

For the above reasons we allow this appeal. We dismiss the plaintiffs' appeal to the lower appellate Court. We restore (though not for the reasons given by the Munsif) the decree of the Court of first instance, and we direct that the plaintiffs respondents' suit do stand dismissed with costs in all Courts.

*Appeal decreed.*

1901

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DASRATH  
RAI  
v.  
BHIRGU  
RAI.

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## REVISIONAL CIVIL.

1901  
June 12.

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*Before Mr. Justice Burkitt and Mr. Justice Chamier.*

RAMESHAR SINGH (DEFENDANT) v. DURGA DAS (PLAINTIFF).\*

*Act No. IX of 1887 (Provincial Small Cause Courts Act), Sec. 11, cls 13 and 31—Jurisdiction—Small Cause Court.*

The plaintiff claimed as land-owner to be entitled to receive the rents or fees paid by shop-keepers for the temporary occupation during a fair of a piece of land, which, the plaintiff alleged, belonged to his mahal. He further alleged that the defendant claiming that the land was his, had wrongfully received those dues or rents.

*Held* that this was a suit which fell within the provisions of the latter part of clause (31) of the second schedule to Act No. IX of 1887, and was not within the cognizance of a Court of Small Causes. *Damodar Gopal Dikshit v. Chintaman Balkrishna Karve* (1) referred to

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

*Munshi Gulzari Lal*, for the applicant.

BURKITT and CHAMIER, JJ.—In this matter we regret that the respondent was not represented, as the question involved in the reference by the learned District Judge is one of some importance.

The suit was one by a person claiming as land-owner to be entitled to receive the rents or fees paid by shop-keepers for the temporary occupation during a fair of a piece of land which, the plaintiff alleged, belonged to his mahal. He further alleged that the defendant claiming that the land was his, had wrongly received those dues or rents, or whatever they may be called.

The suit was instituted on the Small Cause Court side of the Court of a Munsif invested with Small Cause Court powers.

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\* Miscellaneous No. 75 of 1901.

(1) (1892) I. L. R., 17 Bom., 42.

1901

RAMSHAR  
SINGH  
v.  
DURGA  
DAS.

The first plea raised by the defendant was that the suit was one which was excluded from the cognizance of a Court of Small Causes. The defendant relied on clause 13 of the second schedule of Act No. IX of 1887. The Judge of the Court of Small Causes overruled that plea, and we think rightly.

In our opinion the suit as framed is one by the plaintiff to recover from the defendant money paid to, and received by, the defendant to the plaintiff's use, and wrongly retained by the defendant. Such a suit does not come within the purview of clause 13 of the second schedule. But there is another clause in that schedule to which neither the Judge of the Small Cause Court nor the District Judge has referred, and that clause, in our opinion, excludes the suit from the cognizance of a Court of Small Causes. We refer to the latter portion of clause 31, in which, among the suits excluded from the cognizance of a Court of Small Causes, we find "a suit for the profits of immovable property belonging to plaintiff which have been wrongfully received by the defendant." These words, we think, cover the present suit; it is one undoubtedly for profits of immovable property which plaintiff says belongs to him, and which profits, he says, were wrongly received by the defendant. In this opinion we are supported by a decision of the Bombay High Court in *Damodar Gopal Dikshit v. Chintaman Ballerishna Karve* (1). From the judgment in that case it is clear that the learned Chief Justice of that Court would have held this suit to be excluded from the cognizance of a Court of Small Causes.

The question in that case was, to some extent, the converse of this, but the principle applied in that case would exclude this case.

For the above reasons we set aside the decision and decree of the Court of Small Causes in this matter. We annul all proceedings taken in it before that Court, and we direct that the plaint be returned to the plaintiff for presentation to the proper Court. We make no order as to costs.