

REVISIONAL CIVIL.

1891
March 18.*Before Mr. Justice Mahmood.*

MALIK RAHMAT (PLAINTIFF) v. SHIVA PRASAD AND OTHERS (DEFENDANTS).*

Small Cause Court—Judgment of Small Cause Court, what should be contained therein—Revision—Civil Procedure Code, ss. 203, 502, 622, 647—Act IX of 1887 (Small Cause Courts Act), s. 25.

Section 203 of the Code of Civil Procedure does not relieve the Judge of a Small Cause Court from the necessity of giving some indication in his judgment that he has understood the facts of the case in which such judgment is given.

Where a judgment in a Small Cause Court suit stated merely that the suit was dismissed for reasons given in the Judge's decision in another suit, and the judgment in the suit so referred to was in the following words:—"Claim for recovery of money lent with interest. Reply. Defendant pleads that he has paid the debt to plaintiff. Issued. Has the defendant paid the debt claimed to the plaintiff? Finding. It is not proved that the defendant paid the debt to the plaintiff. Ordered that the claim is decreed with costs:—" held that this was in fact no judgment at all, and the case must be remanded for re-trial on the merits under the analogy of s. 502 of the Code of Criminal Procedure, read with s. 647 *ib.*

The facts of this case sufficiently appear from the judgment of Mahmood, J.

Munshi *Jwala Prasad*, for the applicant.

Munshi *Madho Prasad*, for the opposite parties.

MAHMOOD, J.—This is an application under s. 25 of the Provincial Small Cause Courts Act (IX of 1887), and also under s. 622 of the Code of Civil Procedure (Act XIV of 1882), invoking my interference as a Judge sitting in the revisional jurisdiction of this Court in regard to such matters. Mr. *Jwala Prasad*, who appears for the petitioner, and Mr. *Madho Prasad*, who holds the brief of Mr. *Kashi Prasad*, for the opposite parties, are agreed that these two sections apply and that the determination of the case depends upon their effect.

The facts of the case are that one Malik Rahmat, who is the petitioner before me, pawned certain jewels for the amount of Rs. 100

* Miscellaneous application No. 52 of 1890, for revision of a judgment, dated the 19th April 1890, of Babu Mrittonjoy Mukerji, Judge of the Court of Small Causes of Benares.

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to Sheo Prasad, Sheopal and Sukhundan on the 20th August 1887, and it was agreed that whatever sum of money may be repaid out of the debt the pawned property should, to the extent of such payment, be released from the pawn.

Now the plaintiff states that Rs. 40 out of the amount thus due under the pawn of the 20th August 1887, was paid by him, and that to the extent of the value of such payment some of the pawned jewels were released some time about the 27th April 1888, and thereafter another payment of Rs. 67-8 was made some time about the 22nd April 1889, and that upon such payment having been made the defendants had promised to return the rest of the pawned jewels, but that they did not keep their word and the jewels were not therefore returned.

This incident is stated to be the cause of action for the present suit. The suit was met by the plea that the aforesaid sum of Rs. 67-8 was never given to the defendants, pawnees, and that therefore the suit could not prevail,

During the pendency of the cause there was some other dispute between the same parties which was pending in the Small Cause Court, in which the defendant to this cause was the plaintiff and the plaintiffs in this cause were the defendants. The suit was tried by the Small Cause Court Judge of Benares, and that suit was decided on the 19th April 1890, being suit No. 1223 of 1889, and a copy of the judgment in that cause is upon the record.

This being so, the entire judgment in this case passed by the learned Small Cause Court Judge consists of the following words:—

“For the reasons given in my decision in 1223, decided to-day, the plaintiff is not entitled to recover the jewels without paying the debt due to the defendant. Order. Suit dismissed with costs.”

Now it was because of the brief manner in which this judgment was worded that I was anxious to see the record of the case to which it referred. The record was sent for by my order of the 20th February 1891, in order to enable me to understand what

reasons were given in the case to which reference was thus made by the learned Judge of the Small Cause Court.

The record has come up and I wish to quote the whole of the judgment in order to show how little there is anything of the expected reasons in the case. The judgment runs as follows :—

“Claim for recovery of money lent with interest. Reply. Defendant pleads that he has paid the debt to the plaintiff. Issue. Has the defendant paid the debt claimed to the plaintiff? Finding. It is not proved that the defendant paid the debt to the plaintiff. Ordered. That the claim is decreed with costs.”

This was the order made by Mr. Mrittonjoy Mukerji, exercising the powers of a Small Cause Court Judge, under the jurisdiction which he possessed under the Provincial Small Cause Courts Act (IX of 1887), and this is the kind of judgment in which he, in the exercise of the powers thus conferred upon him, thought fit to exercise them.

