1899

MUHAMMAD MUNAWAR ALI v. RASULAN BIBI.

when he assumed possession of his own and his wife's property as mutawalli in 1881 down to his death in 1895. I am therefore of opinion that the appeal on this point fails and that the decree of the Subordinate Judge is right. I would dismiss this appeal with costs.

BLAIR, J.,—I concur.

Appeal dismissed.

FULL BENCH.

1899
April 25.

Before Sir Arthur Strachey, Knight, Chief Justice, Mr. Justice Knox and Mr. Justice Burkitt.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) *v.* SUKHDEO (PLAINTIFF).*

Cause of action—Pleadings—Plaint disclosing no cause of action—Discovery at the stage of an appeal under the Letters Patent of defect in the plaint—Dismissal of suit—Practice.

Where in an appeal under section 10 of the Letters Patent it was brought to the notice of the Court that the plaint in the suit disclosed no cause of action against the defendant named therein, the Court entertained the plea and dismissed the suit.

THIS was a suit brought by one Sukhdeo against the Secretary of State for India in Council to recover certain property, which had been seized by a Magistrate in satisfaction of a fine imposed on his son, Natthe, or in the event of such property having been sold, its value, Rs. 10.

The facts of the case, briefly stated, were that Natthe had been convicted by a Magistrate of the 1st class of an offence under section 417 of the India Penal Code and sentenced to pay a fine of Rs. 200. In satisfaction of the fine certain articles were seized by the Police as being the property of Natthe. Sukhdeo raised an objection before the Magistrate who had succeeded the Magistrate by whom the fine had been imposed, but his objection was rejected, and the articles in question were sold. Sukhdeo thereupon preferred the present suit.

* Appeal No. 50 of 1898, under section 10 of the Letters Patent.

1899

THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. SUKHDEO.

The court of first instance decreed the claim. On appeal the lower appellate Court modified the first Court's decree. The defendant appealed to the High Court. The appeal coming on for hearing before a Division Bench, the Judges composing the Bench differred in opinion, and the decree of the lower appellate court was accordingly upheld.* The defendant thereupon filed the present appeal under section 10 of the Letters Patent.

Babú *Satya Chandra Mukerji* (with whom were Munshi *Gulzari Lal* and Munshi *Jai Bihari Lal*) for the respondent raised a preliminary objection that no appeal lay in this case under section 586 of the Code of Civil Procedure nor under section 10 of the Letters Patent. The plaintiff's suit was a suit of the nature cognizable by a Court of Small Causes, as it was a suit for the recovery of moveable property or the value thereof, and the amount sought to be recovered was below five hundred rupees. There was no doubt that the suit as framed was one of the nature cognizable by a Court of Small Causes, and exemption from such cognizance was sought by seeking to include it within the description of suits mentioned in clauses (2), (21) or (23) of the second schedule of Act No. IX of 1887.

[STRACHEY, C. J.—Clauses (21) and (23) do not seem to me to be in point; but what do you say to clause (2)? You will observe that the wording of clause (2) is very wide. Is not the present suit one concerning an act purporting to be done by a Judicial Officer acting in the execution of his office?]

Clause (2) does not apply. This suit is not a suit concerning an act of a public officer. For a case exactly in point see *Bunwari Lal Mookerjee* v. *The Secretary of State for India* (1). What has to be looked to in this connection is the relief that is asked for. It may be that the granting of that relief would have the effect of setting aside some order of some other public officer; but if that order is not sought to be cancelled in so many words, the suit would not be taken out of the category of Small

* *See* Weekly Notes, 1898, p. 173.

(1) (1889) I. L. R., 17 Calc., 290.

Cause Court suits.—*Vide* the observations of Farran, C.J. and Strachey, J. in *Raghunath Mukund* v. *Sarosti K. R. Kama* (1); also the case of *Mahund Ram* v. *Bodh Kishan* (2).

[STRACHEY, C. J.—Before we decide your preliminary objection will you show us from your plaint how you establish your cause of action against the defendant? You do not even allege in your plaint how the Secretary of State is liable in this matter.]

The defendant has not taken that objection in his written statement nor in his grounds of appeal to the lower appellate Court, and it is too late to take that objection now.

[BURKITT, J.—The defendant put you to the proof of your claim. He did not admit it. You must show that you have a cause of action against him.]

The plaint is no doubt defective in that respect, but that defect should be overlooked at this late stage.

