

asked the appellant to point out to us what injury would accrue to him from the adoption of such procedure. No particular injury was pointed out. We accordingly dismiss the appeal with costs.

*Appeal dismissed.*

1902

KISHAN  
CHAND

v.

JAGANNATH  
PRASAD

## MISCELLANEOUS CIVIL.

1902

November 3.

*Before Mr. Justice Know and Mr. Justice Blair.*

RAM LAL (DEFENDANT) v. KABUL SINGH (PLAINTIFF).\*

*Civil Procedure Code, section 646B—Small Cause Court—Jurisdiction—Question of jurisdiction not raised in the Court of Small Causes—Reference by District Judge under section 646B declined.*

Section 646B of the Code of Civil Procedure does not apply to every case in which a Court of Small Causes has failed to exercise a jurisdiction vested in it by law, or has exercised a jurisdiction not vested in it by law, but only to a restricted number of such cases, namely those cases in which a Court of Small Causes has erroneously held a suit to be, or not to be, cognizable by it.

Where no question as to the Court's jurisdiction was raised by either party, and the Court of Small Causes proceeded to judgment as if the case was properly cognizable by it, the High Court refused to interfere upon a reference made by the District Judge purporting to be made under section 646B of the Code of Civil Procedure.

ONE Kabul Singh brought a suit against Ram Lal, a civil court amin, and Shib Lal, the judgment creditor, on account of damage done to his country cart while under attachment in execution of a decree. The case was tried as a Small Cause Court suit, and no question as to its not being a suit of the nature cognizable by a Court of Small Causes was raised at the hearing. A decree having been passed in favour of the plaintiff, the defendant Ram Lal applied to the District Judge asking that a reference might be made to the High Court under the provisions of section 646B of the Code of Civil Procedure, and the case was referred accordingly.

Dr. *Tej Bahadur Sapru*, in support of the reference.

KNOX and BLAIR, JJ.—The learned District Judge of Meerut has referred this case, which is now before us, under section 646B of the Code of Civil Procedure. The learned Judge is of opinion that a Court subordinate to him, namely the

\* Miscellaneous No. 95 of 1902.

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Court of the Munsif of Meerut, in trying a suit between one Kabul Singh and Ram Lal, defendant, exercised a jurisdiction which was not vested in that Court by law. The learned Judge appears to have overlooked the fact that section 646B does not apply to any or every case in which a Court of Small Causes has exercised a jurisdiction not vested in it by law, but only to a restricted number of such cases, namely those cases in which the Court of Small Causes has, by reason of erroneously holding a suit to be cognizable by it, exercised a jurisdiction not vested in it by law. There is procedure sanctioned by law which provides for cases in which a Court of Small Causes has acted without jurisdiction. In the present case the learned vakil who appears for the applicant Ram Lal has very properly allowed that the question of jurisdiction or want of jurisdiction was never raised before the Court of Small Causes. If not raised there, there could be no holding and no decision. It was contended, first, that Ram Lal, by mentioning in his written reply that he attached the articles under a decree of Court, raised the question of jurisdiction, if we may so term it, in spirit; secondly, that the Court of Small Causes should have considered whether the suit before it was one which it had jurisdiction to entertain independently of whether an actual plea was or was not taken to that effect. Neither of these contentions approves itself to us. What took place in the case is very evident. The defendant lost his case, and then, for the first time, had it suggested to him that there was a plea which he might have raised before a Court of Small Causes with effect, and thereupon tried to get the decision reversed by an application to the District Judge. We are not in favour of assisting parties to set aside decrees upon points which they did not raise before the Court which tried the matters in issue, and of which they gave no notice to the opposite party. The plea of want of jurisdiction could have been met by facts showing that the want alleged did not exist, and if the other side had had notice, it might have shown that the alleged act was an act of wanton mischief, or some similar kind which would have rebutted the plea of want of jurisdiction. We decline to interfere.