

minor son, Jung Bahadoor. According to the principle laid down in *Suraj Bansi Koer v. Sheo Prosiad Singh* (1) the plaintiffs can set aside the sales if they can prove that the debts, which were the foundations of the decrees in execution of which they were held, were contracted by the father for immoral purposes. This the plaintiffs in this case have failed to prove. Their suit, therefore, as regards Jufferabad, Aurungabad and Jehanabad, will fail. We, therefore, modify the decree of the lower Court to this extent, *viz.*, that we dismiss the plaintiff's suit as regards these mouzahs, but we affirm the decree so far as the Mouzah Dowlatabad is concerned. As the major portion of the plaintiff's claim has failed, they must pay the defendant's costs in both Courts.

1882

 SHEO
 PROSIAD
v.
 JUNG
 BAHADOOR.

Appeal allowed and decree modified.

Before Mr. Justice Wilson and Mr. Justice Field.

RAMJOY SURMA (DEFENDANT) *v.* JOY NATH SURMA (PLAINTIFF).*

*Contribution, Suit for—Money paid in satisfaction of joint decree—
 Small Cause Court, Jurisdiction of.*

1882

 July 27.

A suit for contribution for money paid by one judgment-debtor in satisfaction of a joint decree against him and others cannot be entertained by a Court of Small Causes.

Rambux Chittanjeo v. Mudhoosoodun Paul Chowdhry (2); *Shaboo Majee v. Noorai Mollah* (3) followed; *Nathprasad v. Baijnath* (4), dissented from.

In this case the plaintiff alleged that he and the defendant jointly had borrowed a sum of money from one Ram Kanai Das, who, on the 9th of September 1876, obtained a joint decree for the amount, with costs, against the plaintiff and the defendant. In 1877, the decree-holder took out execution against the plaintiff alone, and recovered from him Rs. 250. The decree-holder applied

* Appeal from Appellate Decree No. 1998 of 1880 against the decree of Baboo Ram Coomar Paul, Subordinate Judge of Sylhet, dated the 10th July 1880, modifying the decree of Baboo Upendro Chunder Ghose, Munsiff of Nubeegunge, dated the 31st March 1880.

(1) L. R., 6 I. A., 88; S. C., I. L. R., 5 Calc., 148.

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

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

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

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 RAMJOY
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for further execution, but while his application was pending he came to a compromise and sold the decree to the plaintiff for Rs. 90. The plaintiff claimed to recover in the present suit Rs. 170 from the defendant, being half of the total amount paid by him under the decree of the 9th of September 1876. The suit was dismissed by the Court of first instance, but this decision was reversed on appeal. The defendant appealed to the High Court.

Baboo Joy Gobind Shome for the appellant.

Baboo Juggut Chunder Banerjee, for the respondent, objected that no second appeal lay, as the suit being one for contribution and the amount claimed being under Rs. 500, it was of a nature cognizable in a Court of Small Causes.

The judgment of the Court (WILSON and FIELD, JJ.) was delivered by

WILSON, J.—This is a second appeal from a decision of the Subordinate Judge of Sylhet modifying a decree of the Munsiff of Nubsegunge. A preliminary objection was raised that under s. 586 of the Procedure Code this appeal does not lie, on the ground that the claim is under Rs. 500, and the cause of action of such a nature that a Small Cause Court had jurisdiction over it.

The claim is for contribution. The case found is that the plaintiff and the defendant, being jointly liable on a bond, were jointly sued, and a decree was made against them jointly. The plaintiff was compelled to satisfy that decree, and in this suit seeks to recover his share from the defendant. In *Rambux Chittanjee v. Mudhoosoodun Paul Chowdhry* (1) the general rule was laid down by a Full Bench that a suit for contribution does not lie in a Small Cause Court under s. 6 of the Mofussil Small Cause Courts Act (XI of 1865), in the absence of a contract to contribute. In *Shaboo Majee v. Noorai Mollah* (2) the plaintiff and defendant had been jointly sued upon a joint bond, and a joint decree obtained against them, plaintiff having had to pay the amount sued for contribution. It was held by a Full Bench that he could not sue in a Small Cause Court. This case is on all fours with the present, and we are bound to follow it, unless some-

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

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

thing has since occurred by which the law has been altered. It was argued before us that ss. 43, 69 and 70 of the Contract Act (IX of 1872) have made a change in the law on this point, and that such a suit as the present has become one for "money due on bond or other contract, or for damages." We are unable to accede to this view. The sections referred to appear to us to do no more than state in written form what was the law before the Contract Act, and the consequences of a given rule of law must be the same whether it be written or remain unwritten.

A somewhat different view has been taken in a partially analogous case by the Allahabad High Court in *Nathprasad v. Baijnath* (1); but that view has not been followed in this Court. *Nobin Krishna Chukravati v. Ram Kumar Chakravati* (2) and Special Appeal No. 2,350 of 1879 (3). The appeal must, therefore, be heard on its merits.

The appeal will be dismissed with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Field and Mr. Justice Norris.

IN THE MATTER OF THE PETITION OF CHAROO CHUNDER MULLICK
AND OTHERS.

CHAROO CHUNDER MULLICK v. THE EMPRESS.*

1882.
October 12

High Court's Criminal Procedure Act (X of 1875), ss. 14 and 147—Commitment, Application to quash—24 and 25 Vict. c. 104, ss. 13 and 15.

The words "or other proceeding" in s. 147 of Act X of 1875, do not include a commitment, and an application to have a commitment quashed can be entertained under the provisions of that section.

Applications under s. 14 of that Act should be disposed of by the High Court in the exercise of its Ordinary Original Criminal Jurisdiction.

IN this case three persons, named Bunwari Lall, Charoo-Chunder Mullick, and Chintamoney Doss, were charged before Mr. B. L.

* Criminal Motion against the order of B. L. Gupta, Esq., Presidency Magistrate of Calcutta, dated the 9th October 1882.

(1) I. L. R., 3 All., 66. (2) I. L. R., 7 Calc., 605. (3) Unreported.