

APPELLATE CIVIL.

1904
February 8.

Before Mr. Justice Blair and Mr. Justice Banerji.

MAHADEO (DEFENDANT) v. BUDHAI RAM (PLAINTIFF).*

Act No. IX of 1877 (*Provincial Small Cause Courts Act*), Schedule II, Articles 13 and 31—*Small Cause Court suit*—*Suit for money had and received*—*Second Appeal*—*Civil Procedure Code, section 586.*

Under a decree passed upon an award a certain market was partitioned between the plaintiff and the defendant. In the plaintiff's share was a temple. The plaintiff alleging that according to the award and the decree thereon the duties and weighment charges collected in the market were allotted for payment of the expenses of the temple sued the defendant to recover, for the purposes of the temple, certain dues said to have been collected by the defendant in his share of the market. The suit was instituted in the Court of a Munsif.

Held (1) that the suit was a suit of the nature cognizable by a Court of Small Causes, and (2) that the fact that the suit was instituted in the Court of a Munsif and not in a Court of Small Causes would not render the provisions of section 586 of the Code of Civil Procedure inapplicable. *Kabian Dayal v. Kabian Narer* (1), followed. *Dyobukes Nundun Sen v. Mudhoo Goopla* (2), dissented from.

THE plaintiff and defendant in the suit out of which this appeal arose had been joint owners of certain immovable property, including a bazar in the town of Jasra. This property had been partitioned between them by means of arbitration, and the award of the arbitrators had been followed by a decree of court. To the plaintiff's share had fallen the management of a certain temple, and, according to him, under the terms of the award and decree, amongst the sources of income appropriated to the temple were certain charges derivable from the market. In the present suit the plaintiff claimed Rs. 150, which the defendant was alleged to have collected from his share of the market, and which according to the plaintiff the defendant ought to have handed over to him for the benefit of the temple. The defendant denied that under the terms of the award and the decree the particular income arising from his share of the market was to be devoted to the maintenance

* Second Appeal No. 986 of 1901 from a decree of Munshi Muhammad Siraj-ud-din, Judge of the Court of Small Causes, exercising powers of the Subordinate Judge of Allahabad, dated the 20th May 1901, confirming a decree of Mr. Nand Lal Banerji, Barrister-at-Law, Munsif of Allahabad, dated the 1st September 1900.

(1) (1884) I. L. R., 9 Bom., 259 (2) (1875) I. L. R., 1 Calc., 123.

1904

 MAHADEO
 v.
 BUDHAI
 RAM.

of the temple. He also raised the contention that the suit was of the nature cognizable in a Court of Small Causes, and that as such a court existed in Allahabad the suit could not be entertained by the Munsif, in whose court it had been filed. Both the Courts below overruled the defendant's contention as to jurisdiction, holding that article 13 of the second schedule to the Provincial Small Cause Courts Act, 1887, excluded the jurisdiction of the Small Cause Court. The Munsif decreed the plaintiff's claim, and on appeal this decree was confirmed. The defendant thereupon appealed to the High Court.

Pandit *Baldeo Ram* for the appellant.

Mr. *Abdul Jabil* (for whom Mr. *Abdul Raouf*), for the respondent.

BLAIR and BANERJI, JJ.—This appeal arises out of a suit brought by the plaintiff respondent in the Court of the Munsif of Allahabad for recovery of a sum of Rs. 150 which the plaintiff alleged he was entitled to. The defendant had collected that amount in a certain market and had withheld payment of it. It appears that the parties had differences about the partition of certain property. Those differences were referred to arbitration, and an award was made, in accordance with which a decree was passed. The award and the decree provided for the maintenance of a temple, situated in the market of Jasra, which was partitioned between the parties, and indicated the sources of income arising from the market which were to be devoted to the maintenance of the temple. One of these sources was certain weightment charges. It was contended on behalf of the plaintiff that these charges realized in the share of the market allotted to the defendant ought to have been paid out to the plaintiff for the maintenance of the temple. He accordingly claimed the amount which he alleged was so payable. The defendant denied that under the terms of the award and the decree the particular income arising from his share of the market was to be devoted to the maintenance of the temple. He also raised the contention that the suit was of the nature cognizable in a Court of Small Causes, and that as such a Court existed in Allahabad the suit could not be entertained by the Munsif. The Courts below overruled the defendant's

1904

MAHADEO
o.
BUDDHAI
RAM.

contention as to jurisdiction, holding that article 13 of the second schedule to the Provincial Small Cause Courts Act excluded the jurisdiction of the Small Cause Court. A decree was made by the Court of first instance in favour of the plaintiff. The defendant appealed, and from the decree in that appeal, which affirmed the decree of the first Court, this second appeal has been preferred.

