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 ———
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having regard to the number of petty cases of this nature, which must occur in the mofussil, we think that, on some fitting opportunity, it would be desirable that the subject should be reconsidered by a Full Bench of this Court. As we have not had the advantage in this case of hearing counsel on either side, we think it right to follow the rulings of this Court, and to confirm the judgment of the lower Court.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

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 June 23.

SHIBOO NARAIN SINGH (PLAINTIFF) v. MUDDEN ALLY AND
 OTHERS (DEFENDANTS).
 NATABAR NANDI (PLAINTIFF) v. KALI DASS PALI AND OTHERS
 (DEFENDANTS).*

*Small Cause Court—Jurisdiction—Civil Procedure Code (Act X of 1877),
 ss. 280, 281, and 283—Limitation Act (XV of 1877), sched. ii, art. 11.*

Section 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution-proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether the party is to sue in the Civil Court or in the Small Cause Court, depends entirely upon the nature of the claim and the right which is sought to be enforced.

A person whose goods are illegally sold under an execution, does not lose his right to them, although he may have claimed them unsuccessfully in the execution-proceedings. He may follow them into the hands of the purchaser or of any other person, and sue for them or their value without reference to anything which has taken place in the execution-proceedings, except that, under art. 11, sched. ii, Act XV of 1877, he must bring his suit within one year from the time when the adverse order in the execution-proceedings was made.

Where goods have been illegally seized and sold in execution, a suit by the owner thereof against the purchaser for the goods or their value, will lie in a Small Cause Court, if the value of the goods is within the amount limited by law for the jurisdiction of such Court; but if the plaintiff makes the decree-holder and the judgment-debtor parties to the suit, and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court.

* Small Cause Court Reference, No. 7 of 1881, from the order made by Sreenath Roy, Judge of the Small Cause Court at Howrah.

A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code, will not lie in the Small Cause Court.

Ram Dhun Biswas v. Kefal Biswas (1), *Moozdeen Gazeer v. Dinobundhoo Gossamee* (2), and *Womesh Chunder Bose v. Muddun Mohun Sircar* (3) discussed and explained.

THIS was a reference from the Judge of the Small Cause Court at Howrah, the terms of which were as follows:—The question raised in these cases is, whether a party against whom an order under ss. 280 and 281 of the Civil Procedure Code is passed, may institute a suit to establish his right in the Small Cause Court, where the property in dispute is moveable property, and is valued at an amount cognizable by such Court? As the question is an important one, I beg to submit it for the decision of the High Court.

The plaintiff in the first mentioned of these cases was the unsuccessful claimant; and that in the other case, was the defeated decree-holder.

Before the passing of the Civil Procedure Code, Act X of 1877, the rule laid down by the Calcutta High Court was, that such suits, either by the decree-holder or by the unsuccessful claimant, could not lie in the Small Cause Court—*Ram Dhun Biswas v. Kefal Biswas* (1) and *Moozdeen Gazeer v. Dinobundhoo Gossamee* (2). The contrary decision passed in the ruling in *Womesh Chunder Bose v. Muddun Mohun Sircar* (3) was referred to in the first mentioned of these precedents. That being the law when the old Procedure Code, Act VIII of 1859, was in force, it remains to be seen if the new Code has changed matters or extended the jurisdiction of the Small Cause Court. The words of s. 283 of the new Code are: that “the party against whom an order under ss. 280, 281, or 282 is passed, may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive.” This section is made applicable to the Small Cause Courts by sched. ii of the Act. It does not seem to me clear, however, that this application of the section to the Small Cause Courts has extended the jurisdiction of these Courts

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(1) 10 W. R., 141.

(2) 13 W. R., 99.

(3) 2 W. R., 44.

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to try suits to establish rights to properties, moveable and immoveable. The section provides for remedies to the defeated party, but is quite silent as to the Court which should have jurisdiction to entertain such suits. It appears from s. 5 of the Code that the sections of the second schedule of the Act extend to the Small Cause Courts, so far only as they are applicable, and this leaves no room to doubt that the jurisdiction of the Small Cause Courts has not been enlarged by the Code. The section alluded to (No. 283) is not qualified by any sentence, under parentheses as "so far as relates to moveable property" as appears against the following section, which refers to sales in execution. It would also appear from a note under s. 283 of Broughton's Civil Procedure Code, that "the suit to establish the right of the claimant must be brought in the Court having jurisdiction to try it, not necessarily that in which the proceedings have taken place." Under these grounds I am fully of opinion that these cases are not cognizable by the Small Cause Courts.

