

APPELLATE CIVIL.

Before Walmsley and Pearson JJ.

CHERAKUDDIN

v.

RAM SIRAMAN.*

1920

Dec. 20.

*Criminal Breach of Trust—Misappropriated money, suit for—Jurisdiction—
Provincial Small Cause Courts Act (IX of 1887) Sch. II, Art. 35 (ii).*

A suit for recovery of money with regard to which defendant has committed criminal breach of trust is not triable by a Court of Small Causes.

Appeal by Cherakuddin, the plaintiff.

Plaintiff had borrowed a sum of money from defendant No. 3, defendant Nos. 1 and 2 being sureties. Plaintiff alleged he had paid the money in two instalments to defendant No. 1 for payment to defendant No. 3, but defendant No. 1 paid only Rs. 9 thereout to defendant No. 3 and misappropriated the balance. The matter was brought before a panchayat who asked defendant No. 1 to pay the money, but the latter failed to comply. After some time plaintiff brought this suit for recovery of the money (Rs. 56) claiming interest thereon at the rate of Rs. 3-2 annas per cent. per month, as compensation. It was also stated in the plaint that on demand by the plaintiff, the defendant promised to pay the money with interest at the rate claimed, but the claim was actually based on the fact that defendant No. 1 having misappropriated the money, plaintiff was

* Appeal from Order, No. 83 of 1920, against the order of K. K. Sen, District Judge of Midnapore, dated Feb. 9, 1920, reversing the order of M. L. Mukherji, Munsif of Midnapore, dated July 13.

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entitled to recover it with interest, and the cause of action was stated to have arisen from the respective dates of plaintiff's payment to defendant No. 1.

The suit was originally brought in the Small Cause Court which held that the suit was not triable by it and returned the plaint for presentation to the proper Court. The plaint was then filed in the Munsif's Court in its ordinary Civil Jurisdiction. Objection was raised by defendant No. 1 that the suit was not triable by the Civil Courts but by the Small Cause Court. The Munsif overruled this objection, and on the merits gave plaintiff a decree against defendant No. 2, whose appeal was allowed on a preliminary point, the Court of holding that plaintiffs' claim was really based on the agreement of defendant No. 1 to pay Rs. 56 with interest and the suit was triable by the Small Cause Court. The plaint was accordingly ordered to be returned again for presentation to the proper Court. Plaintiff then preferred this appeal in the High Court under O. XLIII, r. 1 (a).

Babu Ramdoyal Dey (with him *Mr. G. Sircar*), for the appellant. The plaintiff has based his claim upon the fact of misappropriation and claimed interest not under any agreement but as compensation, as he had to pay the same rate of interest to defendant No. 3. The cause of action is said to have arisen from the date when the plaintiff made over the two sums to defendant No. 1, and not from the date of the promise of defendant No. 1 to pay; this promise merely proves his liability, and cannot alone constitute an agreement without evidence of acceptance by plaintiff. The case is purely one of criminal misappropriation and is excluded from cognisance by a Small Cause Court [*c.f.*, article 35(*ii*) of schedule II of the Provincial Small

Cause Court Act.] The order of the Small Cause Court, returning the plaint is final under section 27 of that Act, and the Court in which the plaint is subsequently presented cannot reconsider that order [*In re Hausambhai Abdulabhai* (1)] though it might have referred the matter to the High Court [*Mahamaya Dasya v. Nitya Hari Das Bairagi* (2)].

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Babu Satcouripati Roy, for the respondent. The suit is really based upon an agreement as stated in the plaint, (reads that paragraph). It is therefore triable exclusively by the Small Cause Court and the Court^t of appeal below was quite right in returning the plain^t for presentation to the Small Cause Court.

WALMSLEY J. The plaintiff, who is now the appellant, brought his suit in the first instance in the Court of Small Causes. The Judge of that Court returned the plaint to him on the ground that the suit was of a nature which was not triable by the Small Cause Court. The plaintiff then went to the Civil Court and after trial the Munsif gave him a decree. The defendants then preferred an appeal and the learned Additional District Judge on appeal has held that the case was triable by the Small Cause Court and therefore could not be triable by the Civil Court. The result is that the plaintiff has been told by both Courts that it is the other Court that has jurisdiction to try his suit. He has now preferred this appeal against the Judge's order directing him to go to the Small Cause Court.

On the question whether the suit was of such a nature that it could be tried by the Court of Small Causes, I think the learned Judge in the Court of appeal was wrong. The acts alleged in the plaint seem to amount to misappropriation, and I do not

(1) (1895) I. L. R. 20 Bom. 283, 285. (2) (1895) I. L. R. 23 Calc. 425, 427.

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agree with the Judge's view that the cause of action is based on the promise to make restitution and not on the wrong which the plaintiff reported to the panchayat.

In my opinion the order of the lower Appellate Court directing the plaint to be returned for presentation in the Court of Small Causes must be set aside, and an order passed to the effect that the plaintiff's appeal be heard and decided in accordance with law.

The appellant is entitled to his costs in this Court and in the lower Appellate Court.

PEARSON J. I agree.

G. S. *Appeal allowed, case remanded.*

ORIGINAL CIVIL.

Before Greaves J.

RATANCHAND DHARAMCHAND

v.

GOBIND LALL DUTT.*

Jurisdiction—Leave under cl. 12 of the Letters Patent, 1865—Suit for money advanced and for specific performance of any agreement to mortgage land outside jurisdiction—Injunction to restrain disposal of land outside jurisdiction—Interest in land.

In a suit instituted in the High Court in its original jurisdiction, the plaintiff stated that the plaintiff firm advanced in Calcutta various sums of money secured by promissory notes as well as by the deposit of title deeds of property outside Calcutta to the defendant who resided outside the jurisdiction. It stated that the title deeds were with the plaintiff firm in respect of a previous regularly executed mortgage. It stated further that the defendant agreed to register and execute a regular mortgage whenever called upon to do so but that the defendant refused to return the money or execute the said mortgage and in breach of the agreement the defendant

*Original Civil Suit No. 2087 of 1920.