

MADRAS HIGH COURT REPORTS.

APPELLATE JURISDICTION (a)  
*Referred Case No. 61 of 1870.*

MADUTHAN and 3 others.

*against*

SUBBIER and 6 others.

The plaintiffs sued the defendants in the Small Cause Court to recover the value of certain nets, the property of the plaintiffs, of which the defendants had taken wrongful possession, and damages for the loss sustained by the plaintiffs in that they were unable to carry on their business as fishermen by reason of the detention of their nets by the defendants.

*Held*, that the Small Cause Court had jurisdiction to entertain the suit.

THE following was a case referred for the opinion of the High Court by H. W. Bliss, the Acting Judge of the Court of Small Causes of Cuddalore, in Suit No. 701 of 1870:—

This was a suit to recover the value of certain fishing nets wrongfully taken by the defendants from the possession of the plaintiffs and not restored, and for damages for the loss sustained by the plaintiffs through their inability to follow their pursuit as fishermen whereby they gain their living in consequence of the said wrongful action of the defendants in taking away their nets.

The defence was—

1st.—The nets were at once returned.

2nd.—That the damages claimed were excessive.

3rd.—That the Small Cause Court had no jurisdiction to award damage in this case since they were not actual pecuniary damages.—(Vide Clause 3, Sec. 6, Act XI of 1865.)

The case was heard before me on the 9th day of November 1870, and a decree has been passed in favor of the plaintiff, for first, the value of the nets, Rupees 24-4-0, and second, damages Rupees 28, subject to the decision of the High Court upon the following case:—As appears from the plaint, and indeed may be said to be admitted by the defendants, the only damage which plaintiffs have sustained is that, after the wrongful taking away by the defendants of their fishing nets, they were unable to carry on their usual trade, and though it is not admitted by defendants, it appears

(a) Present : Holloway, Acting C. J. and Innés, J.

that the plaintiffs were too poor to provide themselves with fresh nets, and that consequently they say they have sustained actual pecuniary damages resulting from the tortious acts of the defendants. Upon the foregoing facts I was of opinion that, as plaintiffs had been prevented from earning money by the defendants, the Court had jurisdiction to entertain the suit. The question being one as to jurisdiction, I request the decision of the High Court upon the following points :—

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1st.—Whether in order to give Small Cause Court jurisdiction under Clause 3, Section 6, Act XI of 1865, it is necessary that plaintiffs should have been put to an actual disbursement of money or whether an incidental loss of possible gain of money which they have been prevented from earning will give the Court jurisdiction ?

2nd.—In the event of the decision of the High Court being that the Small Cause Court had not jurisdiction to award the damages sued for, whether the value of the nets being below the jurisdiction of the Small Cause Court and within that of the District Munsif, the Small Cause Court has power to adjudge their delivery or value ?

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—The proper answer is that the Court has jurisdiction. Whether possible gain is an element to be taken into account is a question differently answered by different systems of law, and the Judge must deal with that question for himself, as we do not understand it to be referred.