

4. Is the dismissal of plaintiff's suit under Section 40 by the Collector for default a bar to his recovering damages? 1870.
February 7.
R. C. No. 52
of 1869.

Johnstone, for the plaintiff.

O'Sullivan, for the defendant.

The Court delivered the following judgment:—

We are of opinion that the Small Cause Court had no jurisdiction because the suit was cognizable before a revenue officer. That at the actual period of bringing the suit it could no longer have been prosecuted with success, because the period of limitation, there a shorter one, had expired, can make no difference.

The right to institute it once existed and barred the jurisdiction of the Small Cause Court by the express provisions of the Act which created it.

This renders the answering of the other questions unnecessary.

Appellate Jurisdiction. (a)

Civil Miscellaneous Regular Appeal, No. 195 of 1869.

STRINARASIMMA CHARIYAR.....*Petitioner.*

V. NARASIMMA CHARIYAR.....*Counter-Petitioner.*

Where an application was made to the Civil Court under Sec. 230 of the Civil Procedure Code by the petitioner disputing the right of a decree-holder to dispossess him of certain immoveable property and the Civil Judge rejected the application,

Held, that Sec. 231 of the Civil Procedure Code did not give the petitioner a right of appeal to the High Court.

THIS was an appeal against the order of E. B. Foord, the Civil Judge of Chingleput, dated the 22nd March 1869, passed on Miscellaneous Petition, No. 155 of 1869. 1870.
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The order of the Civil Judge was as follows:—

Petitioner disputes the right of the decree-holder in Original Suit No. 4 of 1866, this Court's file, to dispossess him of $1\frac{7}{8}$ cawnies of land on the ground that the said land was put in his possession in execution of the decree in Suit No. 221 of 1864, Tripassore Munsif's file, in which he was the decree-holder.

(a) Present : Bittleston and Innes, JJ.

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195 of 1869. It appears from the record that the decree-holder in Original Suit No. 4 of 1866 was put in possession of the land by this Court in accordance with a deed of sale executed on the 7th January 1856, whereas the deed of sale in accordance with which the land was put in petitioner's possession was dated in 1863.

It moreover appears that Original Suit No. 4 of 1866 was filed on 10th February 1866, and that the decree in Suit No. 221 of 1864 was passed on the 17th January 1867, the defendants therein having admitted the deed of sale sued on.

Such being the case, I have but little doubt that the decree in the latter suit was obtained collusively in order to render inoperative the deed executed on 2nd May 1863, which has been pronounced by this Court to be genuine in its judgment, dated 14th May 1868.

I therefore reject this petition.

The petitioner appealed to the High Court against the order of the Civil Judge for the following reasons:—

1. No ground has been shown for dispossessing the petitioner of the land in question.

2. The provisions of Section 230 of the Code of Civil Procedure have not been complied with by the Civil Judge.

Parthasarathy Aiyangar, for the petitioner.

Rama Row for *Rangaiya Naidu*, for the counter-petitioner.

The Court delivered the following

JUDGMENT:—In this case the Civil Judge having rejected an application under Section 230 of the Civil Procedure Code, the question is raised whether Section 231 gives the applicant an appeal to this Court; and we think it does not. The language of that section seems to us to show that the Legislature intended only to give the appeal from a decision passed after an investigation of the matter in dispute in the same manner as if a suit had been instituted, and in that case to prohibit any *fresh suit*; but not to give any appeal if the Court should reject the application as being made without probable cause, leaving the applicant in that case to his remedy by an ordinary suit.

This view is in accordance with the decision of the High Court of Bengal (1, Suth. W. R., 140) and not at variance we think with the decision of the High Court of Bombay (4, Bombay H. Ct. Rep., R. A., 35) which seems to have proceeded on the ground that the omission of the Lower Court to number and register the claim as a *sait* was a mere irregularity, and that as that Court had really investigated the claim under Section 229, the irregularity would not take away the right of appeal under Section 231. We ought to mention that in December last upon appeal from a similar order of the same Civil Court, we remitted the case for re-investigation on the merits, no question having been raised as to the right of appeal and our attention not having been directed to the precise language of Section 231; but that decision appears to us now to have been erroneous and may still be corrected upon an application for review.

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The present appeal must be dismissed and the respondent is entitled to his costs.

Appellate Jurisdiction. (a)

Special Appeal No. 104 of 1869.

MUTTUVELU PILLAI.....*Special Appellant.*

VYTHILINGA PILLAI.....*Special Respondent.*

The plaintiff sued to recover certain land of which the defendant obtained possession in execution of a decree in a former suit in which the plaintiff was a defendant, although it was not part of the land mentioned in the plaint or decree in the former suit.

Held, that the plaintiff's suit could not be maintained, and that his only remedy for the wrongful dispossession was a proceeding under Section XI, Act XXIII of 1861.

THIS was a special appeal from the decision of V. Sundara Naidu, the Principal Sadr Amin of Tranquebar, in Regular Appeal No. 29 of 1868, reversing the Decree of the Court of the District Munsif of Trivalore in Original Suit No. 28 of 1867.

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February 8.
S. A. No. 104
of 1869.

The plaintiff sought to recover the lands put in possession of the defendant under the decree of the District Munsif's Court of Triturypoondy in Suit No. 470 of 1864.

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