

(1926) 09 MAD CK 0016
In the Madras High Court

Veeran Kutti Avaru

APPELLANT

Vs

Joosuf Haji Jaffer Sait and Another

RESPONDENT

Date of Decision : 28-09-1926

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 23

Citation : 101 Ind. Cas. 53 : (1927) 25 LW 397 : (1927) 52 MLJ 316

Hon'ble Judges : Reilly, J

Bench : Division Bench

Judgement

Reilly, J.—The suit to which this petition relates was admittedly of a nature cognizable by a Court of Small Causes. The amount sued for

was Rs. 240. The suit was instituted in the Court of the Subordinate Judge of Cochin, and the defendants were then residing and carrying on

business within that part of the Subordinate Judge's local jurisdiction over which his powers as a Judge of a Court of Small Causes extended. But

the Subordinate Judge tried this suit as an ordinary suit, not as a small cause suit, because as it appears both he and the parties were then under the

impression that his powers as Judge of a Court of Small Causes did not extend to suits over Rs. 200 in value. The Subordinate Judge dismissed

the suit. The plaintiff then appealed to the District Judge of South Malabar, who made a decree in his favour for part of the amount claimed.

Subsequently defendant 1 applied to the District Judge for a review of the appellate decree on the ground among others that no appeal lay in the

case; but the District Judge dismissed that application. Defendant 1 now prays that the District Judge's decree may be set aside in revision on the

ground among others that no appeal lay from the Subordinate Judge's decree.

2. It appears that the pecuniary jurisdiction of the Subordinate Judge of Cochin as a Judge of a Court of Small Causes has varied from time to

time. But the latest notification issued before the institution of this suit fixing his jurisdiction in that capacity appears to be the notification of the High

Court published at pages 331 and 332 of Part II of the Fort St. George Gazette, dated 13th February, 1917, directing that all Subordinate Judges

in this Presidency

shall have and exercise the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of

Rs. 500.

3. No exception in respect of the Subordinate Judge of Cochin appears to have been made then or afterwards. The suit therefore was one which

the Subordinate Judge could and should have tried as a small cause suit. It is not suggested that there was anything in its nature which would make

it necessary or proper for the Subordinate Judge to return the plaint u/s 23 of the Provincial Small Cause Courts Act for representation for trial as

an ordinary suit or that the Subordinate Judge did so return it purporting to act under that section. The Subordinate Judge as Judge of a Court of

Small Causes had u/s 16 of the Act exclusive jurisdiction to try the suit. The fact that he called it an ordinary original suit did not alter its character

or make the provisions of the Act inapplicable to it--see *Shankrbhai v. Somabhai* ILR (1900) B 417. Therefore no appeal lay to the District Court

against the Subordinate Judge's decree. And following the Full Bench decision in *Kollipara Seetapathy v. Kankipati Subbayya* 20 MLJ 718 I am

bound to set the District Judge's decree aside as having been made without jurisdiction.

4. The decree of the District Judge is set aside and that of the Subordinate Judge is restored. Plaintiff will pay petitioner's costs in this Court and

in the District Court. Each party will bear his own costs.