

1875.
February 5.
R. A. No. 90
of 1874.

accounts) was secured, import nothing more than the creation of a security for this debt. The defendants, the creditors, are thereby allowed to occupy the land for 55 years at a fixed rent of 280 Rupees out of which, after deducting 160 Rupees for the plaintiff's maintenance and other specified purposes, 120 Rupees are declared to be applicable in liquidation of the debt of 6,538 Rupees ascertained to be due. In this way the debt would be liquidated in 55 years, the defendants during such period having full possession and enjoyment of the land and its profits. In thus providing for the gradual liquidation of the debt and the extension of the period of payment there is no certain indication of an intention to create an absolute lease of the land or to put an end completely to the relation of debtor and creditor previously existing. We are of opinion that, according to the true construction of the document, it creates a mortgage security and the decree dismissing the suit for redemption must be reversed. The case must be remanded to the Court below. Each party will bear their own costs of this Appeal.

Appeal allowed and case remanded.

Appellate Jurisdiction.(a)

Referred Case No. 3 of 1875.

KUNDEME NAINÉ BOOCHE NAIDOO..*Plaintiff.*

RAVOO LUTCHMEEPATY NAIDOO and

another.....*Defendants.*

Where plaintiff's sheep had been attached in satisfaction of a decree against a third party, and the 2nd defendant had purchased the property at the Court sale :—*Held*, that a suit merely to recover the sheep or their value is cognizable by a Small Cause Court.

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R. C. No. 3
of 1875.

THIS was a case referred for the opinion of the High Court by Mr. J. C. Hughesdon, the Judge of the Court of Small Causes, Vellore.

No Counsel were instructed.

The facts sufficiently appear from the following

JUDGMENT :—The first defendant in this suit had attached a flock of sheep belonging to the plaintiff in satisfaction

(a) Present :—Sir W. Morgan, C.J., and Kindersley, J.

of a decree against a third party. The second defendant had purchased the property at the Court sale. The plaintiff sued for recovery of the sheep or for their value.

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The Judge of the Small Cause Court was of opinion that he had jurisdiction to try the suit, but referred the case as the Proceedings of the High Court, dated 27th November 1872 and 5th November 1873, conflicting apparently with the decision in *Janakammal v. Vithenadien* (1) seemed to be an authority for a contrary opinion.

The Proceedings in November 1872 and 1873 show that this Court thought that the discretion conferred by Section 4, Act XXIII of 1861 (2) should not be exercised so as to give jurisdiction to the Small Cause Court in the *particular* cases. In the later case (that of November 1873) a number of defendants (purchasers of different lots) were sued together and the suit itself was for other reasons regarded as one in which we judged it inexpedient to authorize a Small Cause Court to proceed.

The earlier case (that of November 1872) was of the same kind, though in that the further circumstance occurred that the plaintiff sought to set aside an attachment in addition to the recovery of his property.

The present suit is *merely to recover the goods* or their value and is maintainable.

(1) 5 Madras H. C. Rep., p. 191.

(2) "If in any suit there are more defendants than one, and at the date of the institution of the suit all the defendants shall not reside within the jurisdiction of the Court in which the suit is brought, but one or more of the defendants shall reside within such jurisdiction, the suit shall not be rejected by reason of all the defendants not residing within the jurisdiction of the Court in which the suit is brought, but the District Court, if the suit is pending in any Court subordinate to such Court, or the Sudder Court may order that the suit be heard in any Court subordinate to such Sudder or District Court, and competent in respect of the value of the suit to try the same."