

(1947) 01 MAD CK 0016
In the Madras High Court

The District Board

APPELLANT

Vs

P. Kuppuswami Konar alias Kuppuswami Pillai and Others

RESPONDENT

Date of Decision : 29-01-1947

Acts Referred:

Citation : AIR 1947 Mad 382 : (1947) 60 LW 237 : (1947) 1 MLJ 303

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—This is a civil miscellaneous appeal filed by the plaintiff in a suit against an order of the Subordinate Judge of Tanjore setting aside the decree in O.S. No. 226 of 1942 on the file of the District Munsiff of Pattukottah and directing the plaint to be returned to the plaintiff for presentation to the proper Court. The question arose in this way. The suit which was really of a small cause nature was filed before the District Munsiff as an original suit but with a court-fee on the basis that it was of a small cause nature. The suit was tried as an original suit and there was a decree in favour of the plaintiff. The defendants preferred an appeal which was heard by the Subordinate Judge. The Court-fee Examiner took an objection that the court-fee paid was insufficient as the suit was not cognizable by a Court of small causes. The Subordinate Judge went into this question and came to the conclusion that the suit was of a small cause nature. On this finding, instead of dismissing the appeal on the ground that no appeal lay, he set aside the decree of the lower Court and directed it to return the plaint to the plaintiff for presentation to the proper Court, viz., to itself on the small cause side. In effect therefore he entertained the appeal, without his having done so he had no right to make an order setting aside the decree of the lower Court and directing a return of the plaint. If the suit is really of a small cause nature, and it is not disputed that is so, the Subordinate Judge had no jurisdiction whatever to interfere with the decree of the District Munsiff even though the latter proceeded on the basis that the suit was triable as an original suit and not as a small cause suit. If the appellate Court without this objection having come to its notice confirmed the decree on appeal, this Court would not

have interfered with the decision in revision, merely on the ground that a suit of small cause nature was wrongly tried as an original suit. If it had set aside the decree, this Court could have in revision interfered and set aside the appellate decree as passed without jurisdiction. This was held in the Full Bench decision in *Kollipara Seethapathi v. Kantipati Subbayya* (1909) 90 M.L.J. 718 : ILR Mad. 323. The Subordinate Judge relies upon *Ramasami Chettiar Vs. R.G. Orr and Others*, . But it was a case where there was no resort to the appellate Court. The question was whether the decree of the District Munsiff passed in a suit tried as an original suit even though it was really of a small cause nature should be set aside under the revisional jurisdiction conferred on the High Court by Section 622 of the then Code of Civil Procedure. Sir Arnold White, C.J., took the view that in the circumstances there was an exercise of jurisdiction not vested in the Court by law and that therefore all the proceedings in the suit will be set aside and the plaint should be returned to the proper Court. But in the Full Bench decision in *Kollipara Seethapathi v. Kantipati Subbayya* (1909) 90 M.L.J. 718 : ILR Mad. 323 this decision is approved only in so far as it was necessary to set aside the appellate decision which reversed the decision of the District Munsiff. There is no approval of the course adopted by the learned Chief Justice. It is really futile and meaningless that merely because a suit which would have been tried in a summary way as it was of a small cause nature was tried as an original suit by mistake of the plaintiff and the Court concurred in by the defendant, the decree should be set aside in revision on no other ground but for the reason that the jurisdiction invoked was not the small cause jurisdiction but the original jurisdiction.

2. Once the learned Subordinate Judge found that the suit was of a small cause nature, he should have rejected the appeal. What he has done is to interfere with the decree passed in a suit of a small cause nature which is not permitted by law. The order of the Subordinate Judge is set aside and the Appeal No. 66 of 1944 pending on his file will stand dismissed. In the circumstances of this case where the mistake was common to all the parties and to the Court, there will be no order as to costs here and before the Subordinate Judge.