

for that purpose. Had it been the intention of the Legislature to limit the scope of section 37 by the provisions contained in section 432, we should have expected similar provisions in the Code indicating that intention. It was held by the Calcutta High Court in *Beer Chunder Manikya v. Ishan Chunder Burdhun* (1) that section 432 does not prevent the institution of a suit by an independent Prince in his own name and through a recognised agent other than one appointed under that section. The section was amended after that ruling was passed. If the law as laid down in the ruling was different from that which the Legislature contemplated by section 432, the section would in all probability have been amended in such a way as to make the meaning of the Legislature clear. Although, as we have said, the question is one not free from difficulty, we see no reason to put on section 432 an interpretation different from that placed on it by the Calcutta High Court. In our opinion the learned Judge below was wrong in holding that the plaint had not been properly signed and verified, and in dismissing the claim on that ground. We set aside the decree of the lower appellate Court and remand the case under section 562 of the Code of Civil Procedure to that Court with directions to readmit it under its original number in the register and dispose of it according to law. The appellant will get his costs of this appeal.

Appeal decreed and cause remanded.

Before Mr. Justice Know and Mr. Justice Burkitt.

FAUJI LAL (PLAINTIFF) v. CHANGA MAL (DEFENDANT).*

Act No. IX of 1887 (Provincial Small Cause Courts Act), Sch. ii, Art. 29(c)—Suit by a retired partner for the consideration due for his retirement—Jurisdiction—Small Cause Court.

A suit by a retired partner for money alleged to have been agreed to be paid to him by the continuing partners in consideration of his retirement is not excluded from the jurisdiction of a Court of Small Causes.

* Second Appeal No. 152 of 1895, from a decree of Maulvi Aziz-ul Rahman, Subordinate Judge of Agra, dated the 17th November 1894, reversing a decree of Babu Hari Mohan Banerji, Munsif of Agra, dated the 30th June 1894.

(1) I. L. R., 10 Cal., 136.

1897

THE
MAHARAJA
OF
BHARPUK
V.
KACHHEV.

1897

June 2.

1897

FAUJI LAT.
v.
CHANGA MAL.

THIS was a suit to recover Rs. 200 with a certain amount of interest. The plaintiff alleged that he and the defendant were once partners in a pearl-selling venture to which he, the plaintiff, had contributed Rs. 200; that the defendant withdrew from the partnership promising to repay him the two hundred rupees with interest, but that he never did so. The plaint was originally presented to the Court of the Small Cause Court Judge of Agra, who, holding the suit to be a suit relating to a still continuing partnership, returned it to be presented to the proper Court. The plaintiff then took his plaint to the Court of the Munsif, who entertained the suit and ultimately gave the plaintiff a decree. The defendant appealed; and the lower appellate Court (Subordinate Judge of Agra) decreed the appeal and dismissed the suit, on the ground that it was a suit triable only by a Court of Small Causes, and returned the plaint for presentation to such Court. The plaintiff appealed to the High Court.

Pandit *Sundar Lal*, for the appellant.

Pandit *Baldeo Ram Dave*, for the respondent.

KNOX and BURKITT, JJ.—The appellant in this second appeal is the plaintiff. He took a plaint to the Court of Small Causes at Agra, and the Judge of that Court refused to entertain it, holding that the matter was not one within his jurisdiction. The plaintiff then went to the Court of the Munsif, who gave him a decree, holding that the case was one within his jurisdiction as Munsif. The Subordinate Judge in appeal has set aside that decree, being of opinion that the suit was one which fell distinctly within the jurisdiction of a Small Cause Court, and has returned the plaint to be presented to that Court. It is now contended by the plaintiff in appeal that the suit is one which is not cognizable by the Court of Small Causes and that the decision of the Subordinate Judge to that effect was wrong. We have examined the plaint. The suit as laid is a suit by a person who was once a member of a partnership, from which partnership he says he retired under an agreement that the surviving partners would thereafter pay him a certain sum for his interest in the business. That sum was never paid, and he now

sues to recover it. It was sought by the learned advocate for the appellant to bring the case within clause 29(c) of the second Schedule attached to Act No. IX of 1887. But this is not a suit for the balance of a partnership account, as the partnership, so far as the plaintiff is concerned, does not exist. Clause 29(c) contemplates a suit to ascertain the profits and loss of a business and to have a balance of a partnership account struck, and was never intended to extend to the recovery of a mere debt due to a retired partner from the firm.

The appeal fails and is dismissed, but without costs.

Appeal dismissed.

Before Mr Justice Banerji and Mr. Justice Aikman.

GHAZI (DEFENDANT) v. SUKRU (PLAINTIFF).*

Hindu Law—Marriage—Consent of the father of the girl not always necessary to the validity of a marriage.

Under the Hindu law if a girl is given in marriage by her mother and all the necessary rites are duly performed and there is no question of force or fraud and no other legal impediment to the marriage, the marriage will not be invalid merely because the consent of the girl's father has not been obtained. *Bacc Rulyat v. Jey Chund Keowl (1)* and *Venkatacharyulu v. Rangacharyulu (2)* referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Madho Prasad*, for the appellant.

Pandit *Moti Lal*, for the respondent.

BANERJI and AIKMAN, JJ.—This was a suit brought by the respondent against the appellant, his father-in-law, in which he prayed that his wife, the daughter of the defendant, be allowed to live with him, and that her father be restrained from offering obstruction to her doing so. The plaintiff was married to defendant's daughter on the 14th of May 1894. The marriage was celebrated without the consent of the defendant by the girl's mother, whom the defendant had ceased to support for a number

* Second Appeal No. 386 of 1895, from a decree of Babu Brij Pal Das, Subordinate Judge of Allahabad, dated the 7th March 1895, reversing a decree of H. David, Esq., Munsif of Allahabad, dated the 10th September 1894.

(1) 1 Morley's Digest, 181.

(2) 1 L. R., 14 Mad., 316.

1897

PAUSI LAL
v.
CHANGA
MAL,

1897

June 5.