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case such as this the judgment-creditor could not bring to sale after the death of the judgment-debtor the interest which the judgment-debtor had in the joint property of the Hindu family. The same principle is to be found in the judgment in the case of *Rai Bal Kishen v. Rai Sita Ram* (1), and in the case of *Balbhadar v. Bisheshar* (2). Under these circumstances the appeal must be dismissed, and the decree below confirmed with costs.

Appeal dismissed.

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December 21.

Before Mr. Justice Straight and Mr. Justice Mahmood.

MADAN GOPAL (PLAINTIFF) *v.* BHAGWAN DAS (DEFENDANT).*

Civil Procedure Code, s. 646B—Reference by District Judge of proceedings in Small Cause Court attacked for want of jurisdiction.

Before a District Court can make a reference under s. 646B of the Civil Procedure Code, it must be of opinion that the subordinate Court has erroneously held upon the point of jurisdiction in regard to the particular suit before it, and that therefore the matter is one in which the interference of the High Court should be sought.

The word "shall" in s. 646B., clause (1) is not mandatory but directory.

THIS was a suit which was brought in the Court of Small Causes at Mirzapur for recovery of a sum of Rs. 114, alleged to be the balance due upon a partnership account. The defence was that the partnership accounts had not yet been adjusted, and that the suit would not lie. The Court decreed the claim in part, and held that the debt which the plaintiff sought to recover was one which had "nothing to do with the partnership account."

An application was then presented on behalf of the defendant to the District Judge of Mirzapur, purporting to be made under s. 646B of the Civil Procedure Code, and praying that the record of the case might be submitted to the High Court for orders. The application was based upon the contention that the suit was not cognizable by the Court of Small Causes. The District Judge thereupon passed the following order :—

* Reference under Civil Procedure Code, s. 646B by W. T. Martin, Esq., Judge of the Court of Small Causes, Mirzapur.

(1) I. L. R., 7 All. 731. (2) I. L. R., 8 All. 495.

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"Under s. 646B, let the record be submitted. The Subordinate Judge holds that the debt in suit was a separate affair altogether from the partnership account. In that view the suit was cognizable by the Small Cause Court, but is submitted only at request of party."

STRAIGHT, J.—This professes to be a reference made by the District Judge of Mirzapur under s. 646B of the Civil Procedure Code of 1882, as amended by Act VII of 1888. A suit was tried before the Subordinate Judge of Mirzapur sitting as a Small Cause Court Judge, and was decided by a decree, dated the 5th July, 1888. Upon the 24th July the unsuccessful defendant in that suit applied to the Judge of Mirzapur for revision, so the petition is headed, under s. 646B of the Civil Procedure Code as amended by s. 60 of Act VII of 1888. It is not necessary for me to enter into the grounds upon which the interference of the learned Judge was sought. It is sufficient to say that by two orders respectively dated the 24th and the 28th July, the Judge professed to refer the application for revision to this Court for disposal. It therefore, as a preliminary matter, becomes necessary to see whether the reference of the learned Judge has been regularly made, that is to say, in the manner contemplated by s. 646B, clause (1). In my opinion, the reference has been improperly made, as it appears upon the face of it. Section 646B, as I read it, provides for this state of things. Assuming that a Court subordinate to a District Court has held a suit instituted in that Court either to be cognizable by a Small Cause Court or not to be so cognizable, and has either failed to exercise a jurisdiction vested in it by law, or has exercised a jurisdiction not vested in it by law, and the District Judge is of opinion that such subordinate Court has erroneously held, in either of these alternatives, then the District Court may, of its own motion, or at the motion of either of the parties, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous,

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Putting it shortly, my view is that before a District Court can make a reference therein, it must be of opinion that the subordinate Court has erroneously held upon the point of jurisdiction in regard to the particular suit before it, and having so erroneously held, that, therefore, the matter is one in which the interference of the Court should be sought. I do not think that any importance is to be attached to the use of the word "shall," after the phrase "if required by a party." That is purely used in its directory sense; because the latter portion of the first clause of the section goes on to say, that where a District Court acts of its own motion it must "state its reasons" for considering the opinion of the Subordinate Judge's Court an erroneous decision.

The learned Judge in this case has neither stated that the decision is an erroneous one, nor has he given any reasons for coming to that conclusion. It appears to me, therefore, that the reference cannot be entertained by us, and that it should be returned to the learned Judge for him to take the matter up and deal with it in advertence to the observations that I have made and in accordance with the provisions of s. 646B of the Civil Procedure Code. If he is of opinion that the decision of the Subordinate Judge acting as a Small Cause Court Judge was right upon the question of jurisdiction, then he should not make a reference. If he thinks that it was wrong, then he may make a reference to this Court, recording his reasons for so doing. Let the papers be returned to the learned Judge with these remarks.

MAHMOOD, J.—I agree so entirely with what my learned brother has said, that it is scarcely necessary for me to add any further remarks. I am however anxious, because this is the first time within my experience as a Judge of this Court that this new s. 646B, which has been passed so late as this very year, has come under judicial consideration, to say that some doubt did arise in the course of the hearing, in my mind, as to the exact manner in which the word "shall" was to be interpreted, especially as it comes in close proximity to the word "may," with reference to the powers and duties of the District Judge. I think my learned brother's

view fully expresses why, with reference to the words that follow the "shall" we must take this "shall" not as strictly mandatory, but only directory; and that if that word can be used in any greater sense, it can be only as qualifying the words relating to the opinion of the Judge as to the erroneous exercise of jurisdiction.

I fully agree with my brother that the references contemplated by s. 646B are limited to cases where the District Court is of opinion that there has been an error in the exercise of, or in the declining exercise of jurisdiction in cases of the kind mentioned in the section. The whole policy as indicated by the Legislature of the enactments begun with Act XI of 1865, seems to be that statutes *in pari materia* have aimed at finality of decision in cases of the Small Cause Court type. It is not necessary to refer to the various sections of the various Acts beyond saying that they uniformly uphold the desirability of enforcing finality to adjudications in such cases. That finality has been qualified by two classes of provisions; one conferring on the highest Court of appeal the powers of revision such as s. 622, Civil Procedure Code, contemplates, and in particular with reference to Small Cause Court cases, by a provision such as s. 25 of the Provincial Small Cause Courts Act contemplates. Another manner in which the Legislature has thought fit to mitigate any failure of justice in consequence of the erroneous exercise of jurisdiction is this very section which my brother has interpreted, namely, s. 646B.

But whilst the Legislature has been so jealously careful to guard against the failure of justice, as my learned brother has put it, these references under s. 646B are not intended to apply to a case where a Judge has not exercised his mind to consider whether or not the Court below, whose judgment he was dealing with, had or had not jurisdiction. That section is limited only to cases where there has been an error. I fully agree in declining to answer this reference, and in sending back the record to the Judge to be dealt with according to law.