

APPELLATE CIVIL.

1897
July 24.

Before Mr. Justice Banerji.

MAKUND RAM (DEFENDANT) v. BODH KISHEN (PLAINTIFF).*

Civil Procedure Code, section 536—Suit of the nature cognizable in Courts of Small Causes—Act No. IX of 1887 (Provincial Small Cause Courts Act), section 15.

Held that a suit to recover from a decree-holder money paid as the price of property sold in execution of a decree as the property of the judgment-debtors, on the ground that the judgment-debtors had no saleable interest in the property, is a suit of the nature cognizable in Courts of Small Causes within the meaning of section 536 of the Code of Civil Procedure.

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

Babu *Satya Chandar Mukerji*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondent.

BANERJI J.—A preliminary objection has been taken to the hearing of this appeal by the learned vakil for the respondent on the ground that no appeal lies to this Court, the suit being one of the nature cognizable by a Court of Small Causes. The suit was one to recover from the defendant Rs. 130 under the following circumstances:—The defendant, in execution of a decree held by him against certain judgment-debtors, caused some property to be sold at auction and the plaintiff purchased it. Subsequently the plaintiff applied under-section 315 of the Code of Civil Procedure to the Court which executed the decree for a refund of the sale price paid by him on the allegation that the judgment-debtors had no saleable interest in the property sold. That application having been disallowed, he brought the present suit against the defendant, decree-holder, to recover from him the sale price paid by the plaintiff, together with interest. It is urged on behalf of the respondent that this was a suit which was not excluded from the cognizance of a Court of Small Causes by the second schedule to Act No. IX of 1887. If the

* Second Appeal No. 792 of 1896 from a decree of E. J. Kitts, Esq., District Judge of Bareilly, dated the 4th July 1896, confirming a decree of Munshi Harbandhan Lal, Officiating Munsif of Pilibhit, dated the 8th April 1896.

suit does not come within any of the classes of suits specified in that schedule it is a suit which, under the second paragraph of section 15 of Act No. IX of 1887, was cognizable by a Court of Small Causes. In my opinion the suit was not covered by any of the articles mentioned in the second schedule as excepted from the cognizance of a Court of Small Causes. The learned vakil for the appellant refers to article 23 which relates to "suits to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity." This is not a suit to set aside any order. If a decree be passed in the suit in favour of the plaintiff, it may have the effect of nullifying the order of the Munsif refusing to refund to the plaintiff the sale price paid by him, but that circumstance would not make the suit a suit to set aside a decision, decree or order, which it does not purport to be. The amount claimed being a sum not exceeding Rs. 500, a second appeal is barred by section 586 of the Code of Civil Procedure. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Know and Mr. Justice Burkitt.

DOST MUHAMMAD KHAN AND OTHERS (DEFENDANTS) v. SAID BEGAM
AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, section 13, Expl. II—Res judicata—Muhammadan law—Dower—Suit for dower debt after previous suit for partition amongst heirs—Effect of partition decree as constituting res judicata between co-defendants.

Two of the daughters of a deceased Muhammadan sued the remaining heirs for partition of the inheritance, and a decree for partition was made, which was confirmed on appeal by the High Court. Pending the appeal to the High Court, two other daughters of the deceased, who had been parties defendants in the suit for partition, brought a suit by which they claimed a large share in the estate of the deceased as part of the dower debt due to their mother. In this suit they pleaded as defendants all the surviving descendants of their deceased father.

Held that the claim for dower should have been made a ground of defence in the former suit by the plaintiffs, who had been defendants in the suit for

1897

MAKUND
RAM
v.
BODH
KISHEN.

1897
July 27.

* First Appeal No. 283 of 1893 from a decree of Shah Ahmad-ullah, Subordinate Judge of Meerut, dated the 10th July 1893.