate Jurisdiction. (a)*Referred Case No. 23 of 1870.*THE JAGHIRENDAR OF ARNEE *against* PERIYANNA MUDELY.

A Court of Small Causes has no jurisdiction to entertain a suit to recover the amount of a trade impost alleged to be leviable from the defendant in common with all other persons carrying on the trade of weaving within a particular district.

Such a suit cannot be considered as a claim for rent.

THIS was a case referred for the opinion of the High Court, by V. Rungasawmy Iyengar, the District Munsif of Arnee in the Zillah of Chittoor, in Suit No. 323 of 1869. 1870.
May 19.
R. C. No. 23
of 1870.

The following was the case stated :—

The Collector of North Arcot published in accordance with the Government Proceedings, dated 9th February 1861, No. 318, a notification prohibiting the collection of moturpha by Jaghiredar of Arnee and again cancelled this order in accordance with the Proceedings of Madras Government, No. 2,906, dated 25th November 1865, by another notification in the District Gazette, allowing the Zemindar and Jaghiredar of Arnee to collect moturpha within their respective divisions.

In consequence of the subsequent order herein enclosed, the Jaghiredar of Arnee has brought a Suit No. 323 of 1869 on the side of Small Causes against one Periyanna Mudely within the Jaghire limits for the recovery of Rupees 21-5-3 being the amount of tax due by him for his five looms for Fuslies 1276-77 and 78 at the rate of Rupees 4-4-3 per loom a year.

The defendant Periyanna Mudely while admitting the rate and the payment of the tax to the plaintiff, Jaghiredar, previous to the year 1860, states that as the Government prohibited in 1861 the collection of this moturpha tax by the Jaghiredar, he should not pay the tax now, that he has therefore no right to collect the tax, and that his sunnud does not allow him such privileges.

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

1870.
 May 19.
 R. C. No. 23
 of 1870.

Although the Government has prohibited the collection of moturpha tax, yet it appears to have been in existence for very many years before 1832 from time immemorial, and that it does not appear to have been deducted from the permanent assessment paid by the Jaghiredar.

The permanent assessment or quit rent was assessed in 1802 by Regulation XXV of 1802, and this moturpha tax seems to have been levied by the Jaghiredar for nearly 60 years after or before the permanent settlement from 1802 up to 1860.

By the decree of the late Sadr Court No. 6 of 1807, the Zemindars were prohibited from collecting the moturpha, although the permanent assessment may have been fixed exclusive of moturpha or professional tax; but the subsequent Regulation V of 1832 provides for the collection of moturpha or professional tax.

In accordance with the Regulation, the Jaghiredar was collecting from this defendant and others of this description the said moturpha, and has also obtained decrees in his favor against such as had resisted the payment of the tax.

The Regulation V of 1832 has been repealed by Act XVIII of 1861, which subsequent Act has again been repealed by Act II of 1862 to the exclusion of such part as repealed the Regulation and part of the Regulations of Madras Code therein mentioned.

By this it is evident that the custom which prevailed previous to 1832 regarding the moturpha collection should now be observed and no new Regulation appears to have been enacted in connection with it.

I have therefore decided this and some other cases as sued for, thinking that the Jaghiredar is entitled to collect the moturpha tax in the same way as he was collecting the tax before any Regulation was enacted on the subject.

Under these circumstances, I beg to be informed of the decision of the High Court with regard to the disposal in this Court of the above subject.

No counsel were instructed.

The Court delivered the following

JUDGMENT :—We are of opinion that the District Munsif of Arnee has not jurisdiction to dispose of this suit on the Small Cause side of his Court. Unless the claim in the suit can be considered as a claim “for rent,” it is clear that the suit is not one cognizable by a Small Cause Court under Section 6 of Act XI of 1865,^(a) and in our opinion the claim cannot be so considered. We think the word “rent” in the section was intended to be understood in the ordinary sense of a return in money or kind for the enjoyment of specific property held by one person from or under another.

1870.
May 19.
R. C. No. 23
of 1870.

In the present case the claim is obviously not of that nature. It is simply to recover the amount of a trade impost alleged to be leviable from the defendant in common with all other persons carrying on the trade of weaving within the Jaghire of Arnee, and only in respect of such trade. The suit therefore not being within the jurisdiction of a Court of Small Causes should not have been entertained by the District Munsif, and we are not at liberty upon the present reference to express any opinion as to the important question of the right of the plaintiff to levy the impost.

(a) Section 6 is in the following terms :—

The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of five hundred Rupees whether on balance of account or otherwise : Provided that no action shall lie in any such Court.

(1.) On a balance of partnership account, unless the balance shall have been struck by the parties or their agents.

(2.) For a share or part of a share under an intestacy, or for a legacy or part of a legacy under a will.

(3.) For the recovery of damages on account of an alleged personal injury, unless actual pecuniary damage shall have resulted from the injury.

(4.) For any claim for the rent of land or other claim for which a suit may now be brought before a Revenue Officer, unless, as regards arrears of rent for which such suit may be brought, the Judge of the Court of Small Causes shall have been expressly invested by the Local Government with jurisdiction over claims to such arrears.