In our judgment the suit was one for money had and received, and was not of the nature contemplated by article 13 of the second schedule to the Small Cause Courts Act. The cesses and dues therein referred to are cesses or dues which are claimed *qua* cesses or dues and apparently from the person who is liable to pay them. In the present case what the plaintiff really sues to recover is a sum of money which the defendant is alleged to have received for the plaintiff's use. It was also not a case to which article 31 applies, as the amount claimed could not be held to be profits of immovable property belonging to the plaintiff which had been wrongfully received by the defendant. The property from which the amount claimed was realized admittedly belonged to the defendant. Therefore that clause has no application. In our judgment the suit was one of the nature cognizable by a Court of Small Causes. That being so, section 586 of the Code of Civil Procedure precludes a second appeal from the decree of the Court below, the value of the subject-matter being below Rs. 500. That section provides that no second appeal shall lie in any suit cognizable by a Court of Small Causes when the amount or value of the subject-matter of the original suit does not exceed Rs. 500. The applicability of the section depends on the nature of the suit and not on the Court in which it is instituted. We must construe the words used in the section in their ordinary meaning, and so construing them we are unable to hold that the section would not apply to a case in which the Court which entertained the suit had no jurisdiction to take cognizance of it. In this view we are supported by the ruling of the Bombay Court in the case of *Kalian Dayal v. Kalian Narer* (1), with which we fully agree, and we are unable to accept the interpretation

put on the section in the case of *Dyebukee Nandun Sen v. Mudhoo Mutty Goopta* (1). In our judgment the present appeal does not lie. Mr. *Baldeo Ram* on behalf of the appellant asks us to treat this appeal as an application under section 622 of the Code of Civil Procedure, to set aside the decrees of the Courts below and to direct the plaint to be returned. That section confers on us a wide discretion, but, after having considered the terms of the decree and the award to which we have referred above, we see no reason to exercise our discretion in favour of the appellant. We accordingly dismiss the appeal with costs.

Appeal dismissed.

1904

MAHADEO
v.
BUDHAI
RAM.

Before Mr. Justice Blair and Mr. Justice Banerji.

UMRAO SINGH (JUDGMENT-DEBTOR) v. LACHMI NARAIN AND OTHERS
(DECREE-HOLDERS).*

1904
February 9.

*Act No. XV of 1877 (Indian Limitation Act) Schedule II, Article 180—
Execution of decree—Limitation—Decree of Chartered High Court—
Revivor.*

A decree was passed by the High Court at Calcutta in 1887. On the 1st of June 1892 an application for the transmission of the decree to the district of Aligarh was made to the High Court. Upon that application a notice under section 248 of the Code of Civil Procedure was issued, and on the 6th of August 1892, the following order was passed thereon :—" Let execution issue as prayed, no cause being shown."

Held, on objection taken that a subsequent application for execution, filed on the 15th of January 1903, in the Court of the Subordinate Judge of Aligarh, was time-barred, that the order of the High Court at Calcutta made after issue of notice under section 248 of the Code of Civil Procedure amounted to a revivor of the decree within the meaning of article 180 of the second schedule to the Indian Limitation Act, 1877, and execution was not barred. *Suja Hossain v. Manohur Das* (2), *Manohar Das v. Futtah Chand* (3) and *Ganapathi v. Balasundara* (4) referred to.

THIS was an appeal arising out of an application made in the Court of the Subordinate Judge of Aligarh for execution of a decree passed by the High Court at Calcutta on the 1st of December 1887 and thence transferred to Aligarh for execution. The application was not made by all the decree-holders,

* First Appeal No. 278 of 1902 from a decree of Maulvi Muhammad Ali, Subordinate Judge of Aligarh, dated the 4th of September 1902.

(1) (1875) I. L. R., 1 Calc., 123. (3) (1903) I. L. R., 30 Calc., 979.

(2) (1896) I. L. R., 24 Calc., 244. (4) (1884) I. L. R., 7 Mad., 540.