

## ORIGINAL CIVIL.

Before McNair J.

PURNENDU NATH TAGORE

1940

v.

Mar. 20, 21.

DHIRENDRA NATH CHATTERJI.\*

**Costs**—Suits in High Court for reliefs obtainable in Small Cause Court—Costs in High Court lower than in Small Cause Court—Costs if to be on High Court scale—Presidency Small Cause Courts Act (XV of 1882), ss. 19, 41, 42.

The plaintiffs brought a number of suits in the High Court against their tenants for arrears of rent, recovery of possession of property and mesne profits though they could have obtained the reliefs claimed in each of those suits in the Small Cause Court in appropriate proceedings. The costs, however, of such proceedings in the Small Cause Court would in many instances have been higher than the costs of suits in the High Court.

Held that the plaintiffs were justified in bringing the suits in the High Court and the costs would be on the High Court scale although the High Court generally allows costs in Small Cause Court scale in suits instituted in the High Court which might have been brought in the Small Cause Court.

*Bai Meherbai Sorabji Master v. Pherozshaw Sorabji Gazdar* (1) referred to.

## ORIGINAL SUIT.

The facts of the case appear sufficiently from the judgment.

*B. C. Ghose* and *R. Chaudhuri* for the plaintiff. Small Cause Court has no jurisdiction to entertain suits for recovery of immovable property. Presidency Small Cause Courts Act, s. 19. No doubt a landlord may apply under s. 41 to recover possession of immovable property whose annual value at a rack rent is below Rs. 2,000. But the plaintiffs, in order to get the reliefs they claim in each of these suits, will have to file a suit for arrears of rent, then apply under s. 41 to recover possession of premises and lastly to file a suit for mesne profits. The cost of these proceedings in the Small Cause Court would, in many

\*Original Suit, No. 346 of 1940.

(1) (1927) I. L. R. 51 Bom. 885.

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instances, be higher than costs of an undefended suit in the High Court and the time occupied there would be much longer than the time within which a suit in the High Court would be disposed of. *Bai Meherbai Sorabji Master v. Pheroazshaw Sorabji Gazdar* (1). Plaintiffs, therefore, are justified in filing these suits in the High Court and they are for the benefit of the defendants.

McNAIR J. A number of suits have been brought by the plaintiff Kumar Purnendu Nath Tagore and his co-executors against tenants who are in arrears with their rent and who are holding over after the expiration of their tenancy. The plaintiffs claim in each instance possession of the premises, and a decree for arrears of rent and mesne profits at a rate approximating to the rental.

The question arises whether the plaintiffs should get their costs on the High Court scale or on the Small Cause Court scale.

In suit No. 347 of 1940 the actual arrears of rent and taxes is just under Rs. 30, and it would appear at first sight that this is a suit which ought to have been brought in the Court of Small Causes and that the defendant should have the benefit of the scale of costs, which presumably would be less in the Court of Small Causes.

Learned counsel in support of his claim for costs on the High Court scale has referred me to a decision of the Division Bench of the Bombay High Court in *Bai Meherbai Sorabji Master v. Pheroazshaw Sorabji Gazdar* (1), where the same question was agitated before the Bombay High Court. There the Court held that the plaintiffs were entitled to costs on the High Court scale.

It is noteworthy that, in addition to arrears of rent, the plaintiffs in each of these suits seek to recover possession of the property from the possession of a tenant.

Section 19 of the Presidency Small Cause Court Act provides that the Small Cause Court shall have no jurisdiction in suits for the recovery of immovable property, and it is contended that this is a suit for the recovery of immovable property, and therefore incapable of being decided in the Small Cause Court.

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Sections 41 and 42, however, provide a procedure in the Small Cause Court whereby a person, who wishes to recover possession of immovable property of which the annual value at a rack rent does not exceed Rs. 2,000, may obtain relief.

It appears to me, therefore, possible for the landlord to sue for rent in the Small Cause Court, and then to apply under the provisions of s. 41 in order to recover possession of the property.

There would, however, of necessity be in effect two suits, and it is contended that the time which would be occupied in this somewhat cumbersome procedure would be very much longer than the time within which the landlord would be able to obtain possession under the suit in the High Court.

The amount of money obtained in a High Court decree is in some instances considerably below Rs. 1,000, and in some instances nearly Rs. 2,000. In general this Court allows costs only on the Small Cause Court scale where the plaintiff might have sought his remedy in the Small Cause Court but has chosen to bring his suit in the High Court.

Learned counsel, at my desire, has put before me the estimated costs of these suits according to the prescribed scale in the Small Cause Court and in the High Court. In one suit the costs which would be allowed on taxation in the High Court would amount to about Rs. 266. In the Small Cause Court where the annual value at a rack rent would be Rs. 434 the costs under the Small Cause Court procedure work out at over Rs. 280, although the rent in that instance is only Rs. 36 per month.

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In some of the other suits, in which I have passed decrees on behalf of the same plaintiff, the costs under the Small Cause Court procedure would vary between Rs. 421 and Rs. 155 and I find to my surprise that in these suits which presumably might have been brought in the Small Cause Court, the actual costs in the Small Cause Court would, in many instances, have been higher than the costs in the High Court, although the amount, which the plaintiff would recover, would be considerably under Rs. 2,000.

Furthermore, supposing the suit were brought in the Small Cause Court and were contested by the tenant on the ground that the landlord was seeking to bring a suit in which title to immovable property was involved, that suit might be dismissed as being outside the jurisdiction of the Small Cause Court, and, in that event, the stamp, which is no small item of the costs in the Small Cause Court, would be forfeited and the plaintiff would be forced to spend a great deal more money and the defendant might eventually be called upon to pay a larger sum in costs than if the matter were agitated in a suit filed originally in the High Court.

If the plaintiffs had sued in the Small Cause Court to obtain all reliefs for which they are asking here, they would first of all have had to bring a suit for arrears of rent, they would then have to adopt the procedure necessary for obtaining possession and would then have to sue again for the mesne profits for the period during which they had been kept out of their tenancy.

In dealing with this matter the learned Chief Justice in *Bai Meherbai Sorabji Master v. Pherozshaw Sorabji Gazdar* (1) says :—

To my mind the very fact that the defendant would thus be exposed to three suits instead of one would *prima facie* show that this would be the wrong remedy to adopt, . . . . . Secondly, it is an error to suppose that necessarily a suit in the Small Cause Court is cheaper than one in the High Court. It depends partly on the value. But, having regard to the high

and increasing court-fees levied in suits in the Small Cause Court, it can be shown from the High Court records that in certain classes of suits where they are undefended, a High Court suit is cheaper than the one in the Small Cause Court.

This conclusion has been amply demonstrated to me by the scale of costs which has been placed before me by the learned counsel in each one of these cases. The plaintiff, in a suit of this nature, has, in any event, a right to bring his suit in the High Court, and, on the facts and the law which have now been placed before me, it appears to me that he is not only justified in doing so but that, in many instances, it is not only for his own benefit but also for the benefit of the defendant.

In each case there will be costs on the High Court scale.

Attorneys for plaintiffs: *Mitter & Bural.*

*Suit decreed with costs.*

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*McNair J.*