

**Seshammal Vs. Munisami Mudali**

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**SooperKanoon Citation :** [sooperkanoon.com/775480](http://sooperkanoon.com/775480)

**Court :** Chennai

**Decided On :** Oct-26-1896

**Reported in :** (1897)7MLJ140

**Appellant :** Seshammal

**Respondent :** Munisami Mudali

**Judgement :**

1. The plaintiff sued in the Presidency Small Cause Court, and her claim was decreed by the Chief Judge. Under Section 37 of the Act the defendant made an application for a new trial, and the Small Cause Court, consisting of the Chief Judge and two other Judges, heard the application; and in doing so went into the merits of the case. The Chief Judge differed from his colleagues on a point of law, and still maintained that the claim should be decreed, but his colleagues taking a different view on the point of law, the Court reversed the decree passed by the Chief Judge and gave judgment for defendant with costs.

2. Plaintiff' now puts in this revision petition under Section 622, Civil Procedure Code, on the ground that as the judges differed on a point of law, they were bound, under Section 69 of the Presidency Small Cause Courts Act, to refer the case for the opinion of the High Court, and either to reserve judgment or deliver judgment contingent upon such opinion.

3. We think the petition must be allowed. The provision of Section 69 is imperative; it says:--'If two or more judges sit together in any suit \* \* and differ in their opinion as to any question of law \* \* \* the Small Cause Court shall draw up a statement of the facts of the case, and refer statement \* \* \* for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.'

4. It is contended for the counter-petitioner that the difference of opinion now in question did not arise in any suit, so as to come within the purview of Section 69, but only on an application under Section 37, and it is pointed out, that it has been held in *Onkshott v. The British India Steam Navigation Company* ( ) I.L.R., 15 M., 179. *Nnsserwanjee v. Pursutum Doss* ( )I.L.R., 11 C., 298 and *Hall v. Joakin* 12 B.L.R. 34 that the Small Cause Court cannot state a case for the opinion of the High Court on an application for a new trial under Section 37 of the Act. The fallacy in this argument lies in not observing that in the present case the full Small Cause Court did more than consider the application for a new trial. No doubt, the cases quoted are an authority for holding that, while the Court is considering whether a new trial shall be granted or not, Section 69 has no application, but in our opinion, when the Court goes further and proceeds to deal with the merits of the case, it must be held that the new trial has been granted, and that the Court is thenceforward engaged in trying a fresh suit. In all the above-quoted cases the application was rejected, so that Section 69 could not in any way apply; but in the present case though no separate order formally granting a new trial was made, yet such new trial was by necessary implication, granted before the Court proceeded to re-hear the suit. The cases quoted are, therefore, no authority for the counter-petitioner's contention. Indeed, in every one of them it is assumed that if a new trial had been granted, the reference to the High Court could properly have been raised, and we have no doubt but that that assumption is correct.

5. We must, therefore, set aside the revised decree of the Small Cause Court with costs and direct that the suit be restored to its file and be dealt with in accordance with law as laid down in Section 69 of the Presidency Small Cause Courts Act. As the Chief Judge who Was a party to the decree now set aside is absent on leave, but will shortly return, it is desirable that the case should not be taken up for reference until his return.

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