

(1916) 12 MAD CK 0011
In the Madras High Court

Sai Sikandar Rowther

APPELLANT

Vs

Ghouse Mohidin Marakayar and Others

RESPONDENT

Date of Decision : 16-12-1916

Acts Referred:

County Courts Act, 1883 — Section 122

Citation : (1917) ILR (Mad) 355 : (1917) 32 MLJ 213

Hon'ble Judges : Wallis, C.J;Srinivasa Aiyangar, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Wallis, C.J.—We think that Sadasook (Gambir Chund v. Kannayya ILR (1895) M. 96, and Srinivasa Charlu v. Balaji Rau ILR (1896) M.

232, were rightly decided, and should in any case be allowed as they are decisions on a point of practice which have now stood for many years,

and their reversal must seriously affect the settled practice of the court. In Calcutta, Sale, J. was clearly of the same opinion in Sasoon v. Hurrey

Das Bhukut ILR (1896) C. 455, and it has since been treated as settled law. Johan Smidt v. Ram Prasad ILR (1911) C. 425. Dealing with the

question in the reference, we think that in the cases to which we have been referred in Bombay and in this Court Behram v. Ardeshir ILR (1903)

B. 563, Bapuji Dorabji Vs. Dastur Kaikhushru, and V. Ramasamy Aiyar v. The Madras Times Limited (1915) 30 M.L.J. 207 attention was not

sufficiently called to the corresponding changes in the County Courts Act from the first of which the provision as to new trials were taken. As is

well known the Presidency Towns Small Cause Courts are summary tribunals established in 1850 to relieve the Supreme Courts in the Presidency

Towns, and were largely modelled on the County Courts which had recently been established in England under 9 and 10 Vict. C, 95 to relieve the

Common Law Courts at Westminster, many of the principal sections in the Indian Act IX of 1850 being taken verbatim from the English Act,

including that which made the judgments of the courts final and conclusive subject to the power of granting new trial. Section 89 of the English Act

provided as follows :—"Every order and judgment of any court held under the Act, except as hereinafter provided, shall be final and conclusive

between the parties but the Judge shall have power to non-suit the plaintiff in every case in which satisfactory proof shall not be given to him

entitling either the plaintiff or the defendant to the judgment of the court, and shall also in every case whatever have the power, if he shall think fit, to

order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay proceedings.

2. The section was re-enacted verbatim as Section 53, Act IX of 1850 merely substituting judges for judge with the consequential alterations. The

legislature which in express terms made the judgment of these summary courts final and conclusive did not in conferring the power to grant a new

trial intend to give a right of appeal on the facts, but rather to enable the court before whom the application came to interfere with such findings in

the same way and on the same grounds as the Courts of Common Law who had no power to find facts for themselves were accustomed to

interfere with the findings of juries by setting them aside and directing a new trial. See *Muratagh v. Barry* (1890) 24 Q.B.D. 632, *Clarke v. West*

Ham Corporation (1914) 2 K.B. 448. At the time the procedure in Common Law Courts of Queen's Bench, Common Pleas and Exchequer was

still much as it is described in Blackstone, Book 111, Chapters 23 and 24. After the verdict wherever found had been returned into the court in

which the action was brought, the court gave the appropriate judgment on the facts so found unless there was something to vitiate the verdict, in

which case all the court could do was to set it aside and order a new trial, as they had no power to find the facts for themselves. It is we think quite

clear that the legislature did not intend to confer any larger powers of questioning the findings of the judges of these courts. There was some

difficulty about a County Court Judge granting a new trial in a case tried before himself, and though the power has never been taken away the

difficulty was met by Section 14 of the Act of 1850, 13 and 14 Vict. C. 61 which gave a limited right of appeal from his judgments to any of the

Courts of Common Law, "as to the determination or decision of the said court in point of law, or upon the admission or rejection of any evidence

and provided that on the appeal the court "may order a new trial on such terms as it may think fit, or may order judgment to be entered for either

party, as the case may be, and make such order with respect to the costs of the said appeal as such court may think proper." The Appellate Court

was thus only entitled to interfere on the ground of error of law or wrongful admission or rejection of evidence and could not find the facts for itself,

but could either order a new trial or enter judgment if the case allowed it without a fresh finding of facts. There was not the same difficulty in the

case of the Small Cause Courts as in the case of County Court Judges, as the application for a new trial could be taken by the Full Court or a

