

MADRAS HIGH COURT REPORTS.

APPELLATE JURISDICTION (a)

Referred Case No. 39 of 1870.

NARAYANA MALYA

against

GOVIND SHETTY and 2 others.

An application was made on the 14th March 1870 to the District Munsiff to set aside a decree passed *ex-parte* against the defendants under Section 119 of the Code of Civil Procedure.

On the 3rd March 1870 the Madras Government issued a Notification under Section 4 and 5 of Madras Act IV of 1863 investing the Additional Principal Sadr Amin of Mangalore with exclusive jurisdiction to try Small Cause Suits for sums under Rupees 500 within the jurisdiction of the District Munsiff. By order of the Civil Judge the District Munsiff sent to the Additional Principal Sadr Amin the records of all suits cognizable by a Court of Small Causes if one had been in existence at the date of their institution, although they had been filed before the date of the Notification, including the present application. *Held*, that the Additional Principal Sadr Amin had not jurisdiction to entertain the application.

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THIS was a case referred for the opinion of the High Court, by R. Vassudeva Row, the Additional Principal Sadr Amin of Mangalore, in Suit No. 67 of 1870.

The following is the case stated :—

This is an application for setting aside the decree passed *ex-parte* against the defendants by the District Munsif of Mulki under Section 119 of the Code of Civil Procedure.

The application came on for hearing before me on the 8th day of July 1870 and was adjourned for further hearing and consideration, subject to the decision of the High Court upon the following case :—

The plaintiff originally brought this suit in the aforesaid District Munsif's Court on the 27th August 1869 for the recovery of Rupees 61-6-4, the same being the value of cattle sold to the defendants but not paid for.

The defendants having failed to appear, the District Munsif gave judgment for plaintiff *ex-parte* on the 24th February 1870. On the 14th March following the defendants preferred the present application to the Munsif praying that the decree may be set aside under Section 119 of the Code. On the 3rd March 1870, the Madras Government issued a Notification under Section 4 and 5 of Madras

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

Act IV of 1863 investing me with exclusive special jurisdiction to try Small Cause Suits for sums below 500 Rupees over that portion of the District of South Canara which is subject to the jurisdiction of the Mulki Munsif, and under orders from the Civil Judge, the District Munsifs of Mulki and Mangalore then sent up to me and to the other Additional Principal Sadr Amin respectively the records of all such suits as would have been cognizable by a Court of Small Causes if one had been in existence on the dates of their institution, although they had been filed long before the date of the said Government Notification. The application now under reference has accompanied the said records.

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The plaintiff alleges

1st.—That the reference is illegal inasmuch as the Civil Court is incompetent to try the suit itself or to refer it for trial to this Court under Section 6 of the Code of Civil Procedure, this Court being a Court of Small Causes, and as such being subject to the general control and orders of the High Court.

2dly.—That the application in question ought not to be heard by me inasmuch as if I reject it there could be no appeal from my order, while the defendants had a right of appeal under Section 119 if the Munsif had been allowed to dispose of it. The suit from which this application has sprung up having been presented on a date when the parties concerned believed they had a right of appeal, he contends that it is not right that the Notification investing me with small cause powers should be so construed as to deprive them of that right.

The defendants on the other hand contend that the reference of old suits and consequently of the present application is perfectly legal and imperative under Section 12 of the Small Causes Court's Act and the Proceedings of the High Court, dated 29th January 1864.

Upon the foregoing facts I am of opinion that a Civil Judge has evidently no jurisdiction to call up or refer any suit of a small cause nature to a Small Cause Court; that the Notification of the local Government investing any Court with small cause powers cannot be held to have

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retrospective effect in regard to suits filed previous to the date of its issue, and that the present application ought not, therefore, to have been referred to this Court. But the Civil Judge seems to have considered that under Section 12 of Act XI of 1865, the Notification constituting my Court as a Court of Small Cause precluded that Mulki Munsif from any longer hearing or determining any suits cognizable by my Court as a Court of Small Causes, although they had been filed before the issue of the said Notification, but I cannot agree with him :—

1stly.—Because I do not think that an enactment or Notification such as the one above referred to could be held to operate retrospectively unless such operation is expressly allowed therein.

