

(1933) 03 MAD CK 0035
In the Madras High Court

Puthukollai Pallathil Kunhammad's son Moidu and Others	APPELLANT
Vs	
Puthukolli Thekka Pallathil Abdulla's son Ahmad Kutti	RESPONDENT

Date of Decision : 15-03-1933

Acts Referred:

Citation : 145 Ind. Cas. 888

Hon'ble Judges : Pakenham Walsh, J

Bench : Single Bench

Judgement

1. This is a suit to recover Rs. 378-7-7 being the value of certain Jogs of timber or the logs themselves. The plaintiff's suit was dismissed by the

learned District Munsif but on appeal, the learned Subordinate Judge has given a decree in his favour for Rs. 74. Against this decree, the second

appeal has been filed.

2. A preliminary objection has been raised that the value of the suit being below Rs. 500, no second appeal lies u/s 102 of the Civil Procedure

Code. It is contended for the appellants that the suit is one falling u/s 35 (h) (ii) of the Second Schedule to the Provincial Small Cause Courts Act

and is therefore not triable by a Small Cause Court. Section 35 (h) (ii) runs as follows "for an act which is, or, save for the provisions of Chap. IV

of the Indian Penal Code would be an offence punishable under Chap. XVII of the said Code." To see whether this clause applies, we must take

the plaint, a summary of which is extracted in the judgment of the trial Court. To put it briefly, the plaintiff alleged that he took a certain land on

lease to fell timber tinder a registered karar from K.M. Narayanan Nambudripad that he cut some Of the logs of timber in the plaint schedule

which did not contain the property marks of V. R. that; the other logs were cut

by the prior lessee V. Rajagopalachari, that he purchased the logs from him, that he had dragged this timber and stacked it in Karimbu Paramba in which he had acquired a right from Govindan Nair and another under a certain letter on August 14, 1918, that on July 1st, 1920, the defendants came with a number of men to forcibly remove it, that the plaintiff complained to the Sub-Divisional Magistrate of Malappuram on July 20, 1920, that in pursuance of his complaint the Pandikad Police came and found that a Melchappa had been affixed on the logs, that saying that there would be a breach of the peace, the Police took them from the plaintiff's custody and entrusted them to V. Kunhavara on Kaichit, that while the matter was pending before the Sub-Divisional Magistrate, the defendants took away some logs of timber from Kunhavara, that plaintiff complained to the Sub-Divisional Magistrate and to the Police, that the Police took them into custody again and entrusted them to the same Kunhavara, that the criminal case was heard by the Stationary Sub-Magistrate (C. C. No. 435 of 1920), that the defendants were convicted, that on appeal the conviction was set aside, that the Stationary Sub-Magistrate ordered that the logs of timber should be released to the defendants, that on April 17, 1921, he petitioned to the Sub-Divisional Magistrate that the logs of timber should not be released to the defendants, that the Sub-Divisional Magistrate dismissed his petition saying that the matter should be settled by a civil suit, that the defendants have no right to or the possession of logs of timber, that the logs belong to him, that they may be attached and sold and that he should be given a decree for, the amount. The question, whether the cutting of trees under a mistake of fact does or does not fall u/s 35 (h) (ii) of the Provincial Small Causes Court Act, appears to be a disputed one and the decisions are conflicting on this point. The earliest case quoted is Dilbahar Hussain v. Sadaruddin Choudhuri 77 Ind. Gas. 77 77 Ind. Cas. 77 : A I R 1923 Cal. 588; 27 C W N 469 , where it was held that a suit to recover the value of trees cut down by the defendant under a bona fide claim of right does not fall under Article 35 (ii) of Schedule II to the Provincial Small Cause Courts Act. The next case is Kunwar Pal and Another Vs. Bakhshi Madan Mohan, , where it was held that a suit for damages arising out of unlawful attachment and sale in execution of a decree against a third party of trees belonging to the

plaintiff is not a suit within the cognizance of a Court of Small Causes. The last case is Raghubar Dayal and Others Vs. Mulwa and Others, where

it was held that the cutting of trees under a bona fide claim of right, or as a result of the dispute, is riot necessarily a criminal offence and will not

bring the case under Article 35 (ii) of the second Schedule to the Small Cause Courts Act". Consequently, three cases of the Allahabad High

Court are in favour of the respondent's contention while one is against it. However, fortunately in this case it is not necessary to go into that matter

at all. The cause of action is based by the plaintiff not upon the defendants having forcibly taken away the logs of timber from his possession but

upon the defendants having wrongfully, taken them away from the court as ordered by court and therein no question that this is not an offence

under any circumstances. In a much weaker case reported as Kalyan Rai Vs. Jagannath and Others, it was held that even taking the disputed

properties away by one of the parties from the mediator while the matter was pending decision as to ownership would not amount to an offence

and so would not fall Under Article 35 (h) (ii). There can be no question in this case that to take property away from court in accordance with the

court's, order is not an offence apart from any exceptions created by Chap. IV, Indian Penal Code. Therefore the suit was triable as a Small

Cause Suit being under the value of Rs. 500. No second appeal lies. The preliminary objection prevails and this second appeal is dismissed with

costs.

3. The memorandum Of objections is not pressed and is dismissed with costs.