STRACHEY, C. J.—This is a suit in which the plaintiff claims to recover from the Secretary of State for India in Council certain articles, or, in the event of their having been sold, the sum of Rs. 10 as their value.

Now the allegations of the plaint, with reference to the cause of action against the Secretary of State, are as follows:—"On the 21st April, 1894, Natthe was found guilty by Mr. O. G. Arthur, Magistrate, 1st class, in the case of *Queen-Empress* v. *Natthe* under section 417 of the Indian Penal Code, and was ordered to pay a fine of Rs. 200 to Government. In order to realize the aforesaid fine the following articles were seized through the police of Muttra, and the said articles were estimated by the police to be worth Rs. 10-5-0. The aforesaid articles belong to the plaintiff. He raised an objection before Munshi Narain Singh, who succeeded Mr. Arthur, that the aforesaid articles might be released. But the said officer rejected the said objection without taking any evidence on 16th June 1894. The cause of action accrued on 16th June, the day the objection was rejected, within the limits of the jurisdic-

(1) (1898) I. L. R., 23 Bom., 266. (2) Weekly Notes, 1897, p. 198.

1899

THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. SUKHDEO.

tion of this Court. Although the aforesaid convict is the son of the plaintiff, he has been living separate from him for a long time. He had no right and interest in the seized articles detailed below. The plaintiff is therefore entitled to receive back the said articles, or if they have been sold by auction, Rs. 10 may be awarded, no matter for what price they were sold." That is all the substantial part of the plaint.

The Court of first instance decreed the claim. On appeal the lower appellate Court modified the first Court's decree. There was hence a Second Appeal by the appellant to this Court. The learned Judges who heard that appeal differed in opinion. Mr. Justice Blair was of opinion that the suit was not maintainable against the Secretary of State, and that the suit should be dismissed. Mr. Justice Aikman, on the other hand, was of opinion that the decree of the lower Court was right. Under section 575 of the Code of Civil Procedure, the judgment of Mr. Justice Aikman prevailed, and this appeal against his decision has been brought by the defendant under the Letters Patent.

One of the grounds taken in the memorandum of the Second Appeal to this Court was that the plaintiff had shown no cause of action. That point was not raised in the defendant's written statement, but that written statement did not admit any cause of action by the plaintiff, and thereby put the plaintiff to the proof of his whole case. The learned Judges of this Court stated that in consideration of the importance of the point at issue they would allow the appellant to support his appeal by any argument which lay within the scope on his grounds of appeal. The whole of both judgments is substantially occupied with the discussion of the question whether the plaintiff had shown any cause of action against the Secretary of State in Council. Considering that that question lay at the root of the whole suit, we think there can be no doubt that the learned Judges were right in allowing it to be raised and argued. The same ground of appeal is stated in the memorandum of appeal to us under the Letters Patent.

1899

THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. SUKHDEO.

To our minds, however, the question whether any cause of action is shown presents itself in a somewhat different form from that in which it appeared to the learned Judges. What they discussed was rather the question whether any cause of action had been established in the sense of a liability in the Secretary of State in respect of such acts as the seizure and sale of the goods claimed by the plaintiff. But in our view there is a preliminary question, that is, whether, on the face of the plaint, any cause of action against the Secretary of State is even alleged by the plaintiff. We have come to the conclusion that the plaint discloses no such cause of action. What it discloses is that in order to realize a fine imposed upon a third person, certain goods belonging to the plaintiff were wrongfully seized by the police, and that, while these articles were in the custody of the Court, the Magistrate rejected an application by the plaintiff for their release. That is the whole of what the plaint describes as the cause of action. The plaint stops with the Magistrate's rejection of the application, and consequently with the retention of the articles in the hands of the Court. There is nothing more. No action by the Secretary of State or by any person for whom he could be deemed responsible is referred to or even hinted at. After stating these facts the plaintiff goes on to claim the articles, or, if they have been sold, Rs. 10 as their value, from the Secretary of State, who is not alleged ever to have been in possession of them, or to have any connection with them in any way whatever. In this state of the case it appears to us wholly unnecessary to consider any of the questions which were so elaborately discussed in the judgments on the appeal. Upon the short ground which I have mentioned, namely, that the plaint discloses no cause of action against the Secretary of State in Council, we are of opinion that this appeal must be allowed and the suit dismissed. As regards costs we order that, having regard to the fact that the plaintiff had no notice until a late stage of the case of the objection which is fatal to his suit, each party pay his own costs in each of the Courts.

Appeal decreed.