2ndly.—Because by the phrase “*no suit cognizable by such Court shall be heard, &c.*” which occurs in the said Section, is meant suits cognizable by a Small Causes Court on the date of their institution, and consequently not these old suits which were not so cognizable as there was no such Court in existence at the time of their commencement, and

3rdly.—Because these suits having once been filed on the *regular* side of the Munsif's Court, where the parties had a right of appeal, it is not fair to deprive them now of that right. It may be that some of the parties may not have instituted their suits at all, if they had known that their regular suits are to be converted into Small Cause ones. As for the Proceedings of the High Court referred to by the defendants, I beg to enclose a copy thereof for the perusal of the Judges, and respectfully to state that the same has no reference to the present question. The District Munsifs were bound to deal with old suits according to the Small Cause Procedure, because Section 3, Madras Act IV of 1863 provided that “*in all suits*” (whether old or new) “*of a nature cognizable in Courts of Small Causes, District Munsifs shall be governed by the same rules of procedure as if they had been appointed under Act XLII of 1860*” (now Act XI of 1865.)

There is no such clear provision authorizing me to hear these old regular suits as Small Cause ones. The Notification merely constitutes my Court a Court of Small

Causes, and under it I think I can hear and determine only such suits of a small cause nature as may be filed in my Court since the date of the said Notification.

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The questions, therefore, for the decision of the High Court are—

I.—Whether suits for sums *above* Rupees 50 filed in the District Munsifs Court at Mulki previous to the date of the Notification investing me with Small Cause powers can now be heard and determined by me according to the Small Cause Procedure ?

II.—If I am held authorized so to hear them, am I to hear the present application under Section 119 of the Civil Code as requested by the applicants or under Section 21, Act XI of 1865 ? Under which latter Section it will be incumbent upon me to refuse the new trial as the parties applying for the same are defendants, and they have not, with their notice of application, deposited in the Munsif's Court the amount for which the decree has been passed against them including the costs of the plaintiff.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—We are of opinion that the Court of the Principal Sadr Amin had not jurisdiction as a Court of Small Causes to entertain the application in the present case on two grounds :—

First, on the ground that suits pending in the Court of the District Munsif of Mulki at the date of the Notification giving the jurisdiction of Courts of Small Causes to the Court of the Principal Sadr Amin of Mangalore were not transferable to the latter Court for determination in the exercise of its Small Cause jurisdiction under Section 6 of the Code of Civil Procedure. The Court of the Principal Sadr Amin as a Court of Small Causes is not subordinate to the Civil Court ; and that Section therefore is not one that can be applied to the transfer of such suits by force of the enactment in Section 47 of Act XI of 1865, which provides for the extension of the provisions of the Code of Civil Procedure to suits and proceedings under that Act so far as the same are or may be applicable. Consequently

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Secondly, on the ground that, supposing the transfer not to be invalid under Section 6 of the Code, the jurisdiction conferred by the Notification applied under Section 12 of Act XI of 1865 only to suits that had not been "heard or determined,"* and in the present case a decree dismissing the suit had been passed before the Notification came into force and the pending application was to set aside the decree and proceed with the suit. It is unnecessary to say more in answer to the questions submitted. But we think it right to intimate that we think Section 12 of Act XI of 1865 took away the District Munsif's jurisdiction to proceed with the hearing or determination of suits for sums above Rupees 50 cognizable by a Court of Small Causes after the Notification came into force, and to point out that the only course proper to be taken is dismissal by the District Munsif of such suits as have not been determined, and of the suit in question should the decree be set aside, upon the ground of the want of jurisdiction to proceed with the hearing, leaving the parties to bring fresh suits in the proper Court ; or an application to the High Court for an order to transfer the suits to the Court of the Principal Sadr Amin.

APPELLATE JURISDICTION (a)

Civil Miscellaneous Special Appeal No. 123 of 1870.

SUBRAYA GOUNDEN.....*Petitioner.*

VENKATAGIRI AIYAR, and 5 others.....*Counter-Petitioners.*

In execution of a decree the District Munsif made an order which he was not legally authorized to make at the instance of the purchaser of the property sold in execution. No appeal could be made against the order, but the Civil Judge entertained an appeal and reversed the order of the District Munsif.

The High Court set aside the order of the Civil Judge under Section 35, Act XXIII of 1861, but, by virtue of the powers given by the Section, the order of the District Munsif was also annulled.

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THIS was an appeal against the order of the Civil Court of Salem, dated the 10th January 1870, passed on Civil

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