

is certain that the respondent must have known that she was mortgaging an estate which was by law not transferable, the appellant may well have believed that her tenure was of a transferable character. The appeal is decreed, and the appellant's claim is decreed with costs in all the Courts.

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Appeal allowed.

Before Mr. Justice Mahmood.

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August 6.

JIIWA RAM SINGH (PLAINTIFF) v. BHOLA AND ANOTHER (DEFENDANTS) *

Small Cause Court suit—Suit for damages—Personal injury—Actual pecuniary damage—Act XI of 1865 (Small Cause Courts Act), s. 6—Suit instituted before commencement of Act IX of 1887 (Small Cause Courts Act)—Act IX of 1887, s. 3 (a).

* The plaintiff in a suit for damages laid at Rs. 200 claimed Rs. 50 on account of medical expenses caused by an assault committed on him by the defendants, Rs. 50 as the costs of a criminal prosecution which he had brought against them, and Rs. 100 for injury to his reputation and feelings.

Held that inasmuch as part of the claim related to alleged actual pecuniary damage resulting from an alleged personal injury, the whole suit was, with reference to s. 6, proviso (3), of the Mufassil Small Cause Courts Act (XI. of 1865), of the nature cognizable by a Court of Small Causes, and that, under s. 596 of the Civil Procedure Code, no second appeal in such suit would lie. *Gunga Narain Meytro v. Gudadhar Chowdhry* (1) referred to.

THE plaintiff in this suit claimed Rs. 200 as damages upon the following statement. He alleged that he had been assaulted by the defendants, who were his tenants; that his injuries had involved him in expenditure on account of medical treatment in hospital to the extent of Rs. 50; that he had also been put to the expense of a criminal prosecution against the defendants which had cost him Rs. 50, and he claimed another Rs. 100 on account of injury to his reputation and his feelings.

The Court of first instance (Munsif of Bulandshahr) decreed the claim on the first head to the extent of Rs. 10; on the second head to the full extent of Rs. 50; on the third head to the extent of Re. 1. On appeal by the defendants, the lower appellate Court disallowed the claims under the first two heads and gave the plaintiff

* Second Appeal, No. 1244 of 1886, from a decree of H. G. Pearse, Esq., District Judge of Meerut, dated the 27th April, 1886, modifying a decree of Moulvi Syed Ahmad Ali, Munsif of Bulandshahr, dated the 27th February, 1886.

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a decree for Re. 1 on the third head only. He appealed to the High Court.

Pandit *Moti Lal*, for the appellant.

Lala *Jokhu Lal*, for the respondents.

A preliminary objection was raised on behalf of the respondents to the hearing of the appeal, on the ground that it was barred by s. 586 of the Civil Procedure Code.

MAHMOON, J.—This appeal has arisen out of an action for recovery of Rs. 200 claimed as damages by the plaintiff for his bodily injury resulting from his having been assaulted by the defendants, and also for the consequent loss of reputation and hurt of feelings, and also in respect of the expenses incurred in the hospital, and in payment of fees to the legal practitioners who prosecuted the defendants in the criminal Court in respect of such assault. The first Court decreed the claim in part, but the lower appellate Court has modified the first Court's decree by assessing damages at only Re. 1, to which extent it upheld the first Court's decree.

The plaintiff has preferred this second appeal; but to the hearing of the appeal Mr. *Moti Lal*, who appears for Mr. *Howell* on behalf of the respondents, objects that, the suit being one cognizable by the Court of Small Causes, no second appeal lies to this Court under s. 586 of the Civil Procedure Code, and in support of this contention the learned pleader cites the case of *Gunga Narain Moytro v. Gudadhar Chowdhry* (1), in which Glover and Hobhouse, JJ., concurred in the opinion that to suits in which even a portion of the claim for damages was claimed as actual damages, the third proviso of s. 6 of the Mufassil Small Cause Courts Act (XI of 1865) did not apply, and that in such cases no second appeal would lie.

Having read the prayer for relief of the plaintiff in this case contained in para. 4 of the plaint, I have no doubt that this suit, so far as this preliminary objection is concerned, is on all fours with the case cited on behalf of the respondents. Because there, as here, the claim for damages referred to loss of reputation along with actual damages. In this case it cannot be doubted that the

(1) 13 W. R., 434.

hospital expenses and the fees paid to the lawyer for prosecuting the defendants were claimed as actual damages.

It is of course not necessary for me to decide whether such fees could be claimed; but considering the nature of the suit as set forth in the plaint and the ruling of the Calcutta High Court to which reference has been made, I am of opinion that the suit was one of the nature cognizable by the Small Cause Court, and that, therefore, no second appeal lay to this Court.

Some suggestion was made that, in deciding this point, I should refer to the new Small Cause Courts Act (IX of 1887); but in this case the second appeal was instituted on the 2nd August, 1886, and the consideration of the new law would be unnecessary upon general principles of construing statutes, and, indeed, those general principles have been duly given effect to in clause (3) to s. 3 of this enactment itself, which provides that the new enactment is not to affect any proceedings before or after decree in any suit instituted before the commencement of the Act. It is therefore clear that the new Act is not applicable, and, as I have already said, under the old Act, this was a Small Cause Court suit, and, being of less value than Rs. 500, was not a fit one for being made the subject of second appeal under s. 586 of the Civil Procedure Code. The appeal is dismissed with costs (1).

Appeal dismissed.

Before Mr. Justice Mahmood.

RAM SARAN AND ANOTHER (JUDGMENT-DEBTORS) v. PERSIDHAR RAI
AND OTHERS (DECREE-HOLDERS).*

Civil Procedure Code, s. 208—Power of lower Court to amend decree affirmed on appeal.

Where a decree for possession of immovable property, passed by a lower appellate Court, omitted to specify the plots of land to which it related, and was upheld by the High Court by a decree which likewise gave no specification of those plots, and the lower appellate Court subsequently, on the decree-holder's application, amended its decree, under s. 208 of the Civil Procedure Code, by inserting the required specification,—*held* that inasmuch as the effect of the amendment was not to alter the effect of the High Court's decree, or to affect

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* Second Appeal, No 448 of 1887, from a decree of G. J. Nicholls, Esq., District Judge of Ghazipur, dated the 4th December, 1886, confirming a decree of Munsif Syad Zain-ul-abdin, Munsif of Korantadih, dated the 18th September, 1886.*

(1) See also *Dabi Singh v. Hanuman Upadhyay*, I. L. R., 3 All 747.