

(1901) 12 MAD CK 0019
In the Madras High Court

Pamu Sanyasi and Another	Vs	APPELLANT
Zamindar of Jayapur		RESPONDENT

Date of Decision : 03-12-1901

Acts Referred:

Citation : (1902) ILR (Mad) 540

Hon'ble Judges : Arnold White, C.J; Moore, J

Bench : Division Bench

Judgement

1. A preliminary objection has been taken that no appeal lies in this case since the suit is of the nature cognizable in a Court of Small Causes. The way in which the plaint is drawn shows that the suit is in substance a suit for compensation for illegal distress or attachment and not a suit for the recovery of specific property. The case relied on in support of the preliminary objection Chakradharudu v. Venkataramayya ILR 22 Mad. 457 is clearly distinguishable. In that case certain attachments had been set aside by the Revenue Court and the Revenue Court had ordered that these properties should be restored. The properties were not restored and a suit was brought to enforce their restoration. In that case no question of illegal distress was involved. The preliminary objection must be overruled. We are of opinion that the suit is time barred. The District Munsif finds that the distraint was made on 25th January. The plaintiff's cause of action arose when the distraint was made. In Yamuna Bai Rani Sahiba v. Solayya kavundan ILR 24 Mad. 339 where the Court held the suit was not time barred on the ground that the detention was a continuing wrong, the property was detained after the attachment had been set aside. It was this detention which the Court held was a continuing wrong. A state of

things in which a party does not restore to its owner property which has been released from attachment may be said to constitute a continuing

wrong as against the owner of the property. This case seems to us to be distinguishable on the facts from the case now before us.

2. In the case before us the wrong was complete when the unlawful distress was made.

3. We think the Courts below were right in holding that the suit is time barred.

4. The second appeal is dismissed with costs.