

CIVIL REVISIONAL.

1885
June 15.*Before Mr. Justice Straight and Mr. Justice Tyrrell.*SURAJPAL SINGH AND OTHERS (PETITIONERS) v. JAIRAMGIR
(OPPOSITE PARTY)*.*Small Cause Court suit—Suit for enforcement of hypothecation against moveable property—Act XI of 1865 (Mufassal Small Cause Courts Act), s. 6.*

A suit was brought in a Small Cause Court to recover a sum of money from the defendants personally, and by enforcement of hypothecation of certain cattle by their attachment and sale. The cattle were in the hands of other persons, who had purchased them at an auction-sale in execution of a decree against the original defendants, and who were added as defendants under s. 32 of the Civil Procedure Code.

Held that the suit was not cognizable by a Small Cause Court, inasmuch as it did not fall under the category of a "suit for money due on a bond or other contract," or of a "suit for personal property, or for the value of such property," within the meaning of s. 6 of the Mufassal Small Cause Courts Act (XI of 1865). *Ram Gopal Shah v. Ram Gopal Shah* (1) and *Godha v. Naik Ram* (2), referred to.

THE facts of this case are sufficiently stated, for the purposes of this report, in the judgment of the Court.

Pandit *Sundar Lal*, for the petitioners.

The opposite party was not represented.

STRAIGHT and TYRRELL, JJ.—This was an application, under s. 622 of Act XIV of 1862, for the revision of an order passed by the Small Cause Court Judge of Mirzapur, on the 6th January, 1885, and the applicants before us are the persons who were defendants in that suit. The plaintiff virtually sued to recover Rs. 117-9-0 from the defendants personally, and by enforcement of hypothecation of sixty-nine head of cattle by their attachment and sale. The cattle were in the hands of defendants Nos. 3 to 5, who were added as defendants under s. 32 of the Code, and who had purchased them at an auction-sale held in execution of a decree against the original defendants.

It has been contended by the learned pleader for the applicants that the suit was not cognizable by the Small Cause Court, and

* Application No. 109 of 1885, for revision under s. 622 of the Civil Procedure Code, of an order of Munshi Madho Lal, Judge of Small Cause Court of Mirzapur, dated the 6th January, 1885.

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that the decree of that Court must therefore be set aside for want of jurisdiction.

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The question is a simple one to determine. S. 6 of the Small Cause Courts Act (XI of 1865) enumerates the various classes of suits cognizable by Small Cause Courts. We have to determine whether the present suit can fall under the category of a "suit for money due on a bond or other contract," or of a "suit for personal property."

Now, it is obvious that the suit contemplated in the first case is a suit for the recovery of a sum of money due on a bond, and it was never contemplated that a suit for enforcement of hypothecation against certain moveable property should fall under that category. The questions which might arise with reference to the enforcement of hypothecation might involve serious and difficult considerations which it was not contemplated should be tried by such Courts.

The observations of Sir Barnes Peacock, in *Ram Gopal Shah v Ram Gopal Shah* (1) on the point are very apposite; and we are of opinion that the relief sought in the shape of enforcement of hypothecation took the suit out of the jurisdiction of a Small Cause Court.

We have now to consider whether this suit can be said to be a suit for personal property or the value of personal property. It cannot be said that the cattle belonged to the plaintiff. The plaintiff does not claim to obtain possession of the cattle or to recover their value. The cattle had been attached and sold in execution of a decree, and purchased by the defendants Nos. 3 to 5, and the Court had no jurisdiction to hold the defendants liable to the extent of the value of the cattle in their hands. We may add that the principles laid down in *Godha v. Naik Ram* (2) apply to this case also.

The application must be allowed, and we set aside the decree of the Small Cause Court as against the defendants who were subsequently added under s. 32 of the Code, with proportionate costs in both Courts.

Application allowed.

(1) 9 W. B. 136.

(2) *Ante*, p. 152.