

CIVIL REFERENCE.

1905

December 6.

Before Mr. Justice Banerji and Mr. Justice Richards.

BHAIRON (PLAINTIFF) v. RAM BARAN AND OTHERS (DEPENDANTS).*

*Act No. IX of 1887 (Provincial Small Cause Courts Act), schedule II, article**41—Small Cause Court—Jurisdiction—Suit for contribution arising out of satisfaction of a joint decree for costs.*

Held that a suit by one of several joint judgment-debtors, who had satisfied a joint decree for costs, for contribution against the other joint judgment-debtors was not a suit exempted from the jurisdiction of a Court of Small Causes. *Bisva Nath Shah v. Naba Kumar Chowdhary* (1), followed.

A DECREE for costs had been passed against the plaintiff and the defendants to the present suit jointly. The decree was put into execution, and was satisfied by the plaintiff alone, who then sued the remaining judgment-debtors for contribution. The suit was first brought in the Court of Small Causes, which, on the defendants' objection, returned the plaint for presentation to the proper Court, holding that it had no jurisdiction to entertain the suit. The plaintiff then presented his plaint in the Court of the Munsif; but he again, on the defendants' objection, returned the plaint upon the ground that the suit was one cognizable by a Court of Small Causes. From the order of the Munsif the plaintiff appealed to the District Judge, by whom a reference was made to the High Court under section 646B of the Code of Civil Procedure.

Neither party was represented before the High Court.

BANERJI and RICHARDS, JJ.—This is a reference by the District Judge of Benares under section 646B of the Code of Civil Procedure. It appears that a decree for costs was made against the plaintiff and the defendants. The plaintiff having paid the costs brought the present suit for contribution against the defendants. The Judge of the Court of Small Causes returned the plaint for presentation in the proper Court, being of opinion that the suit was excluded from the cognizance of that Court by article (41), schedule II, of the Provincial Small Cause Courts Act. In our opinion this was not a suit of the description mentioned in that article, or in any other article of

* Miscellaneous No. 299 of 1905.

(1) (1888) I. L. R., 15 Cal., 713.

the schedule. The schedule does not exclude every suit for contribution from the cognizance of a Court of Small Causes, but specifies the classes of suits for contribution which are so excluded. The present suit manifestly does not come under any of those classes, and was, therefore, cognizable by the Court of Small Causes. This view is supported by the ruling in *Bisva Nath Shah v. Naba Kumar Chowdhary* (1). We accordingly set aside the order of the Court of Small Causes returning the plaint, and direct that Court to receive back the plaint and try the suit.

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BHAIRON
v.
RAM HARAN.

Before Mr. Justice Banerji and Mr. Justice Richards.

CHHOTU (PLAINTIFF) v. JAWAHER (DEFENDANT).*

Small Cause Court—Jurisdiction—Suit for balance due on a partnership account—Addition of prayer for declaration of dissolution of partnership—Civil Procedure Code, section 646B.

Where a plaint asked in effect for the recovery of a balance alleged to have been struck on the winding up of a partnership. *Held* that the fact that a prayer for a declaration that the partnership had been dissolved was added did not oust the jurisdiction of the Court of Small Causes.

Held also that when a reference is made to the High Court under section 646B of the Code of Civil Procedure, the Court which makes it should state its reasons for considering the opinion of the Subordinate Court with respect to the nature of the suit to be erroneous.

THIS was a reference made under section 646B of the Code of Civil Procedure by the District Judge of Benares in the following terms:—

“The applicant filed the suit out of which these proceedings arise in the Court of the Munsif. On the objection of the opposite party the Munsif ruled that he had no jurisdiction, and returned the plaint for presentation to the Court of Small Causes. The Judge of the Court of Small Causes, however, held that the suit was not cognizable by that Court, and returned the plaint for presentation to the proper Court. There can be no doubt that the suit was cognizable either by the Court of Small Causes or by the Munsif, and by no other Court. Either the Judge of the Court of Small Causes has erroneously held that the suit was not cognizable by him or the Munsif has erroneously held that it was. I, therefore, on the application of the plaintiff, submit the record to the High Court. I do not consider it really necessary for me to express an opinion as to which Court was right, but I am inclined to think, in view of *Narayan v. Balaji* (2) that the suit is cognizable by the Court of Small Causes.”

* Miscellaneous No. 338 of 1905.