Appellate Jurisdiction. (a)

Referred Case No. 27 *of* 1869.

D. VENKATACHALAM *against* THIMMA NAIKAN AND 2 OTHERS.

A Small Cause Court has no jurisdiction to try a suit for rent where the defendant bonâ fide sets up by way of defence that the title to the land in respect of which the rent was claimed passed from the plaintiff to others, since the creation of a tenancy between the plaintiff and defendant, and that the rent claimed had accrued due after the determination of the plaintiff's title as landlord.

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THE following case was stated under Section 22, Act XI of 1865 by Vytheeswariah, District Munsif of Oodumalapettah, in Suit No. 148 of 1869.

This is a suit brought for the recovery of Rupees 39 value of 6½ salagays of paddy, being arrears of rent of the lands said to have been rented of plaintiff by the 1st defendant.

Plaintiff states that one salagay of the said paddy is the arrears of rent due by the 1st defendant for the year 1867 for the said lands; that a portion of these lands is the pagoda service Inam and is in plaintiff's possession for the service of "kaitalam" which her daughter, a minor, is doing in the said pagoda; that the remaining land is her own; that on the 10th Chittray of Vibbava (20th April 1868) the 1st defendant rented the said two descriptions of land from plaintiff agreeing to pay her rent for the year Vibbava (1868) at 5½ salagays of paddy.

The 1st defendant admits that he owes plaintiff one salagay of paddy for the year 1867, denies having rented the lands from plaintiff for the year 1868, and adds that he holds the Inam land on lease from the trustees of the pagoda for which it is endowed; that the trustees have further interdicted him by an order from paying the rent of the said Inam land to plaintiff, as her daughter has omitted to perform the service for which the Inam has been allotted.

The trustees of the pagoda were made the 2nd and 3rd defendants by order of Court under Section 73 of the Code of Civil Procedure.

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

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The 2nd and 3rd defendants assert that plaintiff's daughter omitted to do service in the pagoda from the month of Pungoony of Prabhava (March 1868) ; that the defendants have therefore dismissed her and ordered that the proceeds of the Inam land payable to her from that date should be carried to the credit of the pagoda ; that the plaintiff having attempted to receive the said proceeds from 1st defendant, the 2nd and 3rd defendants have sent an order to the 1st prohibiting him from paying them to her.

The case was heard before me on the 15th July 1869 and was adjourned for further consideration subject to the decision of the High Court upon the following case.

This reference is made only as regards the rent claimed, of the Inam land.

For the purpose of the questions referred it must be assumed that the said Inam land was leased to 1st defendant by plaintiff.

The plaintiff has produced the title deed issued by the Inam Commisioner. It is granted to Marow, who is the plaintiff's brother. It appears by this document that the land in question is the devadayam or pagoda service Inam held for the service of "kaitalam" in the pagoda of Kalyanam Ramasawmy, situated in the village of Darapooram. This document further contains a condition that the Inam is to be held without interference so long as the conditions of the grant are duly fulfilled, *i. e.*, so long as the service of "kaitalam" in the pagoda is performed by the holder.

The plaintiff rented this Inam to 1st defendant ; the latter not having paid the stipulated rent, plaintiff sues to recover it. The 1st defendant states that he has been interdicted by the trustees of the said pagoda, 2nd and 3rd defendants, from paying the rent claimed to plaintiff on the ground that the plaintiff's daughter, the holder of the said service, has been dismissed by them for having omitted to do the service.

I therefore entertain a doubt as to whether the 2nd and 3rd defendants are necessary parties to this suit, and I am of opinion that they are.

The Inam in question is granted for the support of a Hindoo pagoda and the 2nd and 3rd defendants as the

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wardens of that institution have power over this Inam and to see that it is duly appropriated for the purpose for which it is intended. In other words they are required to see that the service for which the grant is made is regularly performed. When the service is not done they are empowered to dismiss the holder thereof and appoint another. A person who is not paid cannot be expected to do the service; it is therefore a part of the duty of the 2nd and 3rd defendants as trustees to see that the person who does the service is paid his dues; this they cannot do if the remuneration allowed for that service be appropriated by one who is not entitled to it. When the plaintiff who is stated to have no title to receive the rent claimed endeavours to recover it, the 2nd and 3rd defendants have a right to interpose and urge their objections. They are therefore necessary parties and interested in this suit.

My second doubt is whether the plaintiff can recover the rent claimed without first establishing her right to it. I am of opinion that the holder of the Inam is only entitled to enjoy the Inam so long as he continues to render the service for which it has been allotted—the enjoyment of the Inam is inseparable from the doing of the service for which it is granted. Plaintiff's right to enjoy the Inam in question and receive its proceeds ceases the moment the service is omitted to be done, and vests in the 2nd and 3rd defendants, the trustees. As the defendants contend that the holder of the service has been dismissed by them for omitting to do the service and that plaintiff has no right to receive the rent claimed, plaintiff must first establish her right to receive it before she institutes a suit for its recovery. As Judge of the Court of Small Causes I have no power to adjudicate upon this right.

The questions for the decision of the High Court are:—

1st. Whether the 2nd and 3rd defendants are necessary parties to this suit?

2nd. Whether the plaintiff can recover the rent of the Inam land without first establishing her right to receive it when that right is disputed?

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The case coming on for hearing, and the parties not appearing in person or by counsel, the Court delivered the following

JUDGMENT:—We are of opinion on the first question submitted that the trustees of the pagoda were unnecessarily made parties to the suit, inasmuch as the question of title raised between the original parties to the suit, in which the trustees are interested, appears to us to have rendered the suit no longer cognizable by the District Munsif in the exercise of his Small Cause jurisdiction. For the same reason our answer to the 2nd question must be that the plaintiff cannot recover the arrears of rent in this suit.

The question which it was within the cognizance of the Court to hear and determine in the suit were first—the existence of the relationship of landlord and tenant between the plaintiff and the original defendant; and 2ndly the amount due on account of arrears of the stipulated rent. These points being established the defendant could not be heard to dispute the title of the plaintiff to let the land to him, and if his plea in denial of title had amounted to no more, it would not have affected the jurisdiction of the Court to pass a decree in the plaintiff's favor.

But it was open to the original defendant to set up that the plaintiff's title to the land had passed from her to others since the creation of the tenancy, as a defence to so much of the rent claimed has had accrued due after such determination of the plaintiff's title as landlord, and this we understand from the statement of the case is the nature of the defence which he has pleaded. We also infer that the District Múnsif is satisfied (as it is necessary he should be, *see Referred Case No.* 11 *of* 1864 *in* 2, *Madras H. C. Reports*, 186, *and Referred Case No.* 9 *of* 1863 *in* 1, *Madras H. C. Reports*, 213) that such defence has not been colourably put forward, but is fairly warranted by the circumstances of the case. This being so a *bonâ fide* question of title has arisen in the suit which the Court is not competent to hear and determine, and the suit should be dismissed for want of jurisdiction.