

## APPEAL FROM ORIGINAL CIVIL.

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*Before Rankin C. J. and C. C. Ghose J.*

PADAMCHAND PANNALAL

v.

BHICUMCHAND CHURURIA.\*

1932

Jan. 13, 19.

*Jurisdiction—Court of Small Causes—Execution—Attachment of moveables—Claim case, if a suit—Presidency Small Cause Courts Act (XV of 1882), ss. 18, 26, 27-31, 35, 37—Calcutta Small Cause Court, Rules of Practice, rule 102—Code of Civil Procedure (Act V of 1908), O. XXI, rr. 58-62, 63.*

If, in the course of executing its own decree, the Small Cause Court attaches some moveables and a third party brings a claim case, the court, like any other executing court, has the power and duty to deal with his claim or objection under Order XXI, rules 58 to 62 of the Civil Procedure Code.

Although under the Rules of Practice of the Small Cause Court, a claim case is treated as a suit, it is not itself a suit and no question of valuation for jurisdiction arises in it.

*Bhicumchand Chururia v. Deepchand Doogar* (1) reversed.

*Ismail Solomon Bhamji v. Mahomed Khan* (2) explained.

The right of a claimant to bring a suit to reverse the result of a claim case depends on the express enactment in rule 63 of Order XXI of the Civil Procedure Code and, as that rule does not apply to the Small Cause Court, its decision upon a claim case, subject to any question of a new trial, is final.

APPEAL by defendants.

The facts of the case appear sufficiently from the judgment.

*S. N. Banerjee* (with him *Sudhir Roy*) for the appellants. A claim case is a continuation of the suit and, if there was jurisdiction to try the suit, no question as to jurisdiction arises in the claim case. There was jurisdiction for the suit. See section 37, Presidency Small Cause Courts Act.

*S. M. Bose* (with him *N. C. Chatterji*) for the respondents, *Bhicumchand Chururia*. The

\*Appeal from Original Decree, No. 87 of 1931, in suit No. 934 of 1930.

(1) (1931) I. L. R. 58 Calc. 1251.

(2) (1891) I. L. R. 18 Calc. 296.

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Presidency Small Cause Courts Act is silent as to execution. A claim case is not a proceeding in the suit and rule 102 of the Rules of Practice shows that it is to be treated as a suit. The suit is finished; this is a new proceeding and the court should test its pecuniary jurisdiction again.

This investigation is summary and the question of title is not gone into; therefore the decision cannot act as *res judicata*.

Order XXI, rule 63 of the Civil Procedure Code, does not take away any right to suit, but section 37 of the Presidency Small Cause Courts Act bars a suit. *Ismail Solomon Bhamji v. Mahomed Khan* (1). The claim case must, therefore, be taken to be a suit itself and the question of jurisdiction would arise.

*Banerjee*, in reply. The claim case is a proceeding in execution and can be entertained apart from rule 102. An order in the claim case is an order in the suit and therefore conclusive. The Small Cause Court must execute its own decree.

RANKIN C. J. The appellants Padamchand Pannalal, on 11th February, 1930, sued one Deepchand under his trade name of "New East Bengal Stores" in the Calcutta Small Cause Court for Rs. 1,951-2-0 for goods sold and delivered. On the 26th February, the suit was decreed for the sum of Rs. 2,195-1-0, which included certain costs. On 11th March, execution was applied for and, on the 13th, the stock-in-trade of Deepchand's shop was attached by the Small Cause Court. On the 17th, one Bhicumchand Chururia made a claim to the attached property. He did so in the manner provided by a special rule which has for many years obtained in the court and is applicable to proceedings of the kind known as "Investigation of claims objections"—that is, proceedings under what are now rules 58 to 62 of Order XXI of the Code of Civil Procedure. (This special rule is now rule 102 of the Rules of Practice.

(1) (1891) I. L. R. 18 Calc. 296, 299, *et seq.*

It was till recently rule 96.) Under that rule the claim is made by filing a plaint in which the claimant is plaintiff and the execution-creditor defendant, "and the matter shall then be treated as a suit." Bhicumchand in his plaint put a value upon the subject matter of his claim. He valued it, quite incorrectly [*Khetra v. Mumtaz Begam* (1)], at Rs. 4,000, this being his estimate of the value of the goods which had been attached. Thereupon, having filed his claim, he obtained an order that the attached property should be released on his furnishing security for the amount of the decree, and a few days later, on the 20th March, the property was released from attachment on his entering into a bond to pay the decretal sum "if his claim suit fails." On the 30th April, his claim was dismissed with costs.

It may here be noted that, after the 20th March, the judgment-creditors, Padamchand Pannalal, had no interest in or concern with the property which had been attached. They had none if the claim case succeeded: they had none if the claim case failed. In the latter event, the claimant, his heirs, executors, *etc.*, were liable on his covenant to pay the decretal sum, but the judgment-creditor had ceased to have any right against Deepchand's stock-in-trade, the attachment having been released.