The decision of the Bombay High Court in *Nathu Ganesh v. Kalidas Umed* (1) shows a contrary view of the question; but since that Court has refrained from interpreting the present state of the law, and is not in unison with the view taken by the Calcutta High Court in connection with the past law, I think I am not in a position to take it for my guide.

The case of *Ram Soondur Sein v. Krishno Chunder Goopto* (2) would, I think, justify me in following the rule laid down by the Calcutta High Court.

Under these grounds I think I have no jurisdiction to entertain these suits, and therefore dismiss them both, contingent upon the decision of the High Court.

The judgment of the Court (GARTH, C. J., and McDONNELL, J.) was delivered by

GARTH, C. J.—We think that there is no real difficulty about the point referred to us; and that the new Civil Procedure Code has made no material difference in the law upon the subject. Section 283 of the Code enables a party against whom an order has been made in execution-proceedings to

(1) I. L. R., 2 Bomb., 366.

(2) 17 W. R., 380.

bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit, or the Court in which it is to be brought. Whether, therefore, the party is to sue in the Civil Court or in the Small Cause Court, depends entirely upon the nature of the claim, and the right which is sought to be enforced. If the claim can be made in the Small Cause Court, the suit must be there. If not, it must be brought in the Civil Court.

The first case reported upon the subject, to which we have been referred, is *Womesh Chunder Bose v. Muddun Mohun Sircar* (1). In that case, some bricks were sold in execution of a decree. The plaintiff claimed in the execution-proceedings to be the owner of them, and this claim was refused. The bricks were then sold in execution; and the plaintiff brought his suit against the purchaser in the Civil Court. It was held in that case by the High Court, that, as the value of the bricks was less than Rs. 500, the plaintiff was bound to have sued in the Small Cause Court.

The case of *Ram Dhun Biswas v. Kefal Biswas* (2) was of a very different character. A claim was there made to certain goods which the decree-holder was about to sell in execution, and the claim was allowed. Whereupon the decree-holder brought a suit in the Small Cause Court to establish his right to sell the property as being that of the judgment-debtor. This was a suit which, from its very nature, could not be brought in the Small Cause Court. It was a suit to obtain a declaration from the Court, which the Small Cause Court had no jurisdiction to make. Sir Barnes Peacock and Mr. Justice Mitter, therefore, decided, that the suit ought to have been brought in the Civil Court.

In the next case, *Moozdeen Gazee v. Dinobundhoo Gosamee* (3), the circumstances were very similar to those in *Womesh Chunder Bose v. Muddun Mohun Sircar* (1). A claim had been made to certain goods about to be sold in execution, and the decision had been against the claimant. The property was then sold, and the claimant brought a suit in the Small

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Cause Court to recover them or their value as against the purchaser. The learned Judges in that case, however, do not appear to have had their attention drawn to the case of *Womesh Chunder Bose v. Muddun Mohun Sircar* (1), and supposed (erroneously as we think) that the case ought to be governed by the decision in *Ram Dhun Biswas v. Kefal Biswas* (2). We fear that this ruling has been followed in many cases, and has led to some misapprehension.

The distinction between the two classes of cases is so clearly marked, that it seems almost unnecessary to explain it. A person whose goods are illegally sold under an execution does not lose his right to them, although he may have claimed them unsuccessfully in the execution-proceedings. He may follow them into the hands of the purchaser or of any other person, and sue for them or their value without reference to anything which has taken place in the execution-proceedings, except that, under art. 11 of the Limitation Act, he must bring his suit within a year from the time when the adverse order in the execution-proceedings was made.

The plaintiff's only difficulty in the first of these causes is one of his own creation. If he had simply sued the purchaser under the execution for his goods or their value, he might have enforced his claim as a matter of course. But he has chosen to make both the decree-holder and the judgment-debtor defendants in the suit, for which there was clearly no occasion, and which was obviously a mistake. In sending this case back, therefore, to the Small Cause Court, we would recommend that the names of the decree-holder and judgment-debtor should be struck out of the record, the plaintiff paying their costs, which he avows his readiness to do; and the plaintiff may then proceed to enforce his claim, if it is a just one, against the purchaser only.

The other suit, which is brought by the decree-holder to obtain a declaration from the Court as to his right, comes within the other class of cases, in which the Small Cause Court has clearly no jurisdiction.

(1) 2 W. R., 44.

(2) 10 W. R., 141.