

1896

JIWAT  
DUBE  
v.  
KALI  
SHARAN  
RAM.

decree in relation to which the application was made was no longer capable of execution. He suggests that there never could have been any doubt as to the intention of the appellant, and it appears there could never have been any doubt in the minds of the judgment-debtors, as to the decree which was intended to be executed. He suggests, therefore, that the amendment was properly and rightly made and relates back to the date of the original informal application. In support of his contention he cites the judgment of this Court in *Ajudhia Ram v. Muhammad Munir* (1). It is there ruled that an application having once been admitted the date of a subsequent amendment would not by reason of such amendment become the date of the application. We approve of that ruling, and therefore hold that the third application was within time. Until the date of present application we are not aware of any objection taken by the judgment-debtors to the previous applications upon the ground of the erroneous date being specified as the date of the decree.

We therefore allow this appeal, and set aside the order of the lower appellate Court upon the preliminary point, but without costs, as it has arisen through the mistake of the decree-holder. We remand the case under section 562 of the Code of Civil Procedure for the decision of the remaining issues contained in the memorandum of appeal to the lower appellate Court.

*Appeal dismissed and cause remanded.*

*Before Mr. Justice Blair and Mr. Justice Aikman.*

SADA SHANKAR AND ANOTHER (DEFENDANTS) v. BRIJ MOHAN DAS  
(PLAINTIFF)\*

*Act No. IX of 1887 (Provincial Small Cause Courts' Act) Section 23—Civil Procedure Code Section 586—Suit of the nature cognizable by Courts of Small Causes.*

A suit is none the less a suit cognizable by a Court of Small Causes because that Court may have exercised the discretion conferred on it by section 23 of

\* Second Appeal No. 576 of 1896 from a decree of Babu Nil Madhub Rai, Subordinate Judge of Benares, dated the 2nd May 1896, confirming a decree of Maulvi Mubarak Husain, Munsif of Benares, dated the 19th September 1895.

the Provincial Small Cause Courts' Act, and returned the plaint to be presented to a Court having jurisdiction to determine a question of title raised therein. *Kali Krishna Tagore v. Izzat-an-nissa Khatun* (1) followed.

IN this case the plaintiff Brij Mohan Das sued one Gopal Das in the Court of Small Causes at Benares for the rent of part of a house. He alleged in his plaint that he had purchased the said house from one Kanhaiya Lal, who himself had taken it as heir to one Musammat Dhani Bai, that he had let a portion of the said house to the defendant on the 7th June 1889, but that the defendant had not paid him any portion of the stipulated rent. The plaintiff accordingly claimed rent and interest for three years previous to the date of suit, amounting in all to Rs. 117-4. The defendant pleaded that the house belonged, not to the plaintiff, but to Sada Shankar and Rabi Shankar, to whom the rent claimed had been paid, and that the plaintiff had no concern whatever with the house in question. Rabi Shankar and Sada Shankar were accordingly made defendants to the suit. Subsequently the plaint was returned to the plaintiff to be presented in the proper Court. The plaint was accordingly presented in the Court of the Munsif, who heard the suit and decreed the plaintiff's claim. The defendant Sada Shankar appealed to the Subordinate Judge, who dismissed the appeal. Sada Shankar and Rabi Shankar thereupon appealed to the High Court.

Munshi *Gokul Prasad*, for the appellants.

Maulvi *Ghulam Mujtaba*, for the respondent.

BLAIR and AIKMAN, JJ.—Mr. *Ghulam Mujtaba's* preliminary objection to the hearing of this appeal must prevail. A cause is none the less a cause cognizable by a Court of Small Causes, because that Court exercised the discretion conferred on it by section 23 of the Provincial Small Cause Courts' Act No. IX of 1887, and returned the plaint to be presented to a Court having jurisdiction to determine the title. We concur with the judgment of the Calcutta Court in *Kali Krishna Tagore v. Izzat-an-nissa Khatun* (1). The appeal is dismissed with costs.

*Appeal dismissed.*