

Appellate Jurisdiction(a)

Civil Miscellaneous Regular Appeal No. 182 of 1872.

RA'MALINGA PILLAI *Appellant.*

SATTEASI'VA PILLAI *Respondent.*

Plaintiff brought a suit, Original Suit No. 1 of 1858, in the Civil Court of Cuddalore, claiming certain lands and mesne profits for 1 year, viz., 1858, and obtained a decree as sued for. By Petitions Nos. 312 of 1864 and 459 of 1868 he applied for execution, claiming mesne profits up to 1864, which the Civil Court awarded. *Held*, on appeal, that as the mesne profits in regard to which the appeal was made were not made payable by the decree, they could not be awarded in execution.

C. M. S. A. No. 290 of 1868 [4, M. H. C. R., 257] followed.

THIS was a Regular Appeal against the order of W. Hodgson, the Civil Judge of Cuddalore, dated 31st January 1872, passed on Miscellaneous Petitions Nos. 312 of 1864 and 459 of 1868.

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The plaintiff, in Miscellaneous Petitions Nos. 312 of 1864 and 459 of 1868, applied to the Civil Court of Cuddalore for execution of the decree in Original Suit No. 1 of 1858 on the file of that Court, claiming mesne profits from Fasli 1268 to 1274. The decree in Original Suit No. 1 of 1858 decreed only the mesne profits asked for in the plaint, viz., mesne profits for the year 1858. The Civil Judge, however, in execution awarded mesne profits as asked for.

The defendant appealed on the grounds that

The mesne profits in question were neither asked for in the plaint, nor awarded to the plaintiff in the decree. That, therefore, the Civil Judge had no jurisdiction to award them under Section 11 of Act XXIII of 1861.

Sanjiva Rau, for the appellant.

Miller, for the respondent.

The Court delivered the following

JUDGMENT:—In this case the mesne profits awarded by the decree extended only to what was asked for in the plaint, viz., mesne profits for the year 1858. As mesne profits were asked for, the Court, in awarding them for the year 1858, might, under Section 196 of the Code of Civil Procedure, have gone

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on to award them for subsequent years and until the date of delivery of possession. But it did not do so—And the case at IV, M. H. C. R., page 257, is an authority that in execution mesne profits could only be granted within the plain terms of the decree. We do not see that the circumstance that mesne profits were in that case not awarded at all, distinguishes it in principle from the present case, in which they were awarded for one year; because the decision of the Court in that case was founded on the construction of Section 11, Act XXIII of 1861, and the Court, reading that section with Sections 196 and 197 of Act VIII of 1859, held that it was clear that the words relating to mesne profits subsequent to the date of the suit must be limited strictly to mesne profits made payable by the decree in the suit. As the mesne profits in regard to which this appeal is made were not made payable by the decree, they could not be awarded in execution. We must, therefore, reverse the order of the Civil Judge, but without costs.

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Special Appeal No. 150 of 1872.

RA'JAGOPA'LA A'YYANGA'R..... *Special Appellant.*

THE COLLECTOR OF CHINGLEPUT }
and another..... } *Special Respondents.*

Plaintiff, a Mirásidár, purchased certain land in 1850 which he allowed to lie waste from 1853. In 1866, on the application of the 1st defendant who was also a Mirásidár to the 2nd defendant, the local Revenue Authority, the land was granted to 1st defendant and made over to his possession. Plaintiff was admittedly in arrears of kist. In a suit by plaintiff to recover the land it was contended that non-cultivation and non-payment of rent for a considerable time warranted the Revenue Authorities in entering upon and disposing of the land: *Held*, in Special Appeal, that plaintiff's tenancy could only be determined by his resignation or abandonment of his holding, or by the procedure laid down in Act II of 1864: that the letting land lie fallow does not necessarily lead to the inference of abandonment, and that, in the present case, plaintiff, not being found to have abandoned the land, had been ejected in a manner which the law does not recognize.

S. A. No. 139 of 1858 (Sadr Rep., 1859, p. 21); S. A. No. 482 of 1860 (Sadr Rep. 1861, p. 112); S. A. No. 839 of 1861 (1, M. H. C. R., 12); R. A. No. 20 of 1863 (1, M. H. C. R., 407) and R. C. No. 3 of 1868 (4, M. H. C. R., 153) considered.

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THIS was a Special Appeal against the decision of E. B. Foord, the Civil Judge of Chingleput, in Regular Appeal No. 116 of 1870, reversing the decree of the Court of the District

(a) Present: Innes and Kernan, JJ.