

SMALL CAUSE COURT REFERENCE.

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

NOBIN KRISHNA CHAKRAVATI (PLAINTIFF) v. RAM KUMAR
CHAKRAVATI (DEFENDANT).

1881
June 23.

BUNNIJAN BIBI (PLAINTIFF) v. MAHAMMAD HOSSAIN
(DEFENDANT).*

Contribution—Co-Sharers—Small Cause Court—Jurisdiction.

No suit for contribution between coparceners in a revenue-paying estate, or for contribution between coparceners in a jama, will lie in the Small Cause Court.

Khettermoney Dossee v. Madhub Chunder Ghose (1) doubted, but followed.

Bam Buz Chittanjeo v. Moodhoosoodun Paul Chowdhry (2) followed.

THIS was a reference from the Officiating Judge of the Small Cause Court at Sealdah, the material portion of which is as follows:—In the first case, the plaintiff alleges, that he and the defendant hold a jama in coparcenary. The jama fell into arrears, and the landlord sued them, and ultimately obtained a decree. The decree in due course was executed, and the amount of it was realized from the plaintiff. The plaintiff now sues the defendant for recovery of the money paid in excess of his legitimate share of the debt. The claim is instituted, not upon any contract subsisting between the parties, but upon grounds of equity.

In the second case, the parties are joint owners of an estate under Government. The plaintiff alleges that she has paid the entire revenue and other rates to the Collector; that as her coparcener, the defendant, is bound, in law and equity, to contribute according to the quantum of his share; and that he has not contributed. This claim also is not based upon any contract to

* Small Cause Court Reference, No. 3 of 1881, from an order made by Baboo Bulloram Mullick, Officiating Judge of the Small Cause Court at Sealdah, dated the 29th January 1881.

(1) No. 726 of 1878, unreported.

(2) B. L. R., Sup. Vol., 675; S. C., 7 W. R., 377.

1881
 NOBIN
 KRISHNA
 CHAKRAVATI
 v.
 RAM KUMAR
 CHAKRA-
 VATI.
 —
 BUNNIJAN
 BIBI
 v.
 MAHAMMAD
 HOSSAIN.

so contribute. It is simply stated that the plaintiff has the right to recover in the shape of contribution so much as she has paid in excess of her share of the debt.

In each of these cases the defendant contends, *inter alia*, that the Court of Small Causes is not competent, under s. 6 of Act IX of 1865, to entertain them.

The question to be determined with reference to the above contention is—Whether, under s. 6 of the above Act, the Court of Small Causes has jurisdiction to maintain the present suits?

That section enacts:—"The following are the suits which shall be cognizable by Courts of Small Causes, *viz.*, claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages." The plaintiffs urge that the claims they have instituted are for money due on 'contract,' and they rely upon a Full Bench ruling of the Allahabad High Court—*Nath Prasad v. Baij Nath* (1)—and chap. v of the Indian Contract Act of 1872. The defendants' contention is, that there is no element of contract, either express or implied, involved in the payment of the moneys in respect of which contribution or refund is prayed for by the plaintiffs; that the relation between the adverse parties was only quasi-contractual; and that the remedy prayed for by the plaintiffs is one afforded by Courts of Equity upon merely equitable considerations. They rely upon a Full Bench ruling of the Calcutta High Court—*Ram Bux Chittanjee v. Moodhoosoodnn Paul Chowdhry* (2), uniformly followed by other Divisional Benches of the same Court.

The Judge, having discussed the law and the authorities on the point at considerable length, said:—"I think this Court has no jurisdiction under s. 6 of Act IX of 1865. But as the question is not free from doubt, I should respectfully submit it to their Lordships of the High Court for an authoritative opinion. The suits will be dismissed contingent upon the opinion of the Honorable Court, but without costs."

The case was not argued.

(1) I. L. R., 3 All., 66. (2) B. L. R., Sup. Vol., 675; S. C., 7 W. R., 377.

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

GARTH, C. J. — We think that, for the purposes of this reference, both the cases must be considered as governed by authority in this Court.

The Full Bench case of *Ram Bux Chittanjee v. Moodhoo-soodun Paul Chowdhry* (1) clearly shows, that, in the case of co-sharers of an estate, where one co-sharer pays the whole revenue, he cannot recover contribution in a Small Cause Court from his co-sharer; co-sharers paying revenue to Government are not co-contractors in any sense, and therefore the principle laid down in the Full Bench case and in other subsequent cases with regard to them, is perfectly plain.

But the case of joint tenants who hold a tenure under a zemindar or other landlord at an entire rent, seems to fall within a different principle. Such co-tenants are to all intents and purposes co-contractors, as much so as persons who jointly purchase goods or borrow money; and if one should be compelled by the landlord to pay the whole rent, there seems no reason why, in accordance with the English and the Civil law, the others should not be bound by contract to repay him their proper proportions. This principle was acted upon by the Full Bench in *Shuboo Mujee v. Noorai Mollah* (2), in the case of a principal and surety, where it was held, that a surety having paid the debt could sue the principal in the Small Cause Court. But this distinction does not appear to have been recognized in later cases, and we have ascertained that, in an unreported case, *Khethermoney Dossee v. Madhub Chunder Ghose* (3), heard on the 20th June 1878 by Markby and Prinsep, JJ., where the circumstances were similar to the present, it was held, apparently on the authority of *Shaboo Mujee's Case* (2), that a suit for contribution would not lie in the Small Cause Court.

We find that a different view has been taken of such cases by the Madras and Allahabad High Courts [see *Nath Prosad v. Baij Nath* (4) and *Govinda Muneya Tiruyan v. Bapu* (5)], and

(1) B. L. R., Sup. Vol., 675; S. C., 7 W. R., 377.

(2) B. L. R., Sup. Vol., 691.

(4) I. L. R., 3 All., 66.

(3) No. 726 of 1878, unreported.

(5) 5 Mad. H. C. Rep., 200.

1881

NOBIN
KRISHNA
CHAKRAVARTI
v.
RAM KUMAR
CHAKRA-
VARTI.

BUNNIAN
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1881
 NOBIN
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 CHAKRA-
 VARTI.
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 BUNNIJAN
 BIBI
 v.
 MAHAMMAD
 HOSSAIN.

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.

1881
 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.