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We are of opinion that the objection is a good one. The term 'subordinate' in that Section was intended, we think, to be understood in the sense of subjection to the jurisdiction or control, and in the exercise of the jurisdiction and powers provided for by the Small Cause Courts' Act, No. XI of 1865, those Courts are not in any way made subject to the jurisdiction or control of the Civil Courts. The only existing Court to which they are in this sense subordinate is the High Court (see Section 46 and 53). Then, does it make any difference in this case that the officer who disposed of the suit in the exercise of Small Cause jurisdiction was subordinate to the Civil Court in his judicial capacity of Principal Sadr Amin? We think not. A distinct appointment was necessary to empower him to exercise such jurisdiction, and, when he acted judicially by virtue of that appointment, he did so, in our opinion, for all purposes and in every respect as a Judge of a Court of Small Causes, quite independently of his functions as a Principal Sadr Amin.

This view of the position of Judges of Courts of Small Causes, with reference to the Civil Courts, has been several times recognized and acted upon in Proceedings of this Court, and the recent decision in the case of *Narayana Malya v. Govind Shetty*, 6 M. H. C. Repts., 18, bears directly in support of it.

We are, consequently, of opinion that the objection is fatal to the conviction and sentence, and that they must be annulled and the prisoner set at liberty.

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APPELLATE JURISDICTION (a)  
*Referred Case No. 70 of 1870.*  
CHENGULVA RÁYA MUDALI  
*against*  
THANGAICHI AMMÁL and others.

An action lies in a Small Cause Court for the recovery of costs incurred by the plaintiff in a suit to compel registration of a document.

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THIS was a case referred for the opinion of the High Court by S. Narasimhulu Náyudu, the District Munsif of Chingleput, in Suit No. 181 of 1870.

(a) Present: Scotland, C. J., Holloway and Kindsley, J J.

Plaintiff sued to recover the amount of costs incurred by him in compelling registration of a document executed to him by defendants, the Court which compelled the registration having refused to grant costs. The District Munsif was of opinion that the suit would not lie, but he referred the question,—“ Whether a suit for the recovery of costs, incurred by a party in the course of obtaining the registration of a document, against the person who executed it, but who refused to get it registered, can be entertained in a Small Causes Court, when the District Court has not allowed the said costs ?”

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No counsel were instructed.

The Court delivered the following judgments :—

HOLLOWAY, J.—The question is whether the plaintiff can recover in the Small Causes Court the costs incurred in compelling registration. The general rule is that costs, where adjudicable upon, are not an element in calculating damages.

Under the Registration Act it has several times been decided that costs cannot be given, and in the present case they were not given.

It seems, therefore, that if the transaction between the parties imported an obligation to get the document registered, and, through refusal to perform it, the plaintiff was put to the costs in the suit rendered necessary by defendants' breach, those costs are recoverable in the Small Causes Court.

KINDERSLEY, J.—I am inclined to concur in this opinion. As the Civil Court had no power to make any order for costs, there seems to be no sound objection to the recovery of costs by a separate suit.

SCOTLAND, C. J.—I think that the suit was maintainable. The District Court had no power to grant the costs of the special remedy provided by the Registration Act XX of 1866, and I do not see anything in the Act to preclude the plaintiff, who has been improperly driven to pursue that remedy, seeking to recover the necessary expense to which he has been put.

The suit then is really one for damages, and assuming the sums claimed to have been reasonably expended in the

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proper conduct of the Proceedings necessary under the Act, I apprehend the plaintiff is entitled to recover those sums, on the general principle that they are the damages directly and proximately consequent upon a legal injury caused by the conduct of the defendant.

It seems to me that out of the contract to sell and transfer the defendant's title to the property by a *written instrument*, there necessarily arose the implication of the duty to do what on his part was required, in order to effect registration (see Section 36), without which the instrument could not be effectual to pass the title in accordance with the contract.

Upon the ground, therefore, that the defendant's refusal to appear and acknowledge his execution of the instrument, which prevented registration, was a breach of his obligation in that behalf under the contract of sale, and consequently a legal injury to the plaintiff, I give my opinion in the affirmative on the question referred.

APPELLATE JURISDICTION (α)

*Special Appeal No. 474 of 1870.*

WANNATHAN KANDILE CHIRUTHAL. *Special Appellant.*

KEYAKADATH PYDEL KURUP.....*Special Respondent.*

Plaintiff sued to recover certain land in virtue of an alleged gift from her deceased husband. The parties were subject to the Marumakkattayam law. The facts were, that, the land being in the hands of tenants, a deed of gift with the counterpart lease was delivered by the donor to the plaintiff. It did not appear that there were any title deeds belonging to the property. *Held*, reversing the decision of the Principal Sadr Amin, that the rule of law applicable is that a gift is perfectly valid if such delivery is made as the nature of the object permits, and that this had been done in the present case.

THIS was a Special Appeal against the decision of K. R. Krishna Menon, the Principal Sadr Amin of Tellicherry, in Regular Appeal No. 251 of 1869, reversing the decree of the Court of the District Munsif of Badagara in Original Suit No. 268 of 1867.

The suit was brought to recover certain land with arrears of rent. The plaint stated that the land in question

(α) Present : Holloway and Kindersley, JJ.

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