Bench thereof but Section 53 of Act IX of 1850 was defective in so far as it only empowered the court on such application to order a new trial

and not to give the appropriate judgment when no fresh finding was necessary, Robinson v. Fawcett and Firth (1901) 2 K.B. 325, a decision on

the identical section in the County Courts Act. It was only natural that this defect should be supplied when the present Presidency Towns Small

Cause Courts Act was passed in 1882 by amending the old Section 53, renumbered as Section 37, and empowering the court either to order a

new trial to be held or to "alter, set aside or reverse the decree or order upon such term as it thinks reasonably." There is really no ground for the

contention that by this amendment the legislature intended to enable the Court to entertain appeals on questions of fact. In Cousins v. Lombard

Deposit Bank (1876) I. Ex. D. 404, in consequence of an alteration in the procedure prescribed in bringing appeals from the County Courts

before the High Court, the contention was raised that the High Court had by virtue of the amendment been invested with the power of hearing of

appeals on the facts, but the contention was emphatically rejected by Cleasby, B and Grove and Field, JJ. "I cannot think" Grove, J. observed

that by 38 and 39 Vict. C. 50, Section 6, the legislature contemplated an extension of the right to appeal in suits arising within what used to be

cited the common law jurisdiction of the County Courts. The change would have been great in principle, and if the legislature had intended to

introduce it, clear language would have been employed. If an appeal were allowed upon questions of fact the result would be that, either as a

matter of right, or by leave of the Judge of the County Court, this Court, or even a higher tribunal, might be compelled to determine the proper

inference to be drawn from conflicting facts. The object of the legislature in establishing cheap and expeditious tribunals would be defeated." These

observations are fully applicable to the present case, thousands of cases are decided by the Small Cause Court every year, and if the right of

appeal were freely exercised, not only would the summary nature of the tribunal be destroyed, but the work of the court would be blocked. Again,

if the legislature had intended to allow appeals on the facts, some record of the evidence would certainly have been prescribed. As already pointed

out full effect may be given to the alteration introduced into Section 37 in 1882 without construing it as introducing so revolutionary a change.

3. The matter is, if anything, clearer as regards the further alterations introduced by Act I of 1895. In 1882 in consequence of some dissatisfaction

which had been felt as regards the summary disposal of suits involving considerable sums, an extraordinary provision was introduced by Section 38

giving a right of rehearing of the whole case by the High Court after judgment had been given in the Small Cause Court, where the value was over

Rs. 1,000, and the chapter was accordingly headed "New trials and rehearings." In 1895 Section 38 which provided this anomalous procedure

was repealed, liberty being reserved in another part of the Act to remove cases involving sums of more than Rs. 1,000, in the High Court before

trial. Apparently to save renumbering, the old Section 37 was then split up into two, omitting the word "but" and the heading of the chapter was

altered and the word "Appeals" substituted for "Rehearings." The term appeals is applied in the English Act of 1850 already mentioned to

applications to the High Court for a new trial or reversal of the judgment of the County Court on grounds of law, and though its use was perhaps

not unlikely in this country to lead to misconception, its insertion in the heading of the chapter cannot be said to have altered the effect of the

sections which have been already construed.

4. We must accordingly answer the first question in the negative.

5. As regards the second question, whether the Full Bench of the Small Cause Court has jurisdiction to decide questions of fact generally when the

question of fact first arises before it in consequence of its finding on another

question of fact, or law, it has already been shown that the Full Bench has no power to decide questions of fact. When Section 14 of the County Courts Act, 1850 was re-enacted as Section 122 of the County Courts Act, 1883, an amendment was introduced empowering the High Court hearing the appeal to draw any inference as to fact. No such power has yet been conferred upon the Court of Small Causes, and we must accordingly answer the second question in the negative.

Abdur Rahim, J.

6. I agree.

Srinivasa Aiyangar, J.

7. I agree.