

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

1890
December 20

MUHAMMAD BAKAR (DEFENDANT) v. BAHAL SINGH (PLAINTIFF.)

Act IX of 1887 (Provincial Small Cause Courts' Act) s. 25—Small Cause Court—Revision—Circumstances under which the High Court will exercise its revisional powers under s. 25 of Act IX of 1887.

Section 25 of the Provincial Small Cause Courts' Act (Act IX of 1887) was not intended to give in effect a right of appeal in all Small Cause Court cases, either on law or fact. The revisional powers given by that section are only exercisable where it appears that some substantial injustice to a party to the litigation has directly resulted from a material misapplication or misapprehension of law, or from a material error in procedure. *Muhammad Nizam-ud-din Khan v. Hira Lal* (1) and *Musum Ali v. Mohsin Ali* (2) approved.

THE facts of this case were as follows :—

The plaintiff sued in the Small Cause Court at Saháranpur for the sum of Rs. 300 on a promissory note and a sale-deed executed in favor of the plaintiff on behalf of Muhammad Hashim, the creditor, on account of the promissory note. The defendant pleaded (1) that the instrument sued on was not a promissory note, but an agreement, hence no cause of action had accrued to the plaintiff, (2) that no notice as provided by s. 13 of Act IV of 1883 had been issued to him, and (3) that the plaintiff could not derive any benefit contrary to the terms of the instrument and that the plaintiff's claim against the defendant's person was improper. The Court framed issues in accordance with these pleadings and decided all of them in favour of the plaintiff; giving the plaintiff a decree for the sum claimed with costs. The defendant then applied to the High Court for revision on the following grounds :—(1) because the learned Judge was wrong in holding that the condition about the time of payment was void under s. 29 of Act IX of 1872, (2) because the document sued upon was insufficiently stamped and was therefore inadmissible in evidence, and (3) because the suit was premature. The application came on for hearing before Straight, J., who referred it to a Division Bench. It then came

(1) Weekly Notes, 1890, p. 121.

(2) Weekly Notes, 1890, p. 201.

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before Edge, C.J., and Brodhurst, J., who ordered that it should be laid before the Full Bench.

Maulvi *Ghulam Mujtaba*, for the applicant.

Pandit *Sundar Lal*, for the opposite party.

EDGE, C.J., STRAIGHT, TYRRELL, MAHMOOD and KNOX, JJ.—We are of opinion that the powers conferred by s. 25 of Act IX of 1887 are purely discretionary. We agree with the opinion of Mahmood, J., in *re Muhammad Nizam-ud-din Khan v. Hira Lal* (1) and *Masum Ali v. Masum Ali* (2) that it was not intended by that section to give in effect a right of appeal in all Small Cause Court cases, either on law or fact. We think we should not interfere under s. 25 of the Act unless it clearly appeared to us that some substantial injustice to a party to the litigation had directly resulted from a material misapplication or misapprehension of law or material error in procedure in the Court of Small Causes and that this is not such a case. The application is dismissed with costs.

Application dismissed.

1890
December 22.

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

OUDDH BEHARI LAL (JUDGMENT-DEBTOR) v. NAGESHAR LAL (DECREE-HOLDER);

Execution of decree—Application for order absolute for sale—Mortgage—Act IV of 1882 (Transfer of Property Act) ss. 88 and 89.

The holder of a decree under s. 88 of the Transfer of Property Act (IV of 1882) applied for execution to the Court charged with execution of the decree.

Held that this was a good application under s. 89 of the Act, and that it was not necessary that such application should be made to the Court which had passed the decree. An application for an order absolute for sale under s. 89 of the Transfer of Property Act (IV of 1882) is a proceeding in execution and subject to the rules of procedure governing such matters.

THIS was a second appeal in execution proceedings. The respondent was the holder of a decree for enforcement of a hypothecatory lien dated the 31st January 1885. The terms of the decree were as follows:—“It is ordered and decreed that a decree be passed against the absent defendant and against the property hypothecated,

(1) Weekly Notes, 1890, p. 121.

(2) Weekly Notes, 1890, p. 201.