

MISCELLANEOUS CIVIL.

1901

December 12.

Before Mr. Justice Know and Mr. Justice Blair.

NORTH-WESTERN COMMERCIAL BANKING CORPORATION, THROUGH
BABU RAGHUBIR SARAN, OFFICIAL LIQUIDATOR—(APPELLANT), v.
MUHAMMAD ISMAIL KHAN—(OPPOSITE PARTY).*

*Act No. IX of 1887 (Provincial Small Cause Courts Act) schedule ii,
clause (18)—Small Cause Court suit—Jurisdiction—Suit relating to a
trust—Suit to recover money paid to legal practitioner to institute
suits, but not so expended.*

Held, that a suit in which the plaintiff claimed from the defendant the refund of certain moneys alleged by the plaintiff to have been paid to the defendant, a legal practitioner, for the purpose of instituting certain suits, but not to have been so expended, was a suit which was within the cognizance of a Court of Small Causes, and was not a suit relating to a trust within the meaning of clause (18) of the second schedule to Act No. IX of 1887.

THIS was a reference under section 646B of the Code of Civil Procedure, made by the District Judge of Meerut, upon an application to revise an order of the Judge of the Cantonment Court of Small Causes, returning a plaint for presentation to the proper Court.

The plaintiff alleged that three separate sums, amounting in all to Rs. 382-11, had been paid to the defendant, who was a barrister at that time practising in Meerut, for the purpose of filing certain suits, but that the defendant had never filed the suits for which the money was paid, and the money still remained in deposit with him. The plaintiff had on two occasions demanded the return of the said money, but the defendant had not paid it. The plaintiff therefore claimed payment of the sum named with interest, allowing a set off of Rs. 37-10, which had been deposited by the defendant with the bank of which the plaintiff was the Official Liquidator.

The defendant pleaded *inter alia* that "the suit as laid in the plaint relates to a trust and does not lie in the Small Cause Court."

The Judge of the Court of Small Causes returned the plaint for presentation to the proper Court, being of opinion that the suit was not cognizable by a Court of Small Causes with reference to clause (18) of the second schedule to Act No. IX of 1887.

* Miscellaneous No. 145 of 1901.

Against this order the plaintiff applied in revision to the District Judge, who, being of opinion that the view taken by the Judge of the Court of Small Causes was incorrect, referred the question to the High Court.

The following opinion was pronounced :—

KNOX and BLAIR, JJ.—Unfortunately we have not had the benefit of any argument addressed to us, nor of any authorities cited before us. The only paper we had before us is the reference made by the learned District Judge. We hold that the suit as instituted was not a suit which fell within the purview of clause (18) of the second schedule to the Provincial Small Cause Court's Act, and it was a suit, so far as this matter is concerned, not excepted from the cognizance of the Court of Small Causes.

This is our answer to the reference.

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APPELLATE CIVIL.

1898
January 8.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burhitt.

ADHAR SINGH (PLAINTIFF) v. SHEO PRASAD AND OTHERS

(DEFENDANTS).*

Civil Procedure Code, section 244—Sale in execution of decree—Compromise—Suit to set aside compromise and sale.

In execution of a money decree the decree-holders attached and brought to sale the interest of their judgment-debtor in a certain village, and themselves purchased it. An objection to the sale was raised by the judgment debtor, and while such objection was pending, the judgment-debtor's son is said to have entered into a compromise, whereby it was agreed that the decree-holders should take the village in full satisfaction of their decree, though it had, in fact, been sold, for only about three-quarters of the decretal amount, and that the sale should be confirmed on those terms.

The judgment-debtor subsequently filed a suit against the decree-holders, asking for a declaration that the said compromise and the confirmation of sale were collusive and invalid, and were null and void, and ineffectual as against the plaintiff.

Held, that such a suit was barred by the operation of section 244 of the Code of Civil Procedure. *Prosunno Coomar Sanyal v. Kasi Das Sanyal* (1) referred to.

* First Appeal No. 290 of 1898 from a decree of Babu B. pin Behari Mukerji, Additional Subordinate Judge of Cawnpore, dated the 18th October 1898.