In that state of affairs, Bhicumchand, on the 9th May, 1930, brought in the High Court the suit out of which the present appeal arises. He pleaded, to put it shortly, that Deepchand's stock-in-trade had been hypothecated to him since 17th February, 1930, and that over Rs. 10,000 was due to him on the security. Besides Deepchand he impleaded certain persons whom he alleged to have subsisting attachments on the property, and he also impleaded Padamchand Pannalal, now appellants before us. He set forth that these appellants had obtained an attachment, that his claim case had been dismissed and that he had given a bond for the decretal amount. The

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relief asked as against the appellants was simply a declaration of his charge on Deepchand's stock-in-trade.

The learned Judge has given him this declaration as against the appellants and has directed them to pay certain costs of the suit. The appellants by their counsel contended at the trial that the suit was not maintainable as against them, as at the date of the plaint or the date of the hearing the appellants had no interest whatsoever in the goods; and, as Bhicumchand's liability on his bond was conditional upon the result of the claim case and upon nothing else, I am of opinion that the learned Judge should have accepted this contention of the appellants and dismissed them from the suit with costs.

It is necessary, however, that we should deal with another aspect of this case. The appellants contended that, even if the suit was otherwise maintainable against them, the decision, in their favour of the claim case, being a final decision, was a complete answer to the suit: To this the learned Judge has answered that, as the value of the subject matter of the claim case was at least Rs. 2,195-1-0, the Small Cause Court had no jurisdiction to adjudicate upon the claim, though it was an objection brought in that court to an attachment made by its own order. With great respect to the learned Judge this is a misapprehension. The Small Cause Court's powers in execution are limited to moveables, but, subject to this limitation, that court, like any other court, has always power to execute its own decrees and indeed can only transfer its own decree to another court for execution if the conditions laid down by section 31 of its Act are satisfied. If, in course of executing its own decree, it attaches certain moveables, a third party claiming that the goods are his and not the judgment-debtor's can keep aloof from the execution proceedings and bring an independent suit to establish his right in any competent court which he may choose. But he can also bring a claim case in the execution proceedings

and, if he does so, the Small Cause Court, like any other execution court, has the power and duty to deal with his claim or objection under Order XXI, rules 58 to 62 of the Civil Procedure Code. No question of valuation for jurisdiction arises at this point. In other courts, rule 63 of that order applies to give the claimant a further right even if he should lose in the claim case, *viz.*, the right to bring a suit to reverse the result of the claim case. Such a right depends upon express enactment and, as rule 63 has not been applied to the Small Cause Court, its decision upon a claim case, subject to any question of a new trial, is final. It is final—to put the matter at the lowest—because there is nothing to make it contingent. (We are not in this case concerned with any question of an illegal transfer of a decree by the court which passed it to another court for execution.)

The view taken by the learned Judge was based by him on the observations of Sir Arthur Wilson in *Ismail Solomon Bhamji v. Mahomed Khan* (1), where that learned Judge rested the finality of the decision of the Small Cause Court in a claim case upon section 37 of the Act, which says that “every decree and order of the Small Cause Court in a suit shall be final and conclusive.” But Sir Arthur Wilson in that case nowhere suggests that a claim case is itself a suit, still less that it is a new and independent suit to which the provisions of section 18 are to be independently applied. What Sir Arthur Wilson held was that proceedings for investigation of claims and objections under rules 58, *et seq.*, of Order XXI are proceedings in the suit. He bases this upon the language of section 278 of the Code of Civil Procedure (1882) (now Order XXI, rule 58), which applies to all courts—not upon the Small Cause Court Rule which requires the claim to be stated in the form of a plaint. Where rule 58 refers to “the suit”, it must mean the suit in which the decree was obtained: no one supposes that a claim

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proceeding in a Munsif's court is itself a suit. On the other hand, under the Code of 1882, it was a trite, if sometimes a treacherous, saying that execution proceedings are proceedings in the suit. Indeed the same argument exactly can be applied to the Presidency Small Cause Courts Act itself. Chapter V of the Act is headed "procedure in suits" and section 26, which deals with claims and objections under section 278 of the Code of 1882, as well as sections 27 to 31 and section 35, which deal with execution matters, are main provisions of that chapter. Sir Arthur Wilson pointed to the finality of the Small Cause Court's decision in a claim case as explaining the good sense of the Small Cause Court's special rule under which claim cases are tried like ordinary suits and not in a more summary manner as in other courts, but he did not base the finality of the Small Cause Court's decision upon the view that the claim case was itself a second suit, so that section 18 of the Act had to be applied again.

In my opinion, the decree of the learned Judge must be varied by dismissing the appellants from the suit with costs. The appeal is allowed with costs against the plaintiff.

The appellants will have the costs of the motion brought against them to restrain them from putting the bond in force.

GHOSE J. I agree.

*Appeal allowed.*

Attorneys for appellants: *N. C. Bural & Pyne.*

Attorneys for respondents: *O. C. Ganguli & Co., K. K. Sen.*

S. M.