It has been to me a matter frequently for consideration on the Bench in this Court whether the Small Cause Court powers, as implied and required by the Small Cause Courts Act (IX of 1887), are such as should be entrusted to officers who are not fully cognizant of the dignity which the finality of a Small Cause Court decree implies.

In the present case I have no doubt that Mr. *Jwala Prasad*, for the petitioner, is perfectly right in contending that there is absolutely no guarantee upon the record itself that the learned Judge, Mr. Mrittonjoy Mukerji, who presided in the Small Cause Court at Benares, ever understood the case at all or the facts which would have a bearing upon the right decision of the case. And I think the learned pleader* was perfectly within his rights when he asked me, under the peculiar circumstances of the case, to rule that the judgment, or rather, the so-called judgment, in this case is no judgment at all, because it indicates neither the appreciation of the facts of the case nor of the law which is applicable to them.

Mr. *Madho Prasad*, who holds the brief of Mr. *Kashi Prasad*, for the opposite party, has called my attention to s. 203 of the Code

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of Civil Procedure in order to sustain the only point which he could urge on behalf of his clients, namely, that the Judge of a Small Cause Court is not bound to record judgments in the same fashion and with the same fullness as Judges in other Civil Courts. I wish to say again that Mr. *Madho Prasad* was perfectly right in thinking that the first part of the section is the only one which could help the case of his clients, because upon the facts the learned pleader himself felt that he could not sustain the judgment of the lower Court.

I wish to say now what I have never said before, that the investiture of the Small Cause Court powers in Judges, which does occur and is frequently exercised in the direction of the policy upon which the Provincial Small Cause Courts Act (IX of 1887) is based, and the policy upon which the enactment antecedent to it, Act XI of 1865 was based, may be an exercise of power resulting in disastrous results, keeping in view the finality of the jurisdiction which such Courts possess. In the present case I am afraid such has been the result, because, even keeping in view the provisions of s. 203 of the Code of Civil Procedure, and even keeping in view all that Mr. *Madho Prasad* in his argument has addressed to me in regard to the matter, I have no doubt that the learned Judge of the lower Court should have dealt with the case in the manner required by law, and not in a manner which gives neither the points nor, to me, any guarantee that he sufficiently understood the cause.

The exact extent of the revisional powers contained in s. 25 of the Provincial Small Cause Courts Act, (IX of 1887), has been the subject of consideration in a recent case decided by the Full Bench of this Court in *Muhammad Bakar v. Bahal Singh* (1).

Similarly the powers of this Court under s. 622 of the Code of Civil Procedure have been the subject of consideration by their Lordships of the Privy Council in the case of *Muhammad Yusuf Khan v. Abdul Rahman Khan* (2).

The effect of these rulings has been considered by me in some earlier cases, to which I need not refer in detail. What I hold now

(1) I. L. R., 13, All., 277.

(2) I. L. R., 16, Cal., 749.

is, that under the circumstances of this particular case the learned Judge of the Small Cause Court was entirely wrong in thinking that his judgment in the case to which he refers, namely, No. 1223, contained any reasons for the decision of this cause. I have therefore a case which has been decided without any reasons, and s. 203 of the Code of Civil Procedure will not enable even a Small Cause Court Judge to dispose of cases in this manner, or to think that he has done justice to the parties when he has written a judgment such as the one which is now before me.

I therefore regret that, acting under the powers which this Court possesses as a Court of revision, the only order which I feel called upon to make is that the application be allowed, the judgment of Mr. Mrittonjoy Mukerji, Judge of the Small Cause Court of Benares, dated the 19th April 1890, be set aside as no judgment at all, and that that Court be called upon to pass the proper order in the case according to the requirements of the law. Acting under the analogy of s. 562 read with s. 647 of the Code of Civil Procedure, I set aside the decree and remand the case for trial upon the merits with reference to the order which I have made. Costs will abide the result.

APPELLATE CIVIL.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Tyrrell, and Mr. Justice Mahmood.

WALI AHMAD KHAN AND OTHERS (DEFENDANTS) *v.* AJUDHIA KANDU
(PLAINTIFF).*

*Possession—Ejectment—Suit in ejectment on a possessory title—Act I of 1877,
(Specific Relief Act) s. 9.*

Per EDGE, C. J., STRAIGHT and TYRRELL, J. J., (MAHMOOD, J., *dissentiente*).

Section 9 of the Specific Relief Act is intended to provide a special summary remedy for a person who, being, whatever his title, in possession of immovable property, is ousted therefrom.

* Second Appeal No. 879 of 1888, from a decree of G. J. Nicholls, Esq., District Judge of Ghazipur, dated the 17th March 1888, reversing a decree of Munshi Mata-din, Munsif of Ballia, dated the 2nd September